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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JOHN S., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, C.S., J.S., J.S., J.S., *Appellees*.

No. 1 CA-JV 17-0157
FILED 10-31-2017

Appeal from the Superior Court in Maricopa County
No. JD22315
The Honorable Connie Contes, Judge

AFFIRMED

COUNSEL

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

Arizona Attorney General's Office, Phoenix
By Amber E. Pershon
Counsel for Appellees

MEMORANDUM DECISION

Presiding Judge James P. Beene delivered the decision of the Court, in which Judge Randall M. Howe and Judge Kent E. Cattani joined.

B E E N E, Judge:

¶1 John S. (“Father”) appeals the superior court’s order terminating his parental rights to his four children. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Father and Chelsea G. (“Mother”)¹ are the biological parents of C.S. (born in 2007), J.S. (born in 2008), J.L.S. (born in 2010), and J.R.S. (born in 2012) (collectively the “Children”). In August 2012, the Department of Child Safety (“DCS”) took the Children into physical custody and filed the first dependency petition alleging substance abuse and domestic violence. Initially, Father participated in services and the Children were returned to his care.

¶3 Two years later, after learning that Father was using drugs and had been arrested and that the Children were being neglected, DCS filed a second dependency petition alleging substance abuse and neglect. Father failed to appear at the initial dependency hearing held in November 2015. The court proceeded in his absence and adjudicated the Children dependent based upon the allegations in the petition. As part of the subsequent proceedings, Father signed a Form 1 Notice to Parent in Dependency Action that stated in pertinent part:

You are required to attend all court hearings. If you cannot attend a court hearing, you must prove to the Court that you had good cause for not attending. If you fail to attend the Pre-trial Conference, Settlement Conference, or Dependency Adjudication Hearing without good cause, the Court may determine that you have waived your legal rights and admitted the allegations in the dependency petition. The

¹ The superior court also terminated Mother’s parental rights; however, she is not a party to this appeal.

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Court may go forward with the Dependency Adjudication Hearing in your absence and may rule that your child is dependent based on the record and evidence presented.

You must also actively participate in reunification services if they are offered to you. Substantially neglecting or wilfully refusing to remedy the circumstances that cause your child to be in an out-of-home placement, including refusing to participate in reunification services, will be grounds for terminating your parental rights to your child. If you do not participate in reunification services or fail to attend further proceedings without good cause, the Court may terminate your parental rights

For the next nine months, however, Father did not participate in services and for most of that time, had ceased all contact with DCS and could not be located despite DCS's efforts.

¶4 DCS moved to terminate Father's parental rights alleging abandonment, substance abuse, and nine-months out-of-home placement. On August 9, 2016, Father failed to appear at the initial termination hearing. The court found that Father had failed to appear without good cause and, therefore, had waived his right to contest the allegations in the termination motion. The court found the allegations were admitted against him.

¶5 At the evidentiary hearing on February 2, 2017, Father again failed to appear, but his attorney was present. Without objection, the court proceeded in Father's absence, finding "that Father's failure to appear without good cause was previously preserved on August 9, 2016." The court waived Father's presence because, although Father was currently incarcerated, his attorney was present and Father had previously forfeited the right to contest termination by failing to appear. The court terminated Father's parental rights on all three grounds in the motion and found that severance was in the Children's best interests.

¶6 Father filed a late notice of appeal that was excused by the superior court. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") §§ 8-235(A) and 12-120.21(A)(1).

DISCUSSION

¶7 The fundamental right to parent one's child is not absolute. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 24 (2005). 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 by a preponderance of the evidence that termination is in the best interests of the child.² *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248-49, ¶ 12 (2000); *Kent K.*, 210 Ariz. at 284, ¶ 22. The court must consider those circumstances existing at the time of the termination hearing. *Shella H. v. Dep't of Child Safety*, 239 Ariz. 47, 50, ¶ 12 (App. 2016). As the trier of fact, the superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004). Thus, 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. Failure to Appear and Grounds of Abandonment

¶8 Parents in a severance action are required to appear at the pretrial conference, status conference, initial termination hearing, and termination adjudication hearing. *See* Ariz. R.P. Juv. Ct. 64(C), 65(C), 66(D). The superior court may proceed in the parent's absence and terminate the parent-child relationship based upon the record and evidence presented if the court finds that a parent (1) failed to appear without good cause; (2) had notice of the hearing; (3) was properly served; and (4) had been previously admonished regarding the consequences of failing to appear, including a warning that the hearing could go forward in the absence of the parent and that failure to appear may constitute a waiver of rights and an admission of the allegations contained in the motion to terminate. Ariz. R.P. Juv. Ct. 65(C)(6)(c), 66(D)(2); *see also* A.R.S. § 8-863(C).

¶9 At the February 2 hearing, the superior court found that Father was properly served, failed to appear without good cause, and had waived his right to contest the allegations. In fact, Father's attorney stated that she spoke with Father after he failed to appear at the August 9 hearing. He said he may have been incarcerated at that time. She advised him he would need to provide proof, however, Father never provided any such documentation to her, DCS, or the court. The court conducted a search of DOC records and concluded that no evidence showed that Father was incarcerated on August 9.

² Father does not challenge the superior court's finding that termination of his parental rights is in the Children's best interests; thus, we do not address it.

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¶10 Father contends that the court “erred when it not only failed to issue an order securing Father’s appearance from prison but from also restricting the Father’s personal participation from said hearing.” Father cites to *Christy A. v. Ariz. Dep’t of Econ. Sec.*, 217 Ariz. 299 (App. 2007), for the proposition that he had a right to be present and participate at the February 2 evidentiary hearing. Father’s reliance is misplaced.

¶11 In *Christy A.*, Mother failed to appear at the termination hearing, but her attorney was present and urged the court to grant his pending motion to withdraw. 217 Ariz. at 302-03, ¶¶ 6-7. The court found that Mother had waived her rights, proceeded in her absence, and granted Mother’s attorney’s motion to withdraw. *Id.* at 303, ¶ 7. Mother appeared, unrepresented, at the evidentiary hearing held one week later. *Id.* at ¶ 8. The court excluded Mother from the hearing and ordered her to leave the courtroom. *Id.* The court proceeded with the hearing without Mother or her previous attorney present, heard testimony, received evidence, and terminated Mother’s parental rights. *Id.* The court held that although waiver precluded Mother from challenging the grounds for severance or presenting evidence at the hearing, “the requirement of fair procedures mandates giving Mother the opportunity to remain in the courtroom and participate. That right of participation includes cross-examination of [DCS’s] witnesses and testifying if she so desires as it relates to the issue of the best interests of the children.” *Id.* at 306-07, ¶¶ 24-25. The court noted, however, that these particular circumstances were unusual and “[i]n the more typical scenario *where the parent fails to appear but is still represented by counsel, the court may proceed in that parent’s absence because his or her rights will be protected by the presence and participation of counsel.*” *Id.* at 307, ¶ 25 (emphasis added).

¶12 Here, although Father failed to appear at the February 2 hearing, his attorney was present, did not object to proceeding in Father’s absence, did not object to the introduction of evidence, and had the opportunity to cross-examine witnesses. Thus, Father’s rights were protected by his counsel’s presence and participation. Moreover, no evidence in the record indicates that Father wished to be present and participate at the hearing or that he had requested to be present and participate but was denied.

¶13 Nonetheless, DCS was still required to present evidence supporting the grounds for termination on abandonment. *See Manuel M. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 205, 212, ¶ 23 (App. 2008) (noting that “parent’s failure to appear does not relieve the juvenile court of its obligation to assess the record and evidence presented and to determine

whether the state has proven a statutory ground for termination by clear and convincing evidence”) (internal quotations omitted). Abandonment is defined 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). DCS case manager, Angie Nava, testified that Father had failed to maintain a normal parent-child relationship with the Children for at least six months because he did not visit them once, did not send cards or gifts except for one letter many months prior, and did not provide any financial support.

¶14 The court did not abuse its discretion in finding that DCS proved, by clear and convincing evidence, that Father abandoned the Children.³

II. Appropriate Reunification Services

¶15 Father also challenges the superior court’s finding that DCS made a diligent effort to provide appropriate reunification services. Father’s argument is without merit.

¶16 Father admitted the ground of abandonment by failing to appear at the August 9, 2016 and February 2, 2017 hearings. DCS is not required to prove it provided reunification services under the grounds of abandonment. *See Toni W. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 61, 66, ¶ 15 (App. 1999) (DCS is not required to provide parent with reunification services before seeking termination of parental rights on the statutory ground of abandonment). Because Father failed to object to the adequacy

³ Because we find that the evidence supports termination of Father’s parental rights on the grounds of abandonment, we need not address the superior court’s termination on the grounds of substance abuse and nine-months out-of-home placement. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3 (App. 2002) (“If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.”).

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of services during the pendency of the dependency and severance proceedings, he has waived that issue on appeal. *Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, 179, ¶ 18 (App. 2014). Waiver aside, the record indicates that Father was offered appropriate reunification services but failed to participate in any. Nava testified that despite being offered services, including individual counseling, substance abuse treatment, psychological evaluation, and parent aide with supervised visits, Father substantially neglected or willfully refused to participate in any service.

¶17 The superior court did not abuse its discretion in finding that DCS provided appropriate reunification services.

CONCLUSION

¶18 Based on the foregoing, we affirm the superior court's termination of Father's parental rights to the Children.



AMY M. WOOD • Clerk of the Court
FILED: AA