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



DIVISION ONE  
FILED: 6/25/2013  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

KATHY M. , ) No. 1 CA-JV 13-0016  
)  
Appellant, ) DEPARTMENT A  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
CONNOR S. , E.S. , ) Rule 103(G) Ariz. R. P.  
) Juv. Ct.; Rule 28 ARCAP)  
Appellees. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. JS507148

The Honorable Bradley H. Astrowsky, Judge

**AFFIRMED**

Robert D. Rosanelli, Attorney at Law  
By Robert D. Rosanelli  
Attorney for Appellant Kathy M.

Phoenix

Law Office of Anne M. Williams, P.C.  
By Anne M. Williams  
Attorney for Appellee Connor S.

Tempe

**B R O W N**, Judge

¶1 Kathy M. (Mother), the biological mother of E.S.<sup>1</sup> (born June 2009), appeals the juvenile court's termination of her parental rights on the ground of abandonment. For the following reasons, we affirm.

#### **BACKGROUND<sup>2</sup>**

¶2 On April 17, 2012, Connor S. (Father), the biological father of E.S., petitioned to terminate Mother's parental rights to E.S. on the grounds of abandonment, neglect, incapacity, and criminal conviction. In a subsequent amended petition, Father narrowed the grounds to abandonment and neglect.

¶3 Mother contested the severance petition, and the juvenile court held a two-day severance hearing. Father testified that he and Mother were involved in a romantic relationship for approximately three years and living together at the time E.S. was born. At some point during their relationship, Child Protective Services (CPS) filed a petition to terminate Mother's parental rights to her two older children from a previous relationship.<sup>3</sup> As part of that termination case,

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<sup>1</sup> The caption has been amended to safeguard the identity of the juvenile pursuant to Administrative Order 2013-001.

<sup>2</sup> We review the evidence and draw all reasonable inferences in the light most favorable to upholding the juvenile court's factual findings. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 13, 53 P.3d 203, 207 (App. 2002).

<sup>3</sup> Mother's parental rights to her two oldest children were terminated on September 13, 2010.

Mother and Father were asked to submit to drug testing. At the time of the request (March 2010), E.S. was nine months old. Father's drug test was negative, but Mother's test was positive. Based on the drug test results, CPS presented Father with an ultimatum—either he and E.S. reside elsewhere or CPS would remove E.S. from his custody. Father elected to relocate with E.S., and they began living with Father's parents.

¶4 After Father and E.S. moved, Father and Mother entered an informal agreement permitting Mother to have visitation with E.S. every Monday with maternal aunt's supervision. In May 2011, Father unilaterally terminated the visitation because "something happened" during every visit. On one occasion, gum became tangled in E.S.'s hair and Mother "chopped" it. On another occasion, E.S. was returned home "starving" and "filthy" with a diaper rash. Father also learned that maternal aunt was not always present to supervise, as agreed, and that Mother's brother, "a convicted child molester" who was not permitted to be around young children, was sometimes in the home. Finally, Father testified that during the last visit, E.S.'s finger was hurt by a bowling ball and Mother failed to timely notify him or seek medical treatment.

¶5 Since the regular visitation ceased in May 2011, Mother saw E.S. on only two occasions. On E.S.'s second birthday, June 2011, Mother attended a birthday party for E.S.

and wished her a happy birthday, hugged her, and gave her a "pack of gummy bears" as a birthday present. In October 2011, Mother attended a Subway "grand opening" and Father and E.S. attended as well. Father testified that during the half-hour or so he and E.S. were at the store, Mother saw them but her only contact with them was to say goodbye when they left.

¶16 Father testified that Mother never sent cards, gifts, or letters to E.S. and had not provided any financial support since June 2010. Father also testified that Mother has not visited E.S. since October 2011 and made only two attempts to schedule a visit since that time. On one occasion, Mother extended E.S. an invitation to attend her youngest child's birthday party. Father declined the invitation "because we had prior -- arrangements." On the second occasion, Mother made a request for visitation via Facebook and Father denied the request.

¶17 Father married his girlfriend of approximately two years in October 2012. He testified that E.S. identifies his wife as her mother and his wife wants to adopt E.S.

¶18 Mother acknowledged that Father terminated her regular visitation with E.S. because of safety concerns. Mother also acknowledged that she has not seen E.S. since October 2011. Mother further admitted that she has not provided for E.S. financially since March 2010. Contrary to Father's testimony,

Mother testified that she asked for visitation with E.S. "on a few occasions" and Father always refused her requests.

¶9 Mother testified that CPS opened another case with her youngest daughter in March 2011 and she has since completed a drug treatment program and parenting classes. Mother acknowledged that she abused methamphetamine for approximately seven years until 2011 and admitted that she was not capable of parenting a young child at that time. Mother also admitted that she recently had an online relationship with a man currently incarcerated for selling drugs and acknowledged that she would still be pursuing that relationship had he not been sentenced to prison. Finally, Mother acknowledged that she did not make more than "a minimal effort" to have contact with E.S.

¶10 After taking the matter under advisement, the juvenile court terminated Mother's parental rights. The court found that Father proved the ground of abandonment and that severance is in the child's best interest, but failed to prove the allegation of neglect. The juvenile court stated in relevant part:

Mother has not provided any support, let alone reasonable support, for Child since March, 2010. Mother has not maintained regular contact with Child since at least May, 2011. The record clearly demonstrates that Mother has made only minimal efforts to support and communicate with Child; thereby failing to maintain without just cause, a normal parental relationship with Child for a period in excess of six months.

¶11 Mother timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 8-235 (2013)<sup>4</sup> and Rule 103(A) of the Arizona Rules of Procedure for the Juvenile Court.

#### DISCUSSION

¶12 To terminate parental rights, the juvenile court must find, by clear and convincing evidence, the existence of at least one of the statutory grounds for termination enumerated in A.R.S. § 8-533(B) (2013). *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). The juvenile court must also find, by a preponderance of the evidence, that termination is in the child's best interest. *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005).

¶13 We will affirm an order terminating parental rights unless the juvenile court abused its discretion by making "factual findings [that] are clearly erroneous[;] that is, unless there is no reasonable evidence to support them." *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998) (citations omitted). "[T]he juvenile court will be deemed to have made every finding necessary to support the judgment." *Maricopa Cnty. Juv. Action*

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<sup>4</sup> Absent material revisions after the relevant date, we cite the current statute.

No. JS-8287, 171 Ariz. 104, 111, 828 P.2d 1245, 1252 (App. 1991) (citation omitted). "Because the trial court is 'in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings,' this court will not reweigh the evidence but will look only to determine if there is evidence to sustain the 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) (quoting *Pima Cnty. Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987)).

¶14 Mother contends the juvenile court erred by finding she abandoned E.S.<sup>5</sup> Pursuant to A.R.S. § 8-533(B)(1), termination of parental rights is justified if "the parent has abandoned the child." As defined in A.R.S. § 8-531(1) (2013):

"Abandonment" means 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.

"[I]n deciding whether a parent has abandoned a child as defined in § 8-531(1), a court should consider each of the stated

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<sup>5</sup> Mother does not challenge the juvenile court's finding that termination of her parental rights is in E.S.'s best interest. Therefore, we address only the court's abandonment finding.

factors - whether a parent has provided 'reasonable support,' 'maintain[ed] regular contact with the child' and provided 'normal supervision.'" *Kenneth B. v. Tina B.*, 226 Ariz. 33, 37, ¶ 18, 243 P.3d 636, 640 (App. 2010).

¶15 Here, the record supports the juvenile court's findings that Mother did not maintain regular contact with E.S. for at least eighteen months and that she has made only minimal efforts to support and communicate with E.S. From the time Mother and Father separated in March 2010, Mother made no financial contributions to E.S.'s care and support. Nor did Mother give E.S. any gifts or toys, other than a bag of candy at E.S.'s second birthday. Although Mother testified that she repeatedly asked Father for visitation, this was contrary to Father's testimony and Mother's subsequent admission on cross-examination that she did not make more than a minimal effort to have contact with E.S. The juvenile court, as the fact-finder, was in the best position to evaluate Mother's testimony and, among its detailed findings, the court expressly found her not credible. Finally, the record reflects that Mother failed to provide E.S. with "normal supervision" and parental care on the few occasions she had contact with E.S., and Mother admitted that she used methamphetamine until 2011 and was unable to



parent during that time. Therefore, the record supports the juvenile court's finding that Mother abandoned E.S.<sup>6</sup>

**CONCLUSION**

¶16 For the foregoing reasons, we affirm.

\_\_\_\_\_/s/\_\_\_\_\_  
MICHAEL J. BROWN, Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
JON W. THOMPSON, Presiding Judge

\_\_\_\_\_/s/\_\_\_\_\_  
KENT E. CATTANI, Judge

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<sup>6</sup> We summarily reject Mother's suggestion that she was "disadvantage[d]" when Father initially filed a petition to establish custody and then failed to pursue it. "When [] circumstances prevent the [parent] 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. Only then is a biological link transformed into a parental relationship deserving full constitutional protection." *Matter of Appeal in Pima Cnty. Juvenile Severance Action No. S-114487*, 179 Ariz. 86, 97, 876 P.2d 1121, 1132 (1994) (citation omitted). Thus, it was incumbent on Mother to assert her legal rights rather than rely on Father to pursue court-ordered custody/visitation. *Cf. Calvin B. v. Brittany B.*, 1 CA-JV 12-0197 (Ariz. App. June 20, 2013) (vacating a finding of abandonment based, in part, on the father's "vigorous[] assert[ion] of legal rights" to his child, including petitioning the court for joint custody.)