

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

HEATHER F., *Appellant,*

v.

DEPARTMENT OF CHILD SAFETY, L.P., *Appellees.*

No. 1 CA-JV 16-0280
FILED 2-28-2017

Appeal from the Superior Court in Maricopa County
No. JD29556
The Honorable William R. Wingard, Judge Pro Tem

AFFIRMED

COUNSEL

Robert D. Rosanelli Attorney at Law, Phoenix
By Robert D. Rosanelli
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Amber E. Pershon
Counsel for Appellees

MEMORANDUM DECISION

Judge Donn Kessler delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Kent E. Cattani joined.

K E S S L E R, Judge:

¶1 Heather F. (“Mother”) appeals the juvenile court’s order terminating her parental rights to L.P. (the “Child”). For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Mother moved to Arizona from California in August 2014 with J. P. (“Father”) because of Father’s job.¹ The Child was born September 22, 2014 at just twenty-eight weeks’ gestation and spent the first sixty-six days of his life in a Neonatal Intensive Care Unit (“NICU”). The Child weighed only two pounds nine ounces at birth, required assistance with breathing, and received his nutrition through a feeding tube. The Department of Child Services (“DCS”) became involved when Mother and Father reported to hospital staff that they were homeless and needed assistance in obtaining housing and food. When a DCS case manager met with them on September 30, 2014, they were living at a Days Inn Motel. At that time, DCS decided to take a “watch and see” approach to see if Mother and Father were able to correct their situation before the Child was discharged from the hospital.

¶3 When the Child was just one month old and still receiving care in the NICU, Mother and Father relocated to Las Vegas, Nevada, for Father’s job. Hospital staff reported to the DCS case manager that Mother only visited the Child twice while he was in the NICU from September 22, 2014 through November 28, 2014. Mother moved back to Arizona from Nevada in November 2014. The court found the Child was dependent in January 2015. Mother sporadically participated in visitation with the Child until February 2015 when she moved back to California.

¹ Father also appealed the termination of his parental rights, however, his appeal was dismissed October 3, 2016 pursuant to Arizona Rule of Procedure for the Juvenile Court 106(G)(1).

HEATHER F. v. DCS, L.P.
Decision of the Court

¶4 During the dependency, DCS repeatedly referred Mother for various services, including drug testing through TASC, Parent Aide services, substance abuse treatment, and psychological evaluation. Mother's participation in these services was sporadic.

¶5 DCS moved for termination of the parent-child relationship in January 2016. The juvenile court held a contested severance hearing and found that the parent-child relationship should be severed on grounds of abandonment pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-531(1) (2014) and 8-533(B)(1) (2014).² Mother timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235(A) (2016), 12-120.21(A)(1) (2016), and 12-2101(A)(1) (2016).

DISCUSSION

¶6 A parent's right to custody and control of her own child is fundamental, *Santosky v. Kramer*, 455 U.S. 745, 753 (1982), but not absolute, *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248-49, ¶¶ 11-12 (2000). To justify severance of a parental relationship, the State must prove by clear and convincing evidence one of the statutory grounds in A.R.S. § 8-533(B). *Michael J.*, at 249, ¶ 12 (citation omitted). The State must also prove by a preponderance of the evidence that severance is in the best interest of the child. *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41 (2005).

¶7 Because the juvenile court is in the best position to weigh the evidence and judge credibility, "we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002) (citations omitted). We do not reweigh the evidence, but "look only to determine if there is evidence to sustain the court's ruling," *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004) (citation omitted), and reverse only if no reasonable evidence to support the ruling exists, *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 376, ¶ 13 (App. 2010) (citation omitted).

¶8 Mother argues that the court erred in finding abandonment, asserting that she maintained a "long-distance type of parental relationship with the child," and that her leaving Arizona was necessary to provide for the Child and for her medical needs.

² We cite to the most current version of the statute unless changes material to this decision have occurred.

HEATHER F. v. DCS, L.P.
Decision of the Court

¶9 We are not persuaded by Mother's argument. Section 8-531(1) defines abandonment as:

[T]he failure of a parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision. Abandonment includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.

¶10 "[T]he court's determination of reasonable support, regular contact and normal supervision will depend on the circumstances of the particular case." *Kenneth B. v. Tina B.*, 226 Ariz. 33, 37, ¶ 19 (App. 2010) (citation omitted). Abandonment is not measured by a parent's subjective intent, but by the parent's conduct. *Id.* at 36, ¶ 15. "Abandonment is conduct. The typical kinds of conduct which constitute abandonment are the withholding of parental presence, love, care, filial affection and support and maintenance." *Anonymous v. Anonymous*, 25 Ariz. App. 10, 12 (1975) (citation and quotation omitted). Additionally, it is the responsibility of the parent to act persistently to establish a relationship with the child and she must assert her legal rights at the first and every opportunity. *Michael J.*, 196 Ariz. at 250, ¶ 22.

¶11 We conclude there is sufficient evidence supporting the juvenile court's finding of abandonment. Mother left her newborn child in a NICU in Arizona to move to Nevada with her boyfriend and only visited the Child twice during the entire time he was in the NICU. After he was discharged from the NICU, Mother left the Child in Arizona to return to California where it was less of a "hassle" to get her medication. This is evidence of withholding parental presence, love, care, and parental affection.

¶12 Mother tries to explain her conduct by arguing, in part, that she moved to Las Vegas while the Child was in the NICU to provide for the Child's needs. However, Mother was never employed while in Las Vegas. It was Father's job that required him to travel. Mother left even though her newborn baby was in a NICU requiring assistance with breathing and receiving his nutrition through a feeding tube. Additionally, Mother did not make any arrangements to have someone come and help care for the Child while she was in Nevada. In fact, during the Child's stay in the NICU, he was not even a dependent of the state. Even when Mother was in

HEATHER F. v. DCS, L.P.
Decision of the Court

Arizona she only visited the Child twice during his two month stay in the NICU.

¶13 Mother also argues she was forced to return to California so that she could have access to her medications for type I diabetes. However, Mother admitted during the hearing that she did have insurance coverage while in Arizona, it was just more of a “hassle” to obtain the medication here. Mother did petition DCS to have her mother, (“Grandma”) who lives in California, become a placement for the Child. However, it was determined in October 2015 that Grandma would not be an appropriate placement for the Child. Mother’s conduct in these situations demonstrates a withholding of parental presence, love, and care and is consistent with a parent who has abandoned their child.

¶14 Mother has also failed to demonstrate that she has persistently acted to establish a relationship with the Child or assert her legal rights to the Child. Mother’s opening brief argues that she visited the Child at least seven times and provided the Child with “a number of gifts.” Mother actually testified that she visited the Child six or seven times, gave the Child one gift, and purchased him clothes on one occasion during his nearly two years of life. Furthermore, multiple DCS case managers testified that Mother failed to consistently maintain contact with DCS, never sent the Child a card or letter, never requested a photo, and never inquired about the Child’s extensive medical needs. They further testified that Mother had failed to maintain a normal parent-child relationship with the Child.

¶15 The evidence supports the juvenile court’s finding that Mother abandoned the Child. Accordingly, we affirm the termination of Mother’s parental rights.³

³ Mother does not argue that the court erred in finding that severance was in the best interest of the Child. Accordingly, we will not address that factor.

HEATHER F. v. DCS, L.P.
Decision of the Court

CONCLUSION

¶16 For the foregoing reasons, we find that sufficient evidence supports the juvenile court's decision to terminate Mother's parental rights. Therefore, we affirm.



AMY M. WOOD • Clerk of the Court
FILED: AA