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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 04-01-2010  
PHILIP G. URRY, CLERK  
BY: GH

CRISANTO D., ) 1 CA-JV 09-0195  
)  
Appellant, ) DEPARTMENT A  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) Ariz. R.P. Juv. Ct. 103(G);  
SECURITY, et al, ) ARCAP 28)  
)  
Appellees. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. JD16326

The Honorable Benjamin R. Norris, Judge

**AFFIRMED**

David W. Bell  
Attorney for Appellant

Mesa

Terry Goddard, Attorney General  
By Pennie J. Wamboldt, Assistant Attorney General  
Attorneys for Appellee Arizona Department of Economic Security

Prescott

**W I N T H R O P**, Judge

¶1 Crisanto D. ("Appellant") appeals from the juvenile court's order terminating his parent-child relationships with V.Q. and J.Q. (collectively, "the children") pursuant to Arizona

Revised Statutes ("A.R.S.") section 8-533(B)(1) and (8)(a) and (c) (Supp. 2009), provisions permitting severance based on abandonment and cumulative out-of-home placement.<sup>1</sup> Appellant argues that the court erred in terminating his parental rights on these bases, but he does not contest its finding that termination of his parental rights was in the children's best interests. See A.R.S. § 8-533(B) (requiring the court to "consider the best interests of the child"). For the following reasons, we affirm.

#### **FACTS AND PROCEDURAL HISTORY<sup>2</sup>**

¶2 In December 2007, Mother, a methamphetamine user, abandoned the children with no means of support, leaving them with a family friend whose vehicle Mother stole and with whom she and the children had been staying. During investigation of the stolen vehicle, police contacted the Arizona Department of Economic Security ("ADES"), which placed the children in the custody of Child Protective Services ("CPS"). The children were eventually placed in an adoptive foster home.

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<sup>1</sup> The court also terminated the parental rights of the children's mother ("Mother") to both the children and another child, A.Q., on September 30, 2009. Appellant is not the father of A.Q., and neither Mother nor A.Q. is a party to this appeal.

<sup>2</sup> We view the facts in the light most favorable to affirming the juvenile court. *In re Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994). To the extent conflicts exist in the evidence, it was for the juvenile court to resolve them. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 12, 53 P.3d 203, 207 (App. 2002).

¶3 Appellant and Mother had never married, and Appellant's whereabouts were unknown at the time of the abandonment. When he was located, Appellant was living in Georgia, had reportedly last seen V.Q. in August 2007, and did not know where the children had been living from August to December 2007.

¶4 In December 2007, Appellant came to Arizona, but after learning the children were in the custody of ADES, he left and briefly visited family in Nevada. He next moved to California, where he lived with relatives, attended a paralegal program, and worked part-time.

¶5 ADES filed a dependency petition on December 26, 2007, alleging the children were dependent as to Mother and Appellant, as well as other potential fathers. With regard to Appellant, ADES alleged that he had not established paternity of the children, had abandoned them and failed to maintain a normal parental relationship with them. ADES later added an allegation of neglect.

¶6 On December 27, 2007, Appellant appeared telephonically at the preliminary protective hearing, denied the allegations of the dependency petition, and agreed to paternity testing, which ultimately established that he was the father of both children. The juvenile court eventually adjudicated the children dependent as to Mother, and pursuant to mediation,

Appellant submitted to the dependency. The court affirmed a case plan of family reunification and ordered CPS to provide visitation after paternity was established. The court held numerous periodic review hearings, at which Appellant was represented by counsel and the court found that ADES was making reasonable efforts to reconcile the family. Appellant did not object to these findings.

¶7 In addition to paternity testing, mediation, and visitation, ADES offered Appellant other reunification services, including transportation, urinalysis drug testing, parent aide services/skills training, a psychological evaluation, and a bonding assessment. ADES also offered to submit an Interstate Compact on the Placement of Children ("ICPC") referral, see A.R.S. § 8-548 (2007), to allow Appellant to have the children placed with him in California, but he declined the offer. While he lived in California, Appellant did participate in urinalysis drug testing and a parenting-skills program, and he submitted to a psychological evaluation in August 2008. However, he requested transportation to Arizona only twice - to attend the August 2008 psychological evaluation and a November 2008 review hearing. ADES paid for his transportation each time, but he requested no additional visits to see the children, despite the fact that, at the August 2008 review hearing, ADES agreed to pay for further transportation to facilitate visitation.

¶18 Appellant completed the paralegal course in October 2008, visited the children in November 2008 after being transported to Arizona for the review hearing, and then returned to Georgia and moved in with his sister. His next visit with the children occurred in August 2009, when ADES paid to transport him to Arizona for the bonding assessment. During the nine-month period from November 2008 until August 2009, Appellant had no contact with the children in person or telephonically.<sup>3</sup>

¶19 In April 2009, the State of Georgia denied ICPC approval for placement of the children with Appellant's sister.<sup>4</sup> At the April 23, 2009 report and review and permanency planning hearing, ADES moved to change the case plan from reunification to severance and adoption, and the juvenile court approved the new case plan.

¶10 On May 20, 2009, ADES filed a motion to terminate Appellant's rights as to the children on the grounds of abandonment, see A.R.S. § 8-533(B)(1), and that he had substantially neglected or willfully refused to remedy the

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<sup>3</sup> However, Appellant reportedly requested telephone contact with V. Q. on her birthday and sent either birthday cards or letters to the children sometime after November 2008.

<sup>4</sup> Later, at a July 6, 2009 pretrial conference, the juvenile court ordered ADES to resubmit the ICPC request to Georgia, and ADES did so. At the time of the severance trial, however, the State of Georgia had not approved that request.

circumstances that caused the children to remain in out-of-home placement. See A.R.S. § 8-533(B)(8)(a). The motion further alleged that termination of Appellant's parental rights was in the children's best interests.<sup>5</sup>

¶11 On September 14 and 16, 2009, the juvenile court held a contested hearing on the severance motion.<sup>6</sup> At the beginning of the hearing, ADES moved to add the fifteen-month time-in-care allegation, and the court granted the motion over Appellant's objection. At the conclusion of the hearing, the court granted the motion for termination of Appellant's parental rights, finding that ADES had proven by clear and convincing evidence that grounds for severance existed pursuant to A.R.S. § 8-533(B)(1) (abandonment) and (8)(a) and (c) (nine and fifteen months' time-in-care) and that termination of Appellant's parental rights was in the children's best interests. On October 29, 2009, the court filed a signed order terminating Appellant's parental rights to the children.

¶12 Appellant filed a timely notice of appeal. We have appellate jurisdiction pursuant to A.R.S. § 8-235(A) (2007) and

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<sup>5</sup> Before the hearing on the motion to terminate, ADES additionally alleged that Appellant had been unable to remedy the circumstances that caused the children to remain in out-of-home placement for fifteen months or longer and was unlikely to be able to parent them in the future. See A.R.S. § 8-533(B)(8)(c).

<sup>6</sup> ADES paid for Appellant's transportation to the hearing.

Rule 103(A) of the Arizona Rules of Procedure for the Juvenile Court.

### ANALYSIS

#### I. Severance Pursuant to A.R.S. § 8-533(B)(1)

¶13 Appellant argues first that insufficient evidence supports the juvenile court's determination that he abandoned the children.<sup>7</sup> We disagree.

¶14 The right to custody of one's children is fundamental, but it is not absolute. See *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248, ¶¶ 11-12, 995 P.2d 682, 684 (2000). "To justify termination of the parent-child relationship, the trial court must find, by clear and convincing evidence, at least one of the statutory grounds set out in section 8-533, and also that termination is in the best interest of the child." *Id.* at 249, ¶ 12, 995 P.2d at 685 (citing A.R.S. § 8-533(B)).

¶15 Because the juvenile court is "in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings," *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987), this court will not reweigh the evidence but will look only to determine if there is evidence to

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<sup>7</sup> ADES maintains that Appellant has waived his arguments on appeal by failing to properly assert them, including providing proper citation to the record and legal authority. See ARCAP 13(a)(4), (6). Finding no waiver on this basis, we address the merits of Appellant's appeal.

sustain the court's ruling. *Maricopa County Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996). "We will not disturb the juvenile court's disposition absent an abuse of discretion or unless the court's findings of fact were clearly erroneous, i.e., there is no reasonable evidence to support them." *Id.*; accord *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, 982 P.2d 1290, 1291 (App. 1998). We presume that the juvenile court made every finding necessary to support the judgment, see *Pima County Severance Action No. S-1607*, 147 Ariz. 237, 238, 709 P.2d 871, 872 (1985), and defer to the court's resolution of conflicting inferences and claims if supported by reasonable evidence. See *Pima County Adoption of B-6355 & H-533*, 118 Ariz. 111, 115, 575 P.2d 310, 314 (1978); *O'Hern v. Bowling*, 109 Ariz. 90, 92-93, 505 P.2d 550, 552-53 (1973).

¶16 Generally, before seeking to terminate a parent-child relationship, ADES must make "reasonable" efforts to preserve the family as a necessary constitutional element to overcome the "fundamental liberty interest of the natural parents in the care, custody and management of their child." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 191-92, ¶ 32, 971 P.2d 1046, 1052-53 (App. 1999) (quoting *Santosky v. Kramer*, 455 U.S. 745, 753 (1982)). This means that ADES must make a reasonable effort to rehabilitate the parent by offering parent services



designed to improve the parent's ability to care for the child. *Id.* at 192, ¶¶ 33-34, 971 P.2d at 1053. However, ADES is not required to provide every conceivable service, *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994), or to provide futile services, *Pima County Severance Action No. S-2397*, 161 Ariz. 574, 577, 780 P.2d 407, 410 (App. 1989), and a parent's compliance under A.R.S. § 8-533 requires more than sporadic, aborted attempts at remediation. *Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994). Moreover, ADES is not required to provide reunification services before seeking severance of parental rights on the ground of abandonment. See *Toni W. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 61, 66, ¶ 15, 993 P.2d 462, 467 (App. 1999).

¶17 Under A.R.S. § 8-533(B)(1), the juvenile court may terminate parental rights upon finding a parent has abandoned the child. "Abandonment" is 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) (2007). Abandonment is not measured by subjective intent but by a parent's conduct. *Michael J.*, 196

Ariz. at 249, ¶ 18, 995 P.2d at 685. Thus, the court must ask "whether a parent has provided reasonable support, maintained regular contact, made more than minimal efforts to support and communicate with the child, and maintained a normal parental relationship." *Id.* at 249-50, ¶ 18, 995 P.2d at 685-86. The obligation rests on the unwed father - who has no immediate or obvious legal tie to a child - to act immediately "to establish the legal or emotional bonds linking parent and child." *Pima County Juv. Severance Action No. S-114487*, 179 Ariz. 86, 96, 876 P.2d 1121, 1131 (1994). A father prevented by circumstance from using traditional bonding methods "must act persistently to establish the relationship however possible and must vigorously assert his legal rights to the extent necessary." *Id.* at 97, 876 P.2d at 1132. If informal efforts to establish a relationship fail, "he must rapidly turn to legal recourse so that the child may obtain a final placement as quickly as possible." *Id.* at 98, 876 P.2d at 1133. Thus, the burden is not on ADES to prevent termination of the parental relationship, but on the father to "assert his legal rights at the first and every opportunity." *Michael J.*, 196 Ariz. at 251, ¶ 25, 995 P.2d at 687.

¶18 In its signed order terminating Appellant's parental rights as to the children, the juvenile court made the following findings regarding abandonment:

Father has abandoned the Children and failed to maintain a normal parental relationship with the Children, without just cause, by failing to provide reasonable support, maintaining regular contact with the Children, and/or providing normal supervision. A.R.S. § 8-533(B)(1). Since the dependency was filed in December 2007, Father has maintained minimal contact with his Children. Father initially lived in California and then moved to Georgia in November 2008. Despite ADES arrangements to provide transportation for visits, Father has only visited the Children three times, which also coincided with his psychological evaluation, bonding assessment and a court hearing. Father has failed to maintain a normal parental relationship with the Children. Dr. Bluth's bonding assessment found that no bond existed between Children and Father.

¶19 We conclude that reasonable evidence in the record supports the juvenile court's finding that Appellant abandoned the children. At the time of the children's removal from Mother's care in December 2007, Appellant's whereabouts were unknown, and he admittedly had not known the whereabouts of the children since August 2007. He reportedly came to Arizona in December 2007 after being informed the children were not being cared for by Mother, but when he arrived and learned the children were already in ADES's custody, he left to visit family in Nevada for a brief time, then went to California to attend school.

¶20 ADES initially created a case plan for family reunification, offered services, and consistently advised Appellant that he was "expected to come to Arizona on a regular basis to develop a relationship with his children." After

Appellant indicated that he lacked sufficient means to travel to Arizona regularly, ADES agreed to assist him financially to facilitate visitation.

¶21 However, eleven months into the dependency proceedings, Appellant had requested transportation to Arizona only twice - to attend his psychological evaluation<sup>8</sup> in August 2008 and a review hearing in November 2008. ADES paid for his transportation each time. Consequently, by the time he moved back to Georgia in November 2008, Appellant had seen the children only twice since August 2007 and had requested no additional visits.<sup>9</sup>

¶22 Less than thirty days after he completed school in California, he left and, after stopping briefly in Arizona, relocated to Georgia. However, he failed to notify either ADES or his counsel when he moved, and he failed to appear at the January 2009 review hearing, at which his counsel "request[ed] to be relieved or that [ADES] be ordered to do a parent locate"

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<sup>8</sup> In his psychological evaluation, Appellant indicated that he was not seeking custody of the children for himself; instead, he wanted family members to care for them. The evaluating doctor, Dr. Shane T. Hunt, concluded that Appellant "really is not committed to caring for his children and wants to have his family care for them." The doctor further opined, "Services are not likely going to change this [lack of commitment] as he is not prepared to take on ALL the responsibilities of parenting," and because he "is having trouble taking care of himself much less caring for his children."

<sup>9</sup> At the severance hearing, Appellant testified that he was unsure if he had actually visited the children in August 2008.

to find him. The court ordered a parent locate search, and Appellant was eventually located on January 23, 2009, after his former roommate in California advised him that he had received correspondence indicating Appellant needed to contact CPS.

¶23 After Appellant moved to Georgia, ADES contacted him numerous times, encouraging him to visit the children in Arizona. In March 2009, Appellant's case manager spoke with Appellant and "requested that he engage in supervised visits with his children." However, Appellant responded, "[N]ow that I'm down here that is going to be an issue. I'm not sure about going down there right now. Let me check my schedule and I will call you back." When the case manager warned that "it is imperative that you have contact with your children," Appellant replied, "I am aware and I will check my schedule and call you back." Appellant did not call back.

¶24 Later, in a June 18, 2009 letter, the case manager informed Appellant, "In previous phone conversations, you have stated you would contact me when you have viewed your schedule. It is concerning that months have gone and you have not contacted me regarding visitation with [the children]." In a follow-up telephone conversation, the case manager asked "if he would be able to participate in a visit with his children," and Appellant responded, "[H]ow do you expect me to visit my kids if

I live in Georgia[?]" Appellant again indicated that he would need to check his work schedule.

¶25 But Appellant did not provide a copy of his work schedule, ask for visitation, or see the children again until August 2009, when he was court-ordered to participate in the bonding assessment.<sup>10</sup> This was the only personal contact Appellant had with the children from November 2008 until the severance trial, a span of approximately ten months. Thus, in total, Appellant visited the children three times during the twenty-one-month dependency, and before the dependency, had not seen either of them for approximately four months.

¶26 Appellant's testimony at the termination hearing further supports the conclusion that he had abandoned the children. He admitted that, until the dependency petition was filed, he had done nothing to establish paternity and had no intention of leaving Georgia and coming to Arizona, or anywhere in the West. After he learned the children were in the custody of ADES, he chose to live in California rather than Arizona because he "thought it was much easier for me since I have

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<sup>10</sup> Dr. G. Joseph Bluth conducted the bonding assessment. Dr. Bluth reported that Appellant arrived "unprepared for the visit and brought no food or toy items." Further, "[t]here was no sign that the children recognized [Appellant] as their father. They did not address him as Dad or any similar term." The doctor concluded, "It was evident from the evaluation that no bond or attachment exists between the children and [Appellant]" and that the children "obviously see the foster parents as their primary attachment figure."

family members in California." And, after receiving his paralegal degree in California, he never sought employment in Arizona and had no "intention whatsoever of trying to move to Arizona while [the] children were here," but instead returned to Georgia "for employment reasons" and because he "had a family that would be able to assist him"; in effect, choosing where he wanted to live over being near the children. Also, despite gaining employment with a cleaning service in Georgia, he never offered to pay any money for the children's support.

¶27 Regarding visitation, Appellant testified that there were times he had asked ADES to transport him from California to Arizona and been denied, but he did not know when this had occurred and "wouldn't be able to remember" if he had informed his attorney that ADES was refusing to pay for transportation. When asked if he had ever raised the issue in court, he responded, "I'm afraid not." He also stipulated that if the original case manager - who had the case from approximately February to November 2008 - were called, she would testify that he had not called her and asked for visitation. Finally, when asked if the children viewed him as their father, Appellant again responded, "I'm afraid not."

¶28 Based on the aforementioned evidence, we conclude that reasonable evidence supports the juvenile court's finding that Appellant failed to establish and maintain a normal parental

relationship with the children, without just cause, by failing to provide reasonable support, maintaining regular contact, or providing normal supervision, and therefore he abandoned the children. See A.R.S. § 8-531(1). Accordingly, the court did not err in terminating Appellant's parental rights pursuant to A.R.S. § 8-533(B)(1).

*II. Severance Pursuant to A.R.S. § 8-533(B)(8)(a) and (c)*

¶29 Appellant also contends that the juvenile court erred in terminating his parental rights to the children pursuant to the nine-month and fifteen-month out-of-home-placement grounds articulated in A.R.S. § 8-533(B)(8)(a) and (c). However, finding the existence of any one of the enumerated statutory grounds is sufficient to justify termination. *Maricopa County Juv. Action No. JS-6520*, 157 Ariz. 238, 242, 756 P.2d 335, 339 (App. 1988). Because we find that reasonable evidence supports termination pursuant to § 8-533(B)(1), we need not consider the additional grounds found by the juvenile court. See *JS-501568*, 177 Ariz. at 575, 869 P.2d at 1228.<sup>11</sup>

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<sup>11</sup> We do, however, conclude that the record, including much of the same evidence supporting the finding of abandonment, supports the court's time-in-care findings under A.R.S. § 8-533(B)(8)(a) and (c).



**CONCLUSION**

¶30 The juvenile court's severance order is affirmed.

\_\_\_\_\_/S/\_\_\_\_\_  
LAWRENCE F. WINTHROP, Judge

CONCURRING:

\_\_\_\_\_/S/\_\_\_\_\_  
MAURICE PORTLEY, Presiding Judge

\_\_\_\_\_/S/\_\_\_\_\_  
MARGARET H. DOWNIE, Judge