

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ALBERT D., *Appellant*,

v.

JESSICA D., N.D., M.D., K.D., *Appellees*.

No. 1 CA-JV 16-0476
FILED 6-22-2017

Appeal from the Superior Court in Maricopa County
No. JS18247
The Honorable Glenn A. Allen, Judge *Pro Tempore*

AFFIRMED

COUNSEL

David W. Bell, Attorney at Law, Higley
By David W. Bell
Counsel for Appellant

Gillespie Shields Durrant & Goldfarb, Phoenix
By DeeAn Gillespie Strub
Counsel for Appellees

MEMORANDUM DECISION

Presiding Judge Kent E. Cattani delivered the decision of the Court, in which Judge Jon W. Thompson and Judge Paul J. McMurdie joined.

C A T T A N I, Judge:

¶1 Albert D. (“Father”) appeals the superior court’s termination of his parental rights as to his children, N.D., M.D., and K.D. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Father and Jessica D. (“Mother”) are the parents of N.D., M.D., and K.D., all born while Mother and Father were married. Mother and Father divorced in 2006 after eight years of marriage.

¶3 Upon their divorce, the parties agreed that Father would pay child support, and that he would receive visitation with the children. Father apparently saw the children frequently in the months following the divorce, and he regularly made child support payments to Mother.

¶4 Father’s involvement with the children declined over the next few years. In early 2007, Father lost his job due to injury. He moved to North Carolina with a friend for eight months, during which time he was unable to obtain employment. Father made only two child support payments in 2007, and he did not pay any child support in 2008 or 2009. He saw the children at their paternal grandmother’s house in September 2008. Father visited with the children, both at Mother’s house and at their school, somewhat regularly throughout summer and fall 2009. These visits apparently stopped sometime after the children’s school informed Father that he could not visit them on campus.

¶5 Father paid just over \$600 in child support in 2010. In summer 2010, Father was briefly incarcerated for his failure to pay child support. He had regular contact with the children throughout that year, including some visits from August through December. In December, however, he was once again incarcerated for failing to pay child support.

¶6 In 2011, Father moved to California and remarried. While living in California, Father apparently made semi-regular attempts to visit

ALBERT D. v. JESSICA D., et al.
Decision of the Court

the children. He also bought a cell phone for M.D., and he occasionally “tagged” N.D. in posts on Facebook. Father obtained employment in July 2011, and although he claims to have thought money was coming out of his paycheck for child support, his only child support payments that year (totaling \$1,260) were made before he became employed.

¶7 Father’s last visit with the children was in October 2011. He testified that he gave up trying to contact Mother, and that the last time he talked to the children was in June 2012. Father moved back to Phoenix in 2013 without telling Mother. He paid \$350 in 2012, \$2,700 in 2013, \$800 in 2014, and \$4,400 in 2015, all far below his annual child support obligations.

¶8 In 2015, Father filed motions to enforce visitation and to modify child support. The court granted Father’s motion to enforce visitation. Mother filed a request for an emergency order preventing Father from seeing his children, which the court granted. Mother then filed a petition to terminate Father’s rights on the grounds of abandonment and abuse.¹ See Ariz. Rev. Stat. (“A.R.S.”) § 8-533(B)(1)–(2).²

¶9 After a two-day severance hearing, the superior court found that Father had abandoned the children and that severance would be in the children’s best interests. Thus, the court terminated Father’s rights to his children. Father appealed, and we have jurisdiction under A.R.S. § 8-235(A).

DISCUSSION

¶10 Father argues that the evidence presented at trial was insufficient to support the superior court’s finding that he had abandoned his children; he does not challenge the best interests finding.

¶11 The superior court may terminate a parent’s rights to his or her child if it finds at least one of the statutory grounds for termination by clear and convincing evidence, and finds by a preponderance of the evidence that severance will be in the child’s best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, 288, ¶¶ 22, 41 (2005). We review an order terminating parental rights for an abuse of discretion, *Jade*

¹ Mother’s allegation of abuse stemmed from an incident in 2005 during which Father had hit then-two-year-old M.D. with a belt. The superior court found that Mother failed to prove this ground.

² Absent material revisions after the relevant date, we cite a statute’s current version.

ALBERT D. v. JESSICA D., et al.
Decision of the Court

K. v. Loraine K., 240 Ariz. 414, 416, ¶ 6 (App. 2016), and we view the facts and all reasonable inferences in the light most favorable to sustaining the order. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009). “[W]e do not reweigh evidence and will affirm the juvenile court’s factual findings if supported by reasonable evidence.” *Dominique M. v. Dep't of Child Safety*, 240 Ariz. 96, 97, ¶ 6 (App. 2016).

¶12 A parent abandons a child by “fail[ing] . . . to provide reasonable support and to maintain regular contact with the child, including providing normal supervision.” A.R.S. § 8-531(1). Abandonment includes those situations in which “a parent has made only minimal efforts to support and communicate with the child.” *Id.* Abandonment is measured by a parent’s objective conduct, not subjective intent. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249–50, ¶ 18 (2000). Whether a parent has abandoned a child is a question of fact. *Anonymous v. Anonymous*, 25 Ariz. App. 10, 12 (App. 1975).

¶13 Here, reasonable evidence supports the superior court’s abandonment finding. Father had no contact with the children between June 2012 and the filing of his petition for enforcement of parenting time in October 2015, and he had not seen the children since October 2011. He paid minimal child support since he and Mother divorced, and he owed more than \$100,000 in arrearages at the time of the severance trial.

¶14 Father contends that he only failed to visit with his children because Mother restricted him from doing so. *See Calvin B. v. Brittany B.*, 232 Ariz. 292, 297, ¶ 21 (App. 2013) (“A parent may not restrict the other parent from interacting with their child and then petition to terminate the latter’s rights for abandonment.”). But reasonable evidence supports the court’s contrary conclusion. Both Mother and N.D., the oldest child, testified that Mother did not restrict Father from seeing the children. And Father’s current wife testified that Father’s failure to visit after he moved back to Arizona in 2013 was largely due to Father’s medical issues and latent animosity between Father and Mother. The court could reasonably conclude from this evidence that Father’s failure to see the children was due to his own inaction, and not interference by Mother.

ALBERT D. v. JESSICA D., et al.
Decision of the Court

CONCLUSION

¶15 The order terminating Father's parental rights as to his children, N.D., M.D., and K.D., is affirmed.



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