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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

COURTNEY M., *Appellant*,

v.

KRISTEN A., K.M., *Appellees*.

No. 1 CA-JV 15-0359
FILED 5-26-2016

Appeal from the Superior Court in Maricopa County
No. JS 517312
The Honorable Rodrick J. Coffey, Judge

AFFIRMED

COUNSEL

The Stavris Law Firm, PLLC, Scottsdale
By Alison Stavris
Counsel for Appellant

Berkshire Law Office, PLLC, Phoenix
By Keith Berkshire, Megan Lankford
Counsel for Appellee Kristen A.

MEMORANDUM DECISION

Presiding Judge Margaret H. Downie delivered the decision of the Court, in which Judge Kent E. Cattani and Judge Donn Kessler joined.

D O W N I E, Judge:

¶1 Courtney M. (“Father”) appeals an order terminating his parental rights. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Father and Kristen A. (“Mother”) are the biological parents of K.M., who was born in November 2008. Shortly after K.M.’s birth, Father was apprehended and incarcerated on outstanding warrants. The record reflects that K.M. visited Father in prison on five occasions, with the last visit occurring in May 2010.

¶3 In March 2011, after receiving letters from Father that she perceived as threatening, Mother obtained an order of protection and also sought sole custody of K.M. The superior court upheld the order of protection after a contested evidentiary hearing, though it removed K.M from the order. In July 2011, the court awarded Mother sole legal custody, finding that Father had committed “significant domestic violence.” The court further noted Father’s “lengthy criminal history” and his anticipated release date of September 2012, followed by five years of intensive probation in Coconino County. The court declined to order Mother to take K.M. to visit Father in prison, but stated that Father could petition “for a regular parenting time schedule upon his release from prison.”

¶4 Mother moved to Germany with K.M. in October 2011. While in Germany, she met and married her current husband (“Stepfather”). After their marriage, Stepfather expressed an interest in adopting K.M., and in March 2014, Mother petitioned to terminate Father’s parental rights on several grounds, including abandonment.¹

¹ We address only the abandonment ground relied on by the superior court.

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¶5 After a contested severance trial, the superior court ruled that Father had abandoned K.M. and concluded termination of his parental rights was in K.M.'s best interests. See Ariz. Rev. Stat. ("A.R.S.") §§ 8-531(1) (definition of abandonment), -533(B)(1) (termination of parental rights for abandonment). Father timely appealed.

DISCUSSION

¶6 The fundamental right to parent one's child is not absolute. The superior court may terminate parental rights if it finds, "by clear and convincing evidence, at least one of the statutory grounds set out in section 8-533, and also that termination is in the best interest of the child." *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248-49, ¶ 12 (2000). We review an order terminating parental rights for an abuse of discretion and will not reverse unless "there is no reasonable evidence to support" the order. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004).

I. Abandonment

¶7 Abandonment is defined as:

[T]he 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 "is measured not by a parent's subjective intent, but by the parent's conduct: the statute asks 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." *Michael J.*, 196 Ariz. at 249-50, ¶ 18. When circumstances such as incarceration prevent a 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." *Id.* at 250, ¶ 22.

¶8 The superior court found that Father's efforts to maintain a parental relationship with K.M. were "minimal at best" and concluded he had failed to "vigorously assert his legal rights." The record supports

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these determinations. Father was cross-examined at the severance trial regarding his attempts to maintain a parental relationship with K.M.:

Q . . . And would you agree, within the last six months that you have not sent either a card, any sort of written correspondence, any sort of gift to [K.M.], correct?

A Correct.

Q Okay. Would you agree that since these actual proceedings started, which was about a year-and-a-half ago, that you have not sent any sort of card, any sort of written correspondence, any gift, any financial support to [K.M.], correct?

A Correct.

Father was also questioned about a period of time when he was not incarcerated – December 2012 to July 2013. He admitted providing no financial support during that time. Nor did he send letters, cards, or gifts to K.M.

¶9 The court recognized that the “combination of Father’s incarceration and Mother’s relocation to Germany in 2011 have made it difficult for Father to have a relationship with [K.M.]” As the court held in *Michael J.*, though, such circumstances required Father to employ all reasonable measures to “vigorously assert his legal rights.” See 196 Ariz. at 250, ¶ 22. Yet the single motion he filed in September 2012 – titled “Status and Verification of Visitation Schedule and Request for Change of Venue” – was dismissed due to failure to prosecute.

¶10 The superior court accurately summarized the record before it, stating that “between June 2010 and July 2015, Father’s efforts to have a relationship with [K.M.] have consisted of a few letters to Mother, three electronic communications and one Family Court Motion that was denied because Father failed to pursue it in a timely manner.” Under these circumstances, a reasonable trier of fact could conclude that Father failed to maintain a normal parental relationship with K.M. without just cause.²

² Father’s suggestion that Mother improperly restricted his visitation finds no support in the record. The superior court specifically stated that Father could petition for “a regular parenting time schedule” upon his

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II. Best Interests

¶11 “[I]n a private proceeding to sever parental rights, just as in state-initiated proceedings, a juvenile court may conclude that a proposed adoption benefits the child and supports a finding that severance is in the child’s best interests.” *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 2, ¶ 1 (2016). In considering a child’s best interests, the court is tasked with balancing “the unfit parent’s diluted interest against the independent and often adverse interests of the child in a safe and stable home life.” *Id.* at 4, ¶ 15.

¶12 The superior court found that adoption by Stepfather “would give [K.M.] permanency and security he deserves with the only father figure he has ever known.” The court also concluded Father’s desire to parent K.M. “after several years of absenteeism and abandonment is a threat to [K.M.’s] stability” and that Father’s history of domestic violence against Mother “while [K.M.] was in utero and shortly after [K.M.] was born is a significant factor that supports a finding by a preponderance of the evidence that it is in [K.M.’s] best interests to terminate Father’s parental rights.” The record supports these findings, which provide ample grounds for the best interests determination.

CONCLUSION

¶13 We affirm the order terminating Father’s parental rights to K.M.



Ruth A. Willingham · Clerk of the Court
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release from prison, but he failed to follow through. And it was Father’s incarceration, not Mother’s conduct, that created a barrier to visitation for a significant part of K.M.’s life.