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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

PAOLA B., *Appellant*,

v.

FRANCISCO M., S.R., *Appellees*.

No. 1 CA-JV 20-0331
FILED 10-19-2021

Appeal from the Superior Court in Maricopa County
No. JS518811
The Honorable Lindsey G. Coates, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Collins & Collins, LLP, Phoenix
By Jonathan S. Collins
Counsel for Appellant

The Stavris Law Firm, PLLC, Scottsdale
By Alison Stavris
Counsel for Appellee Francisco M.

MEMORANDUM DECISION

Chief Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Jennifer B. Campbell and Judge Samuel A. Thumma joined.

C A T T A N I, Judge:

¶1 In this private severance action, Paola B. (“Mother”) appeals the superior court’s denial of her petition to terminate Francisco M. (“Father”)’s parental rights as to their daughter, S. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Mother and Father were married and living together in Mexico when S. was born in May 2009; they separated in early 2012. In August 2012, Mother took S. with her to the United States, and Father had not seen S. since.

¶3 In October 2018, Mother filed a petition to terminate Father’s parental rights based on abandonment, *see* A.R.S. § 8-533(B)(1), seeking to allow Mother’s new husband, M.B., to adopt S. Father opposed. Mother, Father, and two other witnesses testified at the contested severance adjudication, presenting meaningfully different evidence.

¶4 According to Mother, Father became violent and threatening after they separated. Mother attempted to obtain a divorce and custody arrangement through a Mexican court, but Father would not participate, and the case was dismissed.

¶5 In August 2012, Mother left with S. for a long-scheduled few-weeks-long trip to visit her sister in Oregon. Mother testified that Father knew about the trip, where she was going, and her sister’s address. Mother acknowledged that she took Father’s passport with her when she left, but she said she had done so by mistake and that she later had her sister return it to him. Mother extended the trip for several weeks to give Father time to cool off. But Father remained threatening and even looted her home and their business in Mexico, so around October 2012, Mother decided to remain in the United States permanently. She did not inform Father that she and S. would not be returning to Mexico until a phone call several months later.

PAOLA B. v. FRANCISCO M., S.R.
Decision of the Court

¶6 Mother and S. stayed with her sister for several months, then in early 2013, they moved in with M.B. in a different part of Oregon. Later that year, Mother filed for divorce against Father in Oregon court. Mother's dissolution petition requested sole custody of S., with no parenting time for Father and no child support obligation for either party.

¶7 In January 2014, before Father had been served, Father found M.B.'s phone number and called him to contact Mother. When Mother called him back, Father asked to see S., which Mother refused to allow until a formal custody arrangement was established in court; at that point, she informed him of the pending divorce proceeding in Oregon but did not provide details (like her request for sole custody). Mother testified that Father agreed that they needed to come to some legal custody arrangement, and that he said he only wanted to see S. twice a year and would not try to take her away from Mother.

¶8 In early 2014, while the divorce action remained pending, Mother and M.B. moved with S. to Utah. Then in March 2014, Father was served with the divorce petition and related documents through the Hague Convention protocol, with the paperwork delivered to his mother's house in Mexico (where ostensibly he was living at the time). Father did not file anything or otherwise appear in the case, and the Oregon court entered a default dissolution decree granting Mother sole custody, Father no parenting time, and no child support for either side, all as Mother had requested.¹

¶9 Mother married M.B. soon thereafter, and they remained with S. in Utah for the next several years. The family moved to Arizona in the summer of 2018, where they continued to reside during the severance proceedings.

¶10 Mother described Father's efforts to stay in S.'s life as minimal at best. She testified that he knew their whereabouts at all times, and even sent police to her sister's house to do a welfare check within the first couple of months they were in Oregon. But Father never visited S. in Oregon, and he never sought to do so. Mother acknowledged, however, that she never gave Father her new addresses in Utah or Arizona after they moved.

¹ During a UCCJEA conference early in these severance proceedings, the Oregon court declined jurisdiction over the matter in favor of an Arizona court (Mother and S.'s current residence) assuming jurisdiction.

PAOLA B. v. FRANCISCO M., S.R.
Decision of the Court

¶11 Mother testified that Father could have easily contacted her and that they in fact had several phone calls in 2013 and 2014, but he never asked about S. or asked for them to return to Mexico. Mother acknowledged that she got a new cell phone number after moving to Utah and never provided it to Father, but she noted Father was able to find M.B.'s phone number for the January 2014 call, and that number remained active.

¶12 Mother highlighted that Father was served with court documents from the Oregon divorce case informing him of the proceeding to determine custody, but he took no action. And Mother never received notice of any family case initiated by Father. In Mother's view, Father never participated in any court case to seek to enforce his parental rights.

¶13 Mother stated that Father did send emails—by Mother's count, only 10 or 12 total over the years—which were mostly just about himself or were like greeting cards for S. He did not ask meaningfully about S.'s life, did not ask to see S., and never offered to provide any support for S. Mother acknowledged that she never responded and never showed S. any of the emails Father sent. And in 2015, Mother changed her email address without giving Father the new one.

¶14 In Mother's view, she tried many times from the early days of their separation to establish a workable custody arrangement. She added, however, that she could not trust Father in the wake of his violence and harassment, so she wanted to have custody orders in place before allowing him to exercise parenting time. Father had an opportunity to participate in those custody proceedings—and from there to develop a relationship with S.—but he never got involved. Father made no efforts at parenting S. other than emails, never asked to be with S., never asked to see S., never tried to be in her life, and never offered S. any financial support. So by 2014, Mother stopped making an effort to have Father maintain a relationship with S. since she did not see any effort on Father's part.

¶15 Father testified to the contrary. According to Father, Mother blocked his repeated attempts to have contact with S. after their separation, even while she still lived in Mexico. He had no idea where Mother had taken S. when they disappeared in August 2012. Father only found out later through a police investigation that Mother and S. had gone to the United States, and even then he did not know where in the United States they had gone—nor could he follow them across the border because Mother had taken his passport with her. Only months later did Mother's sister tell Father that they had been staying with her in Oregon, but by that time, Mother and S. had moved out. Over the years that followed, Mother never

provided him even general information about S.'s whereabouts, although she could have reached him at any time because he kept the same email address and cell phone number since 2012. Father never knew where S. was until Mother filed this private severance action.

¶16 Father described his efforts to find Mother and contact S., including filing a complaint with Mexican police to start an investigation. He also hired a private investigator to search for them in Oregon, without success. And Father reached out in search of S. through friends and family in Mexico and the United States, with family members helping him look. He tried to track her down on social media, and he published notices in newspapers.

¶17 Father testified that he sent Mother emails intended for S. every month or two since 2012, but he never received a response. He could not send S. physical mail because he never had her address, so Father sent the emails through what he thought was Mother's primary email address (but which, unbeknownst to him, Mother had stopped using in 2015). Father would ask about S. and ask Mother to bring her back to Mexico, and he offered if they needed anything to let him know. Mother never responded. Similarly, Father testified that although he managed to reach M.B. by phone in January 2014 (after finding his number through an acquaintance's shared post on social media), Mother never called him back.

¶18 Father explained that he filed a family court case in Mexico to establish custody and child support (although he had not yet been able to serve Mother), and he stated that he had been paying monthly child support for S. into the Mexican court repository since December 2012. He acknowledged receiving a packet of documents about the divorce action filed in Oregon but testified that he had not received them until late 2016. He contacted the Oregon court thereafter but never filed anything there.

¶19 Father testified that he wanted to reestablish a relationship with S. and was willing to work through the family court in Arizona to develop a custody and support plan. He wanted to communicate with S., visit her when appropriate, have phone calls, and work through professionals and therapists to transition back into S.'s life.

¶20 After trial, the superior court denied severance. Citing *Calvin B. v. Brittany B.*, 232 Ariz. 292 (App. 2013), the court reasoned that Mother's interference had prevented Father's attempts to locate, contact, and develop a relationship with S., and thus that Mother had not proven abandonment. The court highlighted Mother's flight from Mexico with S., her subsequent

PAOLA B. v. FRANCISCO M., S.R.
Decision of the Court

moves without informing Father of S.'s whereabouts, her failure to convey Father's email messages to S., and her refusal to allow Father contact with S., reasoning that Mother thereby restricted Father's attempts—including his request to see S., his emails intended for S., and his legal action in Mexico—to have involvement in S.'s life.

¶21 Mother timely appealed. We have jurisdiction under A.R.S. § 8-235(A).

DISCUSSION

¶22 The superior court is authorized to terminate the parent-child relationship if clear and convincing evidence establishes at least one statutory ground for severance and a preponderance of the evidence shows severance to be in the child's best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). We review a severance ruling for an abuse of discretion, deferring to the superior court's credibility determinations and resolution of conflicting facts. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004); *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002). Our role is not to reweigh the evidence: "The resolution of conflicting evidence is 'uniquely the province of the juvenile court,' and this rule applies even when 'sharply disputed' facts exist." *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 151, ¶ 18 (2018) (first quoting *Jesus M.*, 203 Ariz. at 282, ¶ 12, and then quoting *Pima Cnty. Severance Action No. S-1607*, 147 Ariz. 237, 239 (1985)).

¶23 One statutory ground for severance is abandonment, A.R.S. § 8-533(B)(1), defined as:

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(1). Abandonment is assessed objectively based on the parent's conduct, not his subjective intent. See *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249-50, ¶ 18 (2000). Accordingly, when faced with obstacles to a continuing parental relationship, a parent must "act persistently" to establish or develop the relationship, including by "vigorously assert[ing] his legal rights." *Id.* at 250-51, ¶¶ 22, 25 (citation

PAOLA B. v. FRANCISCO M., S.R.
Decision of the Court

omitted). But we have also recognized that “a parent who has persistently and substantially restricted the other parent’s interaction with their child may not prove abandonment based on evidence that the other has had only limited involvement with the child.” *Calvin B.*, 232 Ariz. at 293–94, ¶ 1.

¶24 Mother argues the superior court erred by applying *Calvin B.* to deny severance, asserting that there was no evidence Mother interfered with Father’s interactions with S. and that undisputed evidence showed Father simply made no effort to assert his parental rights. She contends that the superior court’s *Calvin B.* analysis improperly put the burden on her to facilitate Father’s contact with the child rather than assessing the adequacy of Father’s efforts. But the trial evidence was disputed. While there was evidence that might have supported a different conclusion, the record also supports the superior court’s conclusion that Father had not abandoned S. but rather that Mother’s actions had thwarted his efforts to remain in his daughter’s life.

¶25 In *Calvin B.*, this court reversed an order terminating a father’s parental rights based on abandonment, holding that “[a] parent may not restrict the other parent from interacting with their child and then petition to terminate the latter’s rights for abandonment.” *Id.* at 297, ¶ 21. There, the mother restricted the father’s contact to only minutes at a time despite a dissolution decree calling for “liberal visitation,” then sought two orders of protection against him, ignored his requests for visits, and contacted police to prevent visits; the father meanwhile persistently requested visits and sought and received a court order for parenting time, which the mother violated by refusing contact. *See id.* at 294–95, 297, ¶¶ 2–8, 22–24. Under those circumstances, *Calvin B.* held that the mother could not rely on the roadblocks she had created to produce an artificial abandonment despite the father’s continued, substantial efforts to communicate with the child and assert his right to contact with his son. *Id.* at 297–98, ¶¶ 21, 29.

¶26 Mother asserts that she never restricted Father’s contact with S. and in fact repeatedly asked Father to participate in S.’s life. Although Mother argues that she never refused a request for contact, Father testified that she blocked multiple requests and attempts to see S., starting even before she left Mexico. And Mother herself testified that, in response to the only request that she acknowledged Father making, she would not permit Father contact with S. without a court order governing custody. While true that Mother here did not seek an order of protection against Father to restrict his contact with S., *compare id.* at 297–98, ¶¶ 22–23, 26–29, the custody arrangement she sought (and received by default) denied Father any parenting time.

PAOLA B. v. FRANCISCO M., S.R.
Decision of the Court

¶27 Mother denies that her moves to and within the United States meaningfully restricted Father’s relationship with S., asserting that undisputed evidence showed Father knew where S. was and could contact her at any time. But while Mother testified to that effect, Father testified to the contrary that he had no idea where Mother took S. when she left Mexico or over the years that followed. Mother specifically disputes Father’s testimony that he hired a private investigator to search for her in Oregon, urging that any such investigation would necessarily have found her through the Oregon divorce case, but this argument addresses Father’s credibility—a matter uniquely within the superior court’s bailiwick. *See Jesus M.*, 203 Ariz. at 282, ¶ 12. And Mother acknowledged that she did not keep Father apprised of S.’s whereabouts when she moved from state to state thereafter. The superior court did not abuse its discretion by resolving this “sharply disputed” evidence in Father’s favor. *See Alma S.*, 245 Ariz. at 151, ¶ 18 (citation omitted).

¶28 Mother further argues that, unlike the father in *Calvin B.* who had “consistently ‘done something’ to assert his right to have contact with his son,” 232 Ariz. at 298, ¶ 29, Father here did not persistently seek to assert his parental rights or maintain contact with S. In her view, Father never “even asked to speak to the child” and made no effort “other than a few emails a year.” But again, Father testified to the contrary. Father described sending emails for S. every month or two in which he asked to see S. and offered support—his only way to attempt contact without knowing Mother’s physical address or new phone number—but Mother never responded. Mother herself acknowledged that she never responded to Father’s repeated emails, and that she changed her email address in 2015 without giving Father her new contact information. Similarly, although Father was at one point able to discover M.B.’s phone number, Father testified that Mother never returned his call. To be sure, Mother testified to the contrary that she communicated with Father on several occasions in 2013 and 2014, including in response to his January 2014 phone call. But the superior court found Father’s version of events credible, and we do not reweigh the evidence on appeal. *See Jesus M.*, 203 Ariz. at 282, ¶ 12.

¶29 Mother disputes Father’s testimony that he filed a court action in Mexico to establish custody orders and enforce his parental rights, urging that he presented no admissible evidence to support his position. But Father did, in fact, testify that he filed a family case in Mexico to establish custody and child support, and that testimony is, of course, evidence of Father’s actions on which the superior court could rely. *See, e.g., Ariz. R. Evid.* 602 (permitting testimony based on a witness’s personal knowledge). To the extent Mother asserts that Father’s testimony was not credible,

PAOLA B. v. FRANCISCO M., S.R.
Decision of the Court

urging that he could easily have found and served her with the lawsuit if he had tried to do so, the superior court was free to give credit to Father's testimony and weigh its significance, and we defer to that assessment. *See Jesus M.*, 203 Ariz. at 282, ¶ 12.

¶30 At its base, Mother's argument challenges the superior court's ruling based on her contrary view of disputed evidence. But we do not reweigh the evidence on appeal. *Alma S.*, 245 Ariz. at 151, ¶ 18.

¶31 Mother's other arguments are similarly unavailing. She asserts that the superior court failed to make adequate factual findings, but the court's detailed ruling not only recited both sides of the disputed evidence, but also detailed its findings within the *Calvin B.* analysis. *See* A.R.S. § 8-538(A); Ariz. R.P. Juv. Ct. 66(F).

¶32 Mother further contends that the superior court improperly admitted into evidence and might have improperly relied on untranslated Spanish-language documents offered by Father. But Mother, too, offered several Spanish-language documents into evidence. In any case, the court expressly and repeatedly explained that it could not read the Spanish-language documents and did not consider the content of any such documents, instead relying on the substance of the parties' accompanying testimony. Accordingly, even if the documents had been admitted in error, the court did not consider them, and Mother thus has not shown resulting prejudice as required to justify reversal. *See Kimu P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 39, 42, ¶ 11 (App. 2008).

¶33 Mother next urges that the superior court abused its discretion by failing to consider evidence of Father's domestic violence and by failing to make express findings under A.R.S. § 25-403.03. But the court allowed Mother to testify about Father's violence and harassment, and its ruling specifically noted this evidence. And Mother has offered no authority that § 25-403.03, which addresses the presumptions and rules regarding domestic violence with regard to legal decision-making and parenting time in family court for proceedings under Title 25 (not at issue here), applies in this action in juvenile court seeking to terminate Father's parental rights under Title 8.

¶34 Finally, Mother asserts that severance and adoption was clearly in S.'s best interests. But because the superior court properly found no statutory ground for severance, it was not required to make findings on the second step of the severance inquiry. *See Alma S.*, 245 Ariz. at 149-50, ¶ 8 (describing the "two-step inquiry" under § 8-533(B) as entailing first a

PAOLA B. v. FRANCISCO M., S.R.
Decision of the Court

finding of grounds for termination before a determination of whether severance is in the child's best interests).

CONCLUSION

¶35 We affirm.



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