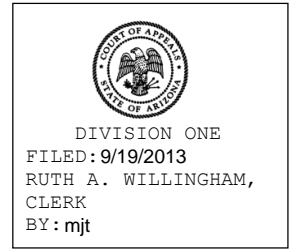


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

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



ANTONIO G.,) 1 CA-JV 13-0089
)
Appellant,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz.R.P. Juv.
SECURITY, J.G.,) Ct.; Rule 28 ARCAP)
)
Appellees.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD20642

The Honorable Joan M. Sinclair, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Michael Valenzuela, Assistant Attorney General
Attorneys for Appellee

Law Office of David M. Osterfeld Buckeye
By David M. Osterfeld
Attorneys for Appellant

G O U L D, Judge

¶1 Antonio G. ("Father") appeals the juvenile court's order terminating his parental rights to J.G. ("Child"). Father

argues the Arizona Department of Economic Services ("ADES") failed to prove he abandoned Child by clear and convincing evidence and the court erred in finding the severance was in Child's best interests. For the reasons set forth below, we affirm.

Facts and Procedural Background

¶2 Child, who was born August 12, 2009, is the biological child of Father and Hannah M. ("Mother").¹ Mother and Child lived with Father for the first eight months of Child's life. Mother and Child moved out of Father's home in early 2010, and Father did not see Child again until January, 2013.

¶3 In the summer of 2011, Child Protective Services ("CPS") in Texas opened a case on Mother based on a report Mother and Child were homeless. Father, who was living in Texas at that time, was interviewed as part of the CPS investigation. Around the same time as the CPS investigation, Mother applied for nutritional assistance from the state of Texas. As a result of Mother's application for state benefits, Texas initiated child support proceedings against Father. The child support case led to Father's paternity of Child being established, and in September 2011 Father was ordered to pay child support for Child.

¹ Mother's parental rights to Child were severed on November 26, 2012 and she has not appealed that decision. Therefore, she is not a party to this appeal.

¶4 When Mother and Child moved to Arizona in August 2011, CPS in Maricopa County received a report that Mother had fled the state of Texas before completing her required substance abuse and mental-health treatment. CPS met with Mother and voiced concerns over her failure to complete treatment in Texas. Based on those concerns, CPS took Child into temporary physical custody.

¶5 ADES subsequently filed a petition alleging that Child was dependent. As to Father, the petition alleged that he had neglected Child by failing to provide for her basic needs and failing to protect her from Mother's substance abuse and mental illness. ADES was unable to locate Father and obtained leave of court to serve him by publication. On November 2, 2011, the juvenile court held Father's publication hearing and found service by publication complete. The juvenile court also determined that Father had failed to appear without good cause, found Child dependant as to Father, and approved family reunification as the case plan.

¶6 ADES finally located Father in March 2012 through a parent-locator service. Father received a phone call from the parent-locator service in March of 2012 advising him that there were proceedings in Arizona concerning Mother. Father told the parent-locator service that given the demands of his work schedule, he was too busy to speak with them about the case.

¶7 Shortly after ADES was notified of Father's location, a CPS case manager called Father and left him a voicemail. In the voicemail, the case manager advised Father that Child was in the custody of CPS in Arizona. However, Father did not contact CPS for approximately two months, and when he did, it was via email. Over the next six months Father did not speak with the case manager directly; instead, Father's mother contacted the case manager on his behalf about the dependency proceedings in Arizona. In her emails, Father's mother explained that Father was working and could not directly communicate with the case manager because of the noise at work. The case manager continued to try to contact Father directly by phone, but he did not respond.

¶8 In August 2012, Child's guardian ad litem asked the juvenile court at a Report and Review Hearing to change the case plan from reunification to severance and adoption due to Father's lack of participation. The juvenile court approved the change, and on September 6, 2012 the guardian ad litem filed a petition to sever Father's parental rights on the grounds of abandonment and nine months out-of-home placement. Arizona Revised Statute ("A.R.S.") § 8-533(B)(8)(b) (abandonment); A.R.S. § 8-533(B)(8)(a) (nine months out-of-home placement).

¶9 The case manager's first direct contact with Father was by phone in November 2012, more than two months after the

severance petition had been filed and nine months after Father had been notified about Child's CPS case. At Father's request, the case manager arranged for Father to have telephonic contact with Child through Child's foster parents. However, Child was "whiny" during the phone call and did not want to talk to Father. A few days after the first call, foster parents arranged another phone call with Father, but Child still did not want to talk to him on the phone.

¶10 Not long after the phone call attempts, Father sent Child two care packages that included his picture, some toys, candy and clothes. Father then had an in-person visit with Child on January 25, 2013. Child did not recognize Father and initially did not want to interact with him. However, during the course of the visit Child began to interact with Father and participated in some activities with him, such as reading.

¶11 On March 1, 2013, the juvenile court held the severance hearing. ADES substituted as the petitioner in the matter and chose to proceed only on the abandonment ground. On March 22, 2013, the juvenile court issued a ruling severing Father's parental rights on the ground of abandonment. The juvenile court also found severance was in Child's best interests. Father appealed after the juvenile court granted him leave to file an untimely notice of appeal. This court has jurisdiction pursuant to A.R.S. §§ 8-235, 12-120.21(A)(1), and 12-2101(A)(1).

Discussion

¶12 On appeal, Father challenges the juvenile court's findings in support of severance. Father argues the juvenile court erred in terminating his parental rights because there was insufficient evidence to show he abandoned Child. Further, Father asserts the juvenile court erred when it determined severance was in Child's best interests.

¶13 "We view the evidence in a severance case in the light most favorable to sustaining the juvenile court's findings." *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 234, ¶ 13, 256 P.3d 628, 631 (App. 2011). The juvenile court is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings; we will only reject the court's findings if no reasonable evidence supports them. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002); *In re Appeal in Maricopa County, Juvenile Action No. JS-4130*, 132 Ariz. 486, 488, 647 P.2d 184, 186 (App. 1982) ("[T]he finding of the trier of fact should be sustained if the evidence furnishes reasonable or substantial support therefor.").

I. Father Abandoned Child Under A.R.S. § 8-533(B)(1).

¶14 Under A.R.S. § 8-533(B)(1), abandonment is measured "not by a parent's subjective intent, but by the parent's conduct." *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz.

246, 249, ¶ 18, 995 P.2d 682, 685 (2000). A court must examine 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, 999 P.2d at 685-86. "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).

¶15 We conclude the juvenile court did not abuse its discretion in terminating Father's parental rights on the grounds of abandonment. Although Father lived with Mother and Child for eight months after Child's birth in August 2009, he had no contact with Child from April 2010 to November 2012, a period of over two and one-half years. When Father was notified that Child had a pending case with CPS in March 2012, he waited approximately nine months to contact Child. Father made no effort to contact Child until a severance petition had been filed. Indeed, even after the severance petition had been filed, Father waited over two months to establish contact with Child.

¶16 We note that Father did pay child support for Child beginning in September 2011, and that Father sent a few gifts and cards to Child. Father also made a few phone calls to Child, and travelled to Arizona to visit Child in January 2013. Despite these commendable efforts, we are unable to conclude the juvenile

court erred in determining these actions failed to show Father acted "persistently to establish the [parent-child] relationship however possible" and that he "vigorously assert[ed] his legal rights" to Child. *Michael J.*, 196 Ariz. at 250, ¶ 22, 995 P.2d at 686. In asserting his parental rights, Father was required to "do more than just wait to respond or oppose" a severance petition; he needed to "affirmatively act to establish his rights." *Pima County Juvenile Severance Action No. S-114487*, 179 Ariz. 86, 99-100, 876 P.2d 1121, 1133-34 (1994). See *In re Maricopa County Juvenile Action No. JS-6520*, 157 Ariz. 238, 242, 756 P.2d 335, 339 (App. 1988) (stating that the sum of father's visits with son - four times in the first year and once a year for the next two years - "does not demonstrate any participation by or presence of" father in the child's life). Here, the record supports the juvenile court's determination that Father failed to affirmatively establish his rights as a parent.

II. The Juvenile Court Had Reasonable Grounds to Find Terminating Father's Parental Rights Served Child's Best Interests.

¶17 Father also challenges the juvenile court's finding that severance is in Child's best interests. In addition to finding one of the grounds for severance by clear and convincing evidence, the juvenile court must also find, by a preponderance of the evidence, that severance is in the best interests of the child. *In re Appeal in Maricopa County, Juvenile Action No. JS-*

8490, 179 Ariz. 102, 107, 876 P.2d 1137, 1142 (1994). A "best interests inquiry focuses primarily upon the interests of the child, as distinct from those of the parent." *Kent K. v. Bobby M.*, 210 Ariz. 279, 287, ¶ 37, 110 P.3d 1013, 1021 (2005).

¶18 Here, the record supports the juvenile court's finding that terminating Father's parental rights serves Child's best interests. Child has developed a close bond with her foster family, and they have provided for her needs. Child has been with her foster home placement since 2011, and her half-brother lives in the same foster home. See *Juvenile Action No. JS-8490*, 179 Ariz. at 108, 876 P.2d at 1143 (stating that child was well cared for and loved by the foster family she lived with for six years such that the potential "benefit from a similar relationship with her natural father" was outweighed by "the risk of harm").

¶19 Moreover, the evidence shows that foster parents expressed a willingness to adopt Child, thereby establishing permanency and stability for Child. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 5, 982 P.2d 1290, 1291 (App. 1998) (evidence of an adoption plan and that a child is adoptable are factors that may support a finding that a child would benefit from a termination of parental rights).

Conclusion

¶20 For the reasons discussed above, we affirm the juvenile court's ruling terminating Father's parental rights to Child.

/S/

ANDREW W. GOULD, Judge

CONCURRING:

/S/

PETER B. SWANN, Presiding Judge

/S/

PATRICIA K. NORRIS, Judge