

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

EMILY B., DENNIS A., *Appellants,*

v.

DEPARTMENT OF CHILD SAFETY, E.A., *Appellees.*

No. 1 CA-JV 17-0050
FILED 10-12-2017

Appeal from the Superior Court in Maricopa County
No. JD529886
The Honorable Timothy J. Ryan, Judge

AFFIRMED

COUNSEL

Maricopa County Public Advocate, Mesa
By Suzanne W. Sanchez
Counsel for Appellant Emily B.

John L. Popilek, PC, Scottsdale
By John L. Popilek
Counsel for Appellant Dennis A.

Arizona Attorney General's Office, Mesa
By Ashlee N. Hoffmann
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Kenton D. Jones delivered the decision of the Court, in which Judge Jon W. Thompson and Judge John C. Gemmill¹ joined.

J O N E S, Judge:

¶1 Emily B. (Mother) and Dennis A. (Father) (collectively, the Parents) challenge the juvenile court's order terminating their parental rights to E.A. (Child), arguing the Department of Child Safety (DCS) failed to prove severance was warranted on the ground of abandonment or that termination is in Child's best interests. For the following reasons, we affirm.

FACTS² AND PROCEDURAL HISTORY

¶2 Child was born drug-exposed in March 2016 and required hospitalization for the first month of his life. DCS assumed custody of Child upon his release from the hospital and placed him with his maternal grandmother (Grandmother) in Prescott Valley.

¶3 In April 2016, DCS filed a dependency petition and offered the Parents supervised visitation, substance abuse testing and treatment, and transportation assistance. After some failed visitation attempts, visits were moved to Prescott Valley, approximately one hundred miles from the Parents' residence. Although the Parents claimed they missed visitations as a result of difficulties traveling to Prescott Valley, neither parent ever requested assistance with transportation. The Parents did not participate in or follow through with services and maintained only sporadic contact with DCS. In June 2016, the juvenile court adjudicated Child dependent as to both parents at a pretrial conference for which neither parent appeared

¹ The Honorable John C. Gemmill, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Sections 3 and 20, of the Arizona Constitution.

² We view the facts in the light most favorable to upholding the termination order. See *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2 (App. 2008).

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and adopted a case plan of family reunification concurrent with severance and adoption.

¶4 Thereafter, the Parents' visitation with Child remained sporadic, and they continued to decline substance abuse related services. In September 2016, DCS moved to terminate the Parents' parental rights on the grounds of abandonment. *See* Ariz. Rev. Stat. (A.R.S.) § 8-533(B)(1).³

¶5 At trial in January 2017, DCS presented evidence that the Parents had not visited Child, then only ten months old, in the preceding five months. Although the Parents blamed DCS for denying them visits, the Parents did not take advantage of accommodations allowing them to visit Child at the public library on weekends and either did not show up for visits or arrived too late. In all, the Parents visited with Child only five times in nine months, did not provide for him financially in any way, and did not express a desire to communicate with him by sending cards, letters, or gifts. The DCS caseworker testified that, without this contact, the Parents failed to establish a normal parental relationship with Child.

¶6 The DCS caseworker further testified that severance would provide Child an opportunity for permanency and stability and to establish a normal parental relationship with Grandmother; in contrast, denial of severance would deprive Child of this crucial relationship during his formative years. The caseworker confirmed Child is adoptable and two potential adoptive placements had been identified.

¶7 After taking the matter under advisement, the juvenile court entered an order finding DCS proved by clear and convincing evidence that Mother and Father had abandoned Child. Within its order, the Court found the Parents remained actively engaged in substance abuse at the time of the trial and failed to present credible testimony. The court also found DCS proved by a preponderance of the evidence that termination was in Child's best interests and entered an order terminating Mother's and Father's parental rights to Child. Mother and Father timely appealed, and this Court has jurisdiction pursuant to A.R.S. §§ 8-235(A), 12-120.21(A)(1), and -2101(A), and Arizona Rule of Procedure for the Juvenile Court 103(A).

DISCUSSION

¶8 To terminate parental rights, the juvenile court must find by clear and convincing evidence at least one statutory ground for severance

³ Absent material changes from the relevant date, we cite a statute's current version.

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and must find by a preponderance of the evidence that termination is in the child's best interests. See *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41 (2005); *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12 (2000). This Court will affirm an order terminating parental rights if reasonable evidence supports it. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009) (citation omitted).

I. DCS Proved Abandonment by Clear and Convincing Evidence.

¶9 The Parents challenge the juvenile court's determination that DCS proved abandonment, arguing they could and would have visited Child if DCS had not impeded or interfered with visitation. Abandonment occurs when a parent fails "to provide reasonable support and to maintain regular contact with the child, including providing normal supervision." A.R.S. § 8-531(1). But whether a parent abandons an existing parent-child relationship or fails to establish a relationship with a child is determined by the parent's conduct, not his or her subjective intent. *Pima Cty. Juv. Severance Action S-114487*, 179 Ariz. 86, 97 (1994); *Michael J.*, 196 Ariz. at 249, ¶ 18. A parent must act persistently to establish or maintain the relationship and must "vigorously assert . . . legal rights to the extent necessary." *Michael J.*, 196 Ariz. at 250, ¶ 22 (quoting *S-114487*, 179 Ariz. at 97).

¶10 The record here evidences no vigorous action on behalf of Mother or Father. Although the Parents presented evidence, in the form of their own testimony, that DCS interfered with visitation, the juvenile court specifically determined they were not credible witnesses. Because the juvenile court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts," we will not second-guess its resolution of conflicts in the evidence. *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004).

¶11 The evidence reflects neither of the Parents provided any support to Child, and five short visits in nine months do not qualify as regular contact. Neither Mother nor Father acted persistently or vigorously to establish or maintain a relationship with Child, instead choosing to show up late or not at all to nearly every visit and court hearing. Objectively, the Parents' conduct indicates they were satisfied with seeing Child on occasion while Grandmother assumed his day-to-day care. The evidence supports the juvenile court's conclusion that Mother and Father abandoned Child without just cause, and we find no error.

II. DCS Proved Termination is in Child's Best Interests.

¶12 The Parents argue the juvenile court abused its discretion by finding termination was in Child's best interests because Child may ultimately be adopted by someone other than Grandmother. Termination is in a child's best interests if the child "would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship." *Id.* at 334, ¶ 6 (citing *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 557 (App. 1997), and then *Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5 (1990)). The determination is not made in a vacuum, but rather, after evaluating the totality of the circumstances. *Dominique M. v. DCS*, 240 Ariz. 96, 98-99, ¶ 12 (App. 2016) (citing *Bennigno R. v. Ariz. Dep't of Econ. Sec.*, 233 Ariz. 345, 351, ¶ 30 (App. 2013)).

¶13 The juvenile court considered evidence that two adoptive placements were being considered for Child and ultimately determined any uncertainty regarding the final placement was outweighed by Child's interest in a permanent, stable home – precisely the type of home Mother and Father have thus far been unable or unwilling to provide. On this record, we find no abuse of discretion. *See Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4, ¶ 12 (2016) ("When a current placement meets the child's needs and the child's prospective adoption is otherwise legally possible and likely, a juvenile court may find that termination of parental rights, so as to permit adoption, is in the child's best interests.") (citing *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50-51, ¶¶ 19-21 (App. 2004), and *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 378, ¶ 6 (App. 1998)).

CONCLUSION

¶14 The order terminating Mother's and Father's parental rights to Child is affirmed.