DIVISION ONE
FILED: 05/01/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

CHRISTOPHER E.,	)	1 CA-JV 11-0245
	)	
Appellant,	)	DEPARTMENT C
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
ARIZONA DEPARTMENT OF ECONOMIC SECURITY, CHRISTOPHER E.,	)	Ariz. R.P. Juv. Ct. 103(G); ARCAP 28)
	)	
Appellees.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. JD19093

The Honorable Jay R. Adleman, Commissioner

AFFIRMED

Thomas C. Horne, Arizona Attorney General — Phoenix
By Carol A. Salvati, Assistant Attorney General
Attorneys for Appellee

Denise L. Carroll — Scottsdale
Attorney for Appellant

N O R R I S, Judge

¶1 Christopher E. timely appeals the juvenile court's order terminating his parental rights to his son, C.E. Father argues the evidence failed to support the juvenile court's

finding he abandoned C.E. under Arizona Revised Statutes ("A.R.S") section 8-533(B)(1) (Supp. 2011), because "based on the [juvenile court's] factual findings about the Department's 'lackluster performance' in trying to reunify Father, [the] court should not have found Father abandoned his child since he was thwarted at reunifying by the Department's actions." Father also argues the State failed to prove termination would be in C.E.'s best interests. Because substantial evidence supported the court's findings and conclusions, however, we affirm its termination order.

FACTS AND PROCEDURAL BACKGROUND[1]

¶2 C.E. was born out-of-state in 2005 and lived, alternately, with his mother, with both parents, and with his parents' families. Father testified he played an active role in C.E.'s early childhood, teaching him to walk, speak, and clean his room. Between 2006 and 2010, however, Mother moved frequently, sometimes traveling to different states, and sometimes taking her children with her.[2] Father testified Mother

[1]We view the facts in the light most favorable to affirming the judgment. *Michael J. v. Ariz. Dep't. of Econ. Sec.*, 196 Ariz. 246, 250, ¶ 20, 995 P.2d 682, 686 (2000) (citation omitted).

[2]Mother had a second child with another father whose parental rights were also terminated, but that termination is not the subject of this appeal.

"had a way of disappearing and not, you know, acknowledging [him]."

¶3 In January, 2010, Father and his family hosted C.E.'s fifth birthday party and, as Father testified at the severance hearing, this was the last time he saw C.E. Shortly after the party, unbeknownst to Father, Mother moved with the children to Arizona.

¶4 On April 24, 2010, the Phoenix police department discovered the children wandering outside alone, unsupervised, and unclothed. Child Protective Services ("CPS"), a division of the Arizona Department of Economic Security ("ADES"), took the children into custody the same day.

¶5 In June 2010, Father learned the children were in ADES's custody and called the CPS hotline. A CPS case manager returned Father's call and confirmed the children were in custody.[3]

¶6 On September 15, 2010, the case manager initiated an interstate placement "home study" process to "acquire additional information as to [Father]," and investigate the possibility of placing the children with him. An agency in Father's home state

[3]Although CPS attempted to provide Mother, whose "mental health was slowly deteriorating," with services to regain custody of her children, Mother disappeared during the process. The juvenile court terminated Mother's parental rights on August 25, 2011.

began the process and, on October 29, 2010, a case worker visited Father's home. The case worker reviewed the home study requirements and paperwork with Father and gave him until November 3, 2010 to complete the requirements, which included clearing up his five outstanding criminal warrants, completing a drug and alcohol screening, and ensuring he and the members of his household were fingerprinted. On November 3, Father called the case worker and informed her the members of his household were not willing to be fingerprinted and that he personally intended to be fingerprinted the same day, but could not make it during the agency's operating hours. The case worker gave him an opportunity to make an appointment to complete the fingerprinting and screening requirements and call back to confirm he had made the appointment, but Father did not do so, and indeed never complied with these requirements, *see infra* ¶ 8.

¶7 Although the CPS case manager initially had "safety concerns . . . that led [her] not to provide contact" between Father and C.E., beginning in October 2010, the case manager decided to allow Father to have one supervised telephone call with C.E. each month.[4] Father completed the calls in October and

[4]The case manager testified that although it was "typical practice for the department to ask foster parents to monitor phone calls with kids, . . . in this case [the] foster parents weren't willing to do that." Thus, the case manager

November. Father did not participate in a phone visit in December. Although the case manager testified "[she couldn't] be sure if [she] had informed [Father] beforehand of that [call]," Father never contacted the case manger to ask about the December call.[5] Father did not have any additional supervised calls with C.E. and the case manager, and although he testified he had called in to the court to participate in approximately ten hearings, with one exception, *see infra* ¶ 9, he did not ask the court or CPS for any further contact with his son.

¶8 On January 5, 2011, the agency in Father's home state denied C.E.'s interstate placement with Father, noting Father had "not made any substantial progress." According to the case worker, Father still had not made any effort to "schedule an appointment to be fingerprinted, resolve his outstanding criminal warrants, follow through with an alcohol and drug

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supervised the calls herself. At the severance hearing, the case manager acknowledged her caseload at the time -- approximately 12 children more than CPS's internal protocol recommended -- was "the only" reason she only allotted Father one phone visit per month.

[5]Father testified he called the case manager "a couple times" and she did not always return his calls. The case manager testified to the contrary; she "believ[ed she] returned all of [Father's] phone calls."

assessment, return [the case worker's] phone calls, or respond to any of the letters [she] sent to him."[6]

¶9 In June 2011, at Father's request, the CPS case manager arranged a telephone visit between Father and C.E. supervised by C.E.'s foster placement.[7] Father completed the visit, but never called the case manager, the foster placement, or C.E. again.

DISCUSSION

¶10 We will not disturb the juvenile court's decision to terminate parental rights "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." *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004) (quotation omitted). The juvenile court is "in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make

[6]At the severance hearing, Father insisted he had, at least a month before the hearing, completed the interstate placement requirements with the exception of the drug and alcohol screening which he could not afford and CPS had not offered to pay for. He further testified he had begun paying child support. Father did not introduce any exhibits or third party evidence showing he had completed the requirements or was paying child support. Further, the CPS case manager testified Father had not complied with the interstate placement requirements or paid any financial support -- testimony the juvenile court accepted.

[7]By February 2011, CPS had moved C.E. to a different foster placement.

appropriate factual findings . . . [and we] will not reweigh the evidence but will look only to determine if there is evidence to sustain the court's ruling." *Id.* (quotations omitted).

¶11 The juvenile court may terminate parental rights when it finds clear and convincing evidence demonstrates a statutory ground for termination, and a preponderance of evidence demonstrates termination is in the best interests of the child. *Raymond F. v. Ariz. Dep't. of Econ. Sec.*, 224 Ariz. 373, 377, ¶ 15, 231 P.3d 377, 381 (App. 2010) (citations omitted). Under A.R.S. § 8-533(B)(1), the court may terminate parental rights if the parent "has abandoned the child," as measured by the parent's conduct. *Michael J.*, 196 Ariz. at 249, ¶ 18, 995 P.2d at 685. A.R.S. § 8-531(1) (2007) defines abandonment 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.

¶12 Here, the juvenile court found it was "clear that [Father] made little or no effort to comply with the [interstate placement] process, to participate in drug/alcohol assessments, to engage in telephone visitation, or to send any cards, letters, or gifts for well over one year." The record amply

supports those findings. As detailed above, the record does not reflect Father did anything from the time his son "disappeared" at the beginning of 2010 until June 2010 to discover where C.E. had gone. Once Father learned of C.E.'s whereabouts, he only participated in three phone visits over the course of a year, and when monthly phone visits did not occur, Father did next to nothing to assert his right to visits. Further, as the juvenile court pointed out, Father did not make any attempt to send C.E. cards, gifts, or support,[8] and failed to meet deadlines, return communications, or follow through with the interstate placement process that could have placed C.E. in his home. Thus, substantial evidence supported the court's finding Father's participation was marked by "lack of effort, and utter abandonment" and he had failed to do what was "necessary to maintain a 'normal parental relationship.'"

¶13 Despite the foregoing, as quoted above, *see supra* ¶ 1, Father argues the court should not have terminated his parental rights, because CPS thwarted his ability to "maintain a normal parental relationship" with C.E. We disagree. We acknowledge, as the juvenile court did, that Mother removed C.E. from

[8]Although Father testified he never sent any cards or gifts because the CPS case manager never provided him with the address of any of C.E.'s foster placements, he also admitted he had never attempted to send any correspondence to C.E. through the case manager because he was "not aware that [he] could."

Father's home state through "little or no fault" of Father's, and CPS's decision to allow only one phone call per month and its failure to provide Father with a clear plan for contacting C.E. were less than ideal circumstances for "maintaining a normal parental relationship."[9] Acknowledging these circumstances, however, does not undercut the court's finding that despite his minimal responsibilities, Father failed to make any effort to maintain a normal parental relationship with C.E.

¶14 As our supreme court has held, "when circumstances prevent the . . . father from exercising traditional methods of bonding with his child, he must act persistently to establish the relationship however possible and must vigorously assert his legal rights to the extent necessary." *Michael J.*, 196 Ariz. at 250, ¶ 22, 995 P.2d at 686 (quotation omitted). "The burden to act as a parent rests with the parent, who should assert his legal rights at the first and every opportunity." *Id.* at 251, ¶ 25, 995 P.2d at 687 (citation omitted). Under the circumstances here, although CPS's efforts were far from perfect, it did not "unduly interfere" with Father's opportunity to develop a

[9]Indeed, the juvenile court acknowledged in a detailed ruling that although CPS had met "minimal standard[s]" in handling Father's case, it had "spurned the best practices associated with the care, custody, and control of dependent children" by, for example, failing to establish a "working relationship" with Father, failing to send Father any correspondence outlining any plan for services, delaying phone visits, only permitting one phone visit per month, and failing to focus its reunification efforts on Father.

relationship with C.E. *See id.; see also Maricopa Cnty. Juv. Action No. JS-4283*, 133 Ariz. 598, 601, 653 P.2d 55, 58 (App. 1982) (citations omitted) ("While [ADES] had the responsibility to make all reasonable efforts to preserve the family relationship, its responsibility was not without limits and at some point the [parent] was required to make a good faith effort to reunite the family."). Father could have, at a minimum, followed through with the interstate placement requirements and maintained monthly phone visits.[10] We thus disagree with Father's argument CPS prevented him from maintaining a normal parental relationship with C.E.

¶15 Finally, Father argues the juvenile court should not have found termination was in C.E.'s best interests because the State "failed to show how additional time for reunification would incur detriment to the child . . . [and ADES] was still investigating placements with the extended family and did not have a placement picked out at the time of the severance hearing." Although proof of abandonment, on its own, is not sufficient to show termination is in a child's best interests, *Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 579,

[10]Compare *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 331, ¶ 31, 152 P.3d 1209, 1214 (App. 2007), where this court reversed a termination order because, among other things, "Mother maintained contact with her children *to the extent that CPS permitted her to maintain it*" (emphasis added).

869 P.2d 1224, 1232 (App. 1994), "[e]vidence that a child will derive 'an affirmative benefit from termination' is sufficient." *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, 511, ¶ 15, 200 P.3d 1003, 1008 (App. 2008) (citation omitted). Further, "a 'specific adoption plan' is not a prerequisite to termination; the juvenile court may rely on evidence that the child is adoptable and the existing placement is meeting the child's needs." *Id.* (citation omitted).

¶16 Here, in addition to the evidence Father abandoned C.E., the CPS case manager testified termination would "allow the children to . . . get out of the foster care system and be able to be in a permanent home that's drug free, stable in all aspects and that can provide for all of their needs." The case manager further testified CPS had identified two potential adoptive homes with the children's extended family, and "there are services in place and that can be in place in an adoptive home to help address" C.E.'s needs. Given this evidence, the juvenile court did not abuse its discretion in finding the State had "proven by a preponderance of the evidence that the best interests of [C.E.] would be served by termination of the parental-child relationship" with Father.

CONCLUSION

¶17 For the foregoing reasons, we affirm the juvenile court's termination order.

/s/
_____
PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

/s/
_____
MARGARET H. DOWNIE, Judge

/s/
_____
MICHAEL J. BROWN, Judge