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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ROBERT S.,) No. 1 CA-JV 09-0183
)
Appellant,) DEPARTMENT A
)
v.)
) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz. R.P. Juv.
SECURITY, BRIANNA S., ERIC S.) Ct.; Rule 28 ARCAP)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD 507418

The Honorable David K. Udall, Judge

AFFIRMED

Robert D. Rosanelli,
Attorney for Appellant

Phoenix

Terry Goddard, Arizona Attorney General
By Eric Devany, Assistant Attorney General
Attorneys for Appellee

Mesa

D O W N I E , Judge

¶1 Robert S. ("Father") appeals the termination of his
parental rights. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY¹

¶2 Father and Connie Y. ("Mother") are the biological parents of Eric and Brianna.² Eric was born in January 2001 and has not lived with Father since he was six-months old. Brianna, who was born in March 2002, has never lived with Father. For most of their lives, the children have resided with their maternal grandparents.

¶3 Since Eric's birth, Father has been incarcerated three times for a total of over three years. In 2001, he served a one-year sentence for aggravated assault against Mother. In 2003, he served six months for two counts of sexual conduct with a minor.³ In July 2008, Father pled guilty to leaving the scene of an alcohol-related accident and received two years' imprisonment.

¶4 In June 2008, the Arizona Department of Economic Security ("ADES") learned Mother had left the children with their grandparents and "had not returned for quite some time." She could not be located. Because Father was incarcerated and the grandparents did not have legal custody, ADES took the

¹ We view the facts in a light most favorable to affirming the juvenile court's findings. *In re Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994) (citation omitted).

² Mother is not a party to this appeal, and we thus do not discuss proceedings and issues relevant only to her.

³ Father's children were not the victims of these offenses.

children into care and placed them with the maternal grandparents.

¶15 In July 2008, ADES filed a dependency petition. Father received notice of the petition but made no effort to contact ADES. The children were found dependent as to Father. The initial case plan was for family reunification. Father received three letters from ADES encouraging him to participate in prison services, including substance abuse classes and treatment, domestic violence education and groups, and parenting classes.

¶16 In March 2009, Mother consented to adoption of the children by the maternal grandparents. Finding that ADES had made reasonable efforts toward permanency and that adoption was in the best interests of the children, the court ordered the case plan changed to severance and adoption. In April 2009, ADES moved to terminate Father's parental rights. After an evidentiary hearing, the juvenile court found Father had abandoned the children and severed his parental rights.

¶17 Father timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-235(A)(2007) and 12-120.21(A)(1)(2003).

DISCUSSION

¶18 "The juvenile court, as the trier of fact in a termination proceeding, is in the best position to weigh the

evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002) (citation omitted). Rather than reweighing the evidence, we "look only to determine if there is evidence to sustain the trial court's ruling." *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004) (citation omitted). We accept its findings of fact unless no reasonable evidence supports them and will affirm a severance order unless it is clearly erroneous. *Jesus M.*, 203 Ariz. at 280, ¶ 4, 53 P.3d at 205 (citations omitted).

¶9 To sever parental rights, a court must find by clear and convincing evidence that at least one statutory ground for termination exists. See *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). It must also determine, by a preponderance of the evidence, that termination is in the children's best interests.⁴ *Id.*

1. Abandonment

¶10 The juvenile court terminated Father's parental rights pursuant to A.R.S. § 8-533(B)(1) (Supp. 2009),⁵ which permits severance based on clear and convincing evidence "[t]hat the

⁴ Father has not challenged the finding that severance and adoption is in the children's best interests.

⁵ We cite to the current statute as no changes material to this decision have been made.

parent has abandoned the child." "Abandonment" is defined 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.

A.R.S. § 8-531(1)(2007). Abandonment is not measured by a parent's subjective intent, but by a parent's conduct. *Michael J. v. Ariz. Dep't Econ. Sec.*, 196 Ariz. 246, 249, ¶ 18, 995 P.2d 682, 685 (2000).

¶11 Father argues the finding of abandonment is clearly erroneous and contrary to the evidence. In particular, he argues the paternal grandmother's ("R.A.V.") testimony proves he had a normal parent relationship with the children before being incarcerated and had "ongoing communication" with them afterward.

¶12 Although there were conflicts in the evidence, it was for the juvenile court to resolve them. *Vanessa H. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 252, ¶ 22, 159 P.3d 562, 567 (App. 2007) (citations omitted); *Jesus M.*, 203 Ariz. at 282, ¶ 12, 53 P.3d at 207. The juvenile court found R.A.V.'s credibility "to be suspect." According to R.A.V., Father sent "little pictures" to the children every week and called them

"every weekend" while he was in prison until January 2009. Her statements were contradicted by Father's own testimony that he had not spoken to the children since July of 2008. R.A.V.'s visitation was revoked in January 2009 because she "continuously disregarded CPS's visitation guidelines." She also made false and unsubstantiated allegations that the children had inadequate food and toys at the maternal grandparents' home and that Brianna was being improperly touched by a half-brother.

¶13 Ample evidence supports the determination that Father failed to maintain regular contact with the children. Case manager C.H. testified that, since ADES became involved in June 2008, Father had not contacted the agency. Brianna told ADES in September 2009 that she did not remember the last time she had contact with her father. Father never called or wrote to the children at the maternal grandparents' home, though he had their phone number, and the grandparents have lived at the same address since August 2001.

¶14 Father argues ADES failed to provide services pursuant to its statutory duty to "strengthen the family" under A.R.S. § 8-800 (2007). Specifically, he contends ADES failed to offer him reunification services. ADES, however, was not required to provide such services before the juvenile court could sever Father's parental rights based on abandonment. *Bobby G. v. Ariz. Dep't. Econ. Sec.*, 219 Ariz. 506, 510, ¶ 11, 200 P.3d

1003, 1007 (App. 2008); *Toni W. v. Ariz. Dep't. Econ. Sec.*, 196 Ariz. 61, 66, ¶ 15, 993 P.2d 462, 467 (App. 1999).

¶15 In *Michael J.*, the court affirmed the severance of an incarcerated father's rights based on abandonment, holding that, "[t]he burden to act as a parent rests with the parent, who should assert his legal rights at the first and every opportunity." 196 Ariz. at 251, ¶ 25, 995 P.2d at 687 (citation omitted). The court reasoned that the father ignored opportunities for asserting his parental rights, about which ADES notified him, even though "ADES owed no duty to [the father] to ensure that his parental rights were not severed." *Id.* Further, he "took none of the actions even an incarcerated parent can take to establish some bond or connection with the child." *Id.* at ¶ 24.

¶16 Similarly, Father failed to take reasonable actions to parent. Although Father claimed he sent R.A.V. a power of attorney so the children could receive care while he was in prison, the paternal grandfather never saw such a document, the maternal grandfather ("R.Y.") did not receive it, and it was never shown to ADES or the court. Father ignored letters from ADES encouraging him to participate in available prison services. Father did not inquire about reinstating communication with the children. Had he done so, he could have established telephonic communication while incarcerated.

¶17 Even before his incarceration, Father's involvement with the children was minimal. The juvenile court stated it did not believe R.A.V.'s testimony that Father saw the children on an almost-daily basis. R.Y. testified Father never called the children at his home; nor did he send gifts, cards, or letters. R.Y. also stated Father visited the children only once every three months in 2007 and only once or twice in 2008.

¶18 Father did not have basic knowledge about the children, such as where they attended school, what grade they were in, or the names of their teachers or doctors. Though Father knew Eric had special needs, he made no effort to have him tested or placed in a special education program. Father neglected such decisions, leaving them to the maternal grandparents, who also met with teachers and monitored the children's education.

¶19 Finally, Father failed to provide reasonable support for the children. At the time of trial, he was over \$12,000 in arrears in child support. Even considering his most recent incarceration, Father was still about twenty-eight months in arrears on support payments. Father admitted he has not provided any support whatsoever for his children while incarcerated.

CONCLUSION

¶20 For the foregoing reasons, we affirm the judgment of the juvenile court.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
MAURICE PORTLEY, Presiding Judge

/s/
LAWRENCE F. WINTHROP, Judge