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



DIVISION ONE  
FILED: 12/13/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

DESERAY T., ) 1 CA-JV 12-0131  
 )  
Appellant, ) DEPARTMENT C  
 )  
v. ) **MEMORANDUM DECISION**  
 )  
JOSEPHINE G., S.T., J.G., ) (Not for Publication -  
 ) Ariz. R.P. Juv. Ct. 103(G);  
Appellees. ) ARCAP 28)  
 )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. JS506923

The Honorable Kirby Kongable, Judge *Pro Tempore*

**AFFIRMED**

Robert D. Rosanelli  
Attorney for Appellant

Phoenix

Rita A. Meiser, P.L.C.  
By Rita A. Meiser  
Attorney for Appellee Josephine G.

Phoenix

**T H U M M A**, Judge

¶1 Deseray T. appeals the juvenile court's order terminating her parental rights to S.T. and J.G.<sup>1</sup> Deseray argues the court's finding of abandonment is clearly erroneous. Because reasonable evidence supports the court's finding that severance was warranted, the order is affirmed.

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

¶2 Josephine G. is Deseray's maternal aunt and is great-aunt to S.T. and J.G. Both Josephine and Deseray live in the Phoenix area.

¶3 During much of Deseray's childhood, her mother was in prison. As a result, Deseray spent many years in group and foster homes, where she lived until her 18th birthday. Deseray, who is the mother of four children, first become a mother when she was 17 years old. Shortly before S.T. was born, Deseray's biological mother was released from prison and died the next day. As a result, Deseray admitted she grew "more depressed and distant."

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<sup>1</sup> The caption in this appeal is amended to refer to the children by their initials.

<sup>2</sup> On appeal from an order terminating parental rights, this court views the evidence in the light most favorable to sustaining the juvenile court's findings. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2, 181 P.3d 1126, 1127 (App. 2008).

¶14 S.T. was born in early July 2006.<sup>3</sup> With the arrival of S.T., Deseray was caring for three infants and found her life “overwhelming.” Within a few weeks, Deseray recognized she was not able to care for all three infants and asked Josephine to care for S.T. Deseray knew Josephine was helpful to the family and available if Deseray needed help. S.T. has lived with Josephine continuously since that time, and Deseray repeatedly provided Josephine a power of attorney as to S.T.

¶15 Over the next months, Josephine encouraged Deseray on multiple occasions to spend time with S.T., resulting in two short visits. Over the next years, Deseray saw S.T. only when J.G. was born and at a few family holiday gatherings. Deseray interacted minimally with S.T. at these gatherings. Over the first five years of S.T.’s life, Deseray asked to see S.T. once to take a photograph. During that five year period, although Deseray gave S.T. a few gifts, Deseray never called for or sent letters to S.T. and never provided emotional or financial support to S.T. Josephine did not prevent Deseray from having contact with S.T.

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<sup>3</sup> The parental rights of S.T.’s father were previously terminated, and he is not a party to this appeal.

¶16 J.G. was born to Deseray in early October 2007.<sup>4</sup> Deseray tested positive for methamphetamines and marijuana at J.G.'s birth; J.G. tested positive for amphetamines at birth and, without objection by Child Protective Services, Deseray asked Josephine to care for J.G. J.G. has lived with Josephine continuously since that time, and Deseray has periodically renewed Josephine's power of attorney as to J.G.

¶17 Deseray made no effort to see J.G. over the first four years of his life, even when attending family gatherings at Josephine's home. Deseray never asked to visit J.G., never called for or sent letters to J.G., never brought J.G. any gifts and never provided emotional or financial support to J.G. Josephine did not prevent Deseray from having contact with J.G.

¶18 In July 2011 -- less than ten days after signing and providing Josephine a new power of attorney for S.T. and J.G. -- Deseray called Josephine and "said she was taking [S.T.]." Josephine replied that, because S.T. did not know Deseray, it would be inappropriate to take S.T., but that Deseray could visit. Deseray refused to visit. The next day, Deseray arrived at Josephine's house "to take [S.T.]" and, instead of waiting to talk with Josephine who was not home at the time, left and then returned with the police. Two days later, Deseray again sent

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<sup>4</sup> J.G.'s father has consented to J.G.'s adoption by Josephine and is not a party to this appeal.

police to Josephine's house, this time with a handwritten document attempting to revoke Josephine's power of attorney as to both children, although misstating both S.T.'s and J.G.'s names and listing an incorrect birth year for J.G.

¶19 The next day, Josephine was awarded temporary emergency sole legal custody of both S.T. and J.G. in an *in loco parentis* proceeding and filed this petition to terminate Deseray's parental rights. After a two day severance hearing, the juvenile court found that Deseray had abandoned S.T. and J.G. and severance would be in the best interests of each child. Accordingly, the juvenile court terminated Deseray's parental rights as to S.T. and J.G.

¶10 Deseray timely appealed. This court has jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) section 8-235.<sup>5</sup>

#### **DISCUSSION**

¶11 The juvenile court is authorized to terminate the parent-child relationship only upon finding that clear and convincing evidence demonstrates the existence of at least one statutory ground for severance and that a preponderance of the evidence shows severance is in the child's best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶

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<sup>5</sup> Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

22, 110 P.3d 1013, 1018 (2005). This court will affirm the juvenile court's order terminating parental rights absent an abuse of discretion and will accept the juvenile court's factual findings unless clearly erroneous. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004).

¶12 The juvenile court may terminate a parent's rights pursuant to A.R.S. § 8-533(B)(1) if "the parent has abandoned the child." Abandonment is defined by statute 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 hinges on objective consideration of the parent's conduct, not on the parent's subjective intent. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249-50, ¶ 18, 995 P.2d 682, 685-86 (2000); see *Anonymous v. Anonymous*, 25 Ariz. App. 10, 12, 540 P.2d 741, 743 (1975). The touchstone in addressing abandonment is whether the parent, considering the circumstances of the case, "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." *Michael J.*, 196 Ariz. at 249-50, ¶¶ 18, 20, 995 P.2d at 685-86; A.R.S. § 8-531(1).

¶13 Deseray does not dispute the juvenile court's finding that severance was in the best interests of S.T. and J.G. On appeal, Deseray argues that the juvenile court erred by finding she had abandoned S.T. and J.G. because Josephine "thwarted" Deseray's attempts to maintain any parental relationship with the children by moving repeatedly and setting aside Deseray's gifts for the children. Deseray claims Josephine prevented a normal parental relationship by stopping Deseray from treating S.T. as a daughter, preventing visits with S.T. and preventing S.T. from knowing Deseray was her biological mother.

¶14 Deseray testified Josephine moved three times without informing Deseray of the new address. Deseray admitted, however, that someone in their family always knew Josephine's address, so Deseray could readily find Josephine, S.T. and J.G. at all times. Although there was conflicting testimony, Deseray claimed to have bought S.T. three gifts over the course of S.T.'s life. Deseray admitted that she had never given J.G. any gifts. Giving three gifts over five years, under the circumstances, at best constitutes minimal efforts and is not inconsistent with abandonment. See A.R.S. § 8-351(1). Deseray's claim that Josephine "put [the gifts] to the side" (whereas Deseray "wanted to personally give it to [S.T.]") does not explain Deseray's

failure to give any gifts to J.G. or her few gifts for S.T. Moreover, Deseray does not claim she provided any emotional or financial support to either child, other than these few gifts for S.T.

¶15 Finally, Deseray claims Josephine prevented contact with S.T., but makes no such claim regarding J.G. Although Deseray testified that she felt she was "getting pushed out of the family," the other witnesses stated that Deseray was never prevented from having contact with the children. Indeed, Deseray admitted that July 2011 -- the incident that immediately preceded the filing of this termination action -- was the first time she was ever denied access to S.T.

¶16 The juvenile court found that "[f]ive years is too long to allow someone to get their life together and then begin to take action. Deseray [] did little or nothing during this time and was not prevented from seeing the children." The evidence summarized above reasonably supports this finding. Although Deseray may not have intended to abandon S.T. or J.G., her "conduct speaks louder than words or subjective intent." *Michael J.*, 196 Ariz. at 250, ¶ 22, 995 P.2d at 685 (citation omitted). Deseray failed to provide support or to maintain contact with S.T. and J.G. for substantially longer than the statutory six-month period and has shown no proper justification for this failure. A.R.S. § 8-531(1).



**CONCLUSION**

¶17 Because sufficient evidence supports the juvenile court's finding of abandonment, the order terminating Deseray's parental rights as to S.T. and J.G. is affirmed.

/s/\_\_\_\_\_  
SAMUEL A. THUMMA, Judge

CONCURRING:

/s/\_\_\_\_\_  
PHILIP HALL, Presiding Judge

/s/\_\_\_\_\_  
PETER B. SWANN, Judge