

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JAIRO Q., *Appellant*,

v.

BRIDGETTE Z., S.Q., *Appellees.*

No. 1 CA-JV 16-0368
FILED 6-6-2017

Appeal from the Superior Court in Maricopa County
No. JS517758
The Honorable Arthur T. Anderson, Judge

AFFIRMED

COUNSEL

Dean W. O'Connor, P.L.L.C Phoenix
By Dean W. O'Connor
Counsel for Appellant

David W. Bell, Higley
Counsel for Appellee Bridgette Z.

MEMORANDUM DECISION

Judge Patricia A. Orozco delivered the decision of the Court, in which Acting Presiding Judge Peter B. Swann and Judge John C. Gemmill¹ joined.

O R O Z C O, Judge:

¶1 Jairo Q. (Father) appeals the juvenile court's order terminating his parental rights for abandonment of the child. For the following reasons, we affirm.

BACKGROUND

¶2 Father and Bridgette Z. (Mother) are the biological parents of S.Q., a daughter born in 2009 (Child). Parents were never married and separated in June 2011. After the separation, Child primarily resided with Mother, and the parents arranged informal parenting time, up to three times per week, for Father between June 2011 and May 2012. Mother made most of the transportation arrangements, and other than provisions made during the visits, Father did not provide any financial support to Mother or Child. In July 2012, Mother filed a petition to establish paternity attempting to formalize joint custody, shared parenting time, and to establish child support. The petition, however, was never served on Father.

¶3 Mother married Joseph Leivian (Stepfather) in October 2013. Child lives with Mother, Stepfather, and a younger half-sister. Stepfather would like to adopt Child.

¶4 Mother filed a petition for termination of parental rights alleging abandonment. At the termination hearing, Father claimed he attempted to see Child on numerous occasions, but acknowledged that he gave up all efforts to see her around August 2012. The court terminated Father's parental rights to Child based on abandonment and found that termination was in Child's best interests.

¹ Honorable Patricia A. Orozco and Honorable John C. Gemmill, Retired Judges of the Court of Appeals, Division One, have been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

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¶5 Father timely appealed. We have jurisdiction pursuant to Article VI, Section 9, of the Arizona Constitution, and Arizona Revised Statutes (A.R.S.) sections 8-235.A., 12-120.21.A.1, and -2101.A.²

DISCUSSION

¶6 Although the right to the custody and control of one's children is fundamental, it is not absolute. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248, ¶¶ 11-12 (2000). To justify termination of the parent-child relationship, the juvenile court must find clear and convincing evidence supporting at least one of the statutory grounds under A.R.S. § 8-533.B. *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 329, ¶ 18 (App. 2007). The court also must find, by a preponderance of the evidence, that termination is in the best interests of the child. A.R.S. § 8-533.B.; *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, 285, ¶ 11 (App. 2011).

¶7 On appeal, we view the evidence in the light most favorable to affirming the court's findings and will affirm a severance order unless it is clearly erroneous. *Michael J.*, 196 Ariz. at 250, ¶ 20. As the trier of fact, the juvenile court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004). Accordingly, we will accept the court's findings of fact "unless no reasonable evidence supports those findings." *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555 (App. 1997).

I. Abandonment

¶8 "Abandonment" is

the 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.

A.R.S. § 8-531.B.1.

² Absent material revisions, we cite to the current version of statutes and rules unless otherwise indicated.

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¶9 Father asserts the court erred in finding abandonment by clear and convincing evidence, because he was foreclosed from having contact with his daughter. Father argues the court erred in not finding “just cause” as to why he had no contact with Child. Abandonment, however, is determined by Father’s conduct, not his subjective intent. *See Michael J.*, 196 Ariz. at 249, ¶ 18. The record shows he has not been present in Child’s life in the past four years. Furthermore, Father admitted he failed to make more than minimal efforts to support and communicate with Child.

¶10 Mother presented phone records demonstrating that Father failed to call or text message her phone between November 2014 and May 2016. She testified that if she could have obtained older records, they would show Father had not attempted to contact her by phone since “the beginning of 2012.” Father confirmed his last attempt to reach out and contact someone about Child was in 2012. He testified that “when you try so many times . . . to get a hold of them and they just say no,” he became frustrated, and “didn’t want to seem like a stalker.”

¶11 Additionally, notwithstanding the lack of regular contact with Child, the evidence was sufficient for the court to conclude that Father showed little interest in maintaining a parental relationship with Child. Even when “circumstances prevent the . . . father from exercising traditional methods of bonding with his child, he must act persistently to establish the relationship however possible and must vigorously assert his legal rights to the extent necessary.” *Pima Cty. Juv. Action No. S-114487*, 179 Ariz. 86, 97 (1994). Mother testified that after speaking to Father about filing the 2012 paternity petition, Father never again requested visitation with Child. In the years between his last visit and the termination hearing, Father did not provide any financial support for Child, failed to maintain regular contact by phone, and failed to send any cards, letters, or gifts. *See Maricopa Cty. Juv. Action No. JS-3594*, 133 Ariz. 582, 586 (App. 1982) (failure to provide child support is “a factor to be considered and, when coupled with a failure to communicate or the absence of sending gifts, is sufficient to uphold a conclusion that the child has been abandoned”).

¶12 Father asserts he had “just cause” for abandoning his parental responsibilities because Mother “foreclosed” his ability to cultivate a normal parental relationship with his daughter. His own testimony, however, demonstrates that he gave up efforts out of frustration more than four years before the termination hearing. Father failed to “assert his legal rights at the first and every opportunity.” *Michael J.*, 196 Ariz. at 251, ¶ 25. As the court noted, “even assuming the father did try to contact Mother by phone (which Mother disputes) those efforts were few and fleeting.”

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¶13 Finally, although Father did not support Child during the first six years of her life, he filed a petition to establish paternity the day before the termination hearing. He claims he is now “ready to make sacrifices for her,” however, his eleventh-hour effort is too little too late. *See Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 8 (1990) (a prima facie case of abandonment is not “rebutted merely by post-petition attempts to reestablish a parental relationship”); *see also In re Maricopa Cty. Juv. Action No. JS-1363*, 115 Ariz. 600, 601 (App. 1977) (holding that once a presumption of intentional relinquishment of parental responsibilities has attached, it may not be rebutted “merely by a showing of attempts to reestablish a parental relationship after the [termination] petition was filed”). In sum, reasonable evidence supports the court’s finding that Father abandoned Child.

II. Best Interests

¶14 Father also challenges the court’s finding that termination of his parental rights is in Child’s best interests. Father argues “there was no evidence before the Court . . . that Father was in any way detrimental to the parties’ minor child.” In the absence of a clear detriment, however, “[t]o support a finding that termination is in the child’s best interest, [Mother] must prove that the child will affirmatively benefit from the termination.” *Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19 (App. 2004). The best interests requirement may be met if, for example, Mother proves that a current adoptive plan exists for Child, or even that Child is adoptable. *See JS-500274*, 167 Ariz. at 6. “[A] juvenile court may conclude that a proposed adoption benefits the child and supports a finding that severance is in the child’s best interests.” *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 2, ¶ 1 (2016).

¶15 At the termination hearing, Mother testified that Child has lived with Stepfather since the age of two and currently lives in a thriving family unit with Mother, Stepfather, and a younger half-sister. Also, Child considers Stepfather to be her “daddy.” Mother further testified that all of Child’s needs are being met and Stepfather provides for the family’s financial needs, allowing Mother to stay at home with the children every day. Additionally, Mother testified that Stepfather has a pending petition to adopt Child and adoption would provide Child with more security and stability. Stepfather testified that he wishes to adopt Child and has been waiting a long time to do so.

¶16 The court found that Child would benefit from the termination because it would allow her to continue to “flourish in a

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permanent, stable, and loving family.” As in *Demetrius L.*, formalizing Stepfather’s legal and financial responsibility through adoption would provide a real benefit to Child. 239 Ariz. at 5-6, ¶¶ 17, 20. We find sufficient evidence supports the court’s finding that termination of Father’s parental rights is in Child’s best interests.

CONCLUSION

¶17 For the foregoing reasons, we affirm.



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