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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: 01/19/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

DANIEL W. ,) 1 CA-JV 11-0026
)
Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G), Ariz. R.P. Juv.
SECURITY, ZACHARY T.,) Ct.; Rule 28 ARCAP)
)
Appellees.)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JS11611

The Honorable Christopher A. Coury, Judge

AFFIRMED

John L. Popilek, P.C.
by John L. Popilek
Attorney for Appellant

Scottsdale

Thomas C. Horne, Attorney General
by Eric Devany, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

Phoenix

P O R T L E Y, Judge

¶1 Daniel W. ("Father") appeals from the order terminating his parental rights to his son.¹ For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 The child was born in Montana in 2006 to Mother, who was sixteen, and Father, who was eighteen. Two months later, Mother and the child moved to Arizona to live with Mother's aunt and uncle. Father agreed that the move would be in the child's best interests, and had one visit with the child before the move. Mother provided Father with her email address and phone number, her new mailing address, and her aunt's phone number.

¶3 Father, who was attending Job Corps in Montana, established paternity and began paying \$58 per month in child support. After he graduated in 2007, he found a job paying approximately \$900 a week but he made no effort to report the fact and his child support payments remained the same. Moreover, he had no contact with his son.

¶4 The child was taken by Child Protective Services ("CPS") in March 2008, and the Arizona Department of Economic Security ("ADES") filed a dependency petition after Mother attempted suicide. She, however, successfully completed the

¹ Mother's parental rights were terminated but she is not a party to this appeal.

reunification efforts, was reunified with the child in October 2009, and the dependency case was dismissed in December 2009.

¶15 During the first dependency, Father received notice that his child support payments were not being delivered. Father emailed Mother and learned about the dependency. Father contacted ADES and sought to become a placement for his child. Father's effort was unsuccessful because the child was reunified with Mother and the dependency was dismissed. Father, however, made no further child support payments.

¶16 Mother emailed Father in January 2010 and requested contact information because she wanted child support. Father never responded. Mother never sought to reestablish child support.

¶17 The child was removed from Mother in August 2010, after he was physically abused by her roommate. ADES filed a termination petition on September 14, 2010, and alleged that Father had abandoned the child. Father subsequently moved to Arizona, contested the termination, and had some visits with the child. After a three-day hearing, the juvenile court entered its findings of facts and conclusions of law and terminated his parental rights. Father appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-235(A) (West 2011) and 12-2101(A)(1) (West 2011).

DISCUSSION

¶8 On appeal, Father argues that he did not know that the child had been moved to Arizona,² did everything he could to locate the child, and once he found the child he made all reasonable efforts to be a part of the child's life. We review a judgment terminating parental rights for an abuse of discretion. *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, 452, ¶ 19, 153 P.3d 1074, 1081 (App. 2007); *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002) (citation omitted). The statutory grounds alleged in the petition or motion must be proven by clear and convincing evidence. A.R.S. § 8-537(B) (West 2011); see A.R.S. § 8-533(B) (West 2011). Additionally, the juvenile court must find that termination is in the best interests of the child by a preponderance of the evidence. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005).

¶9 When reviewing a judgment terminating a parent's rights, "[w]e view the facts in the light most favorable to sustaining the juvenile court's decision." *Christy C.*, 214 Ariz. at 449, ¶ 12, 153 P.3d at 1078 (citation omitted). And, we accept the findings of the juvenile court unless they are clearly erroneous in determining whether the facts support the

² Testimony at trial directly contradicts this contention, as both Mother and Father testified that he knew about and agreed with the move beforehand.

conclusion of abandonment. *Toni W. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 61, 63, ¶ 2, 993 P.2d 462, 464 (App. 1999) (citation omitted).

¶10 "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) (West 2011).

¶11 Here, the testimony was clear. Father had one visit with his son before the child was taken to Arizona. Mother gave him all her contact information, but he never attempted to contact the child or inquire about the child's welfare before 2010. He provided two gifts to the child and some child support for a limited time, but he never attempted to become involved in the child's life until he moved to Arizona after he was served with the termination petition. As a result, testimony supported the findings of the juvenile court as well as the conclusion that Father abandoned his son.

¶12 Additionally, testimony supported the finding that termination was in the child's best interests. There was evidence that the child had developed strong bonds with his

foster family, and Father recognized that his son had a healthy emotional attachment with the foster parents and was well cared-for by the foster family. Moreover, the foster family wants to adopt the child.

¶13 Father also argues that CPS had an obligation to provide him with family reunification services. We disagree. Other than being the child's biological parent, Father never attempted to act as the child's parent until after the second removal and dependency. *See Toni W.*, 196 Ariz. at 66, ¶ 15, 993 P.2d at 467 (finding no requirement for DES to provide family reunification services to parent whose only link with the child was biological). Consequently, the juvenile court properly found that Father had abandoned the child and severance was in the child's best interests.

CONCLUSION

¶14 Based on the foregoing, we affirm the termination of Father's parental rights.

/s/

MAURICE PORTLEY, Judge

CONCURRING:

/s/

JON W. THOMPSON, Presiding Judge

/s/

JOHN C. GEMMILL, Judge