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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ROBERT H., *Appellant*,

v.

KARI H., A.H., T.H., *Appellees*.

No. 1 CA-JV 17-0208
FILED 11-21-2017

Appeal from the Superior Court in Yavapai County
No. V1300SV201680014
The Honorable Anna C. Young, Judge

AFFIRMED

COUNSEL

Law Office of Florence M. Bruemmer, PC, Anthem
By Florence M. Bruemmer
Counsel for Appellant

Collins & Collins, LLP, Phoenix
By Joseph E. Collins
Counsel for Appellee

MEMORANDUM DECISION

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

C A T T A N I, Judge:

¶1 Robert H. (“Father”) appeals from the superior court’s order terminating his parental rights to his children A.H. and T.H. in this private severance action. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Father and Kari H. (“Mother”) are the parents of A.H., born in November 2009, and T.H., born in April 2012. Mother and Father were married before A.H.’s birth, but separated in December 2013 and later divorced. The dissolution decree granted Father parenting time and required him to pay a monthly child support obligation of approximately \$300.

¶3 Father had committed multiple acts of domestic violence against Mother during the marriage, and one or both of the children were present during at least some of these incidents. Father saw the children occasionally after separation but frequently became hostile and disorderly during visits, and Mother called the police to defuse the situation on multiple occasions.

¶4 In January 2015, Father was arrested after another incident of domestic violence against Mother, and he was convicted of two domestic violence offenses and sentenced to two years’ imprisonment. Father wrote to the children while incarcerated, but according to Mother, the letters stopped in November 2015. Father did not call the children for more than a year during that time. Father explained that he initially was not allowed visitation, but later was able to talk to the children on the phone “several times,” including in October 2016. According to Mother, however, Father called only three times throughout his incarceration, all in June 2016. Both parents agreed that Father never sent the children financial support while incarcerated, and (although disputed by Father) Mother claimed that he never sent any gifts.

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¶5 Father was released from confinement in November 2016, and Mother obtained an order of protection against him that same month. Father acknowledged that he had not contacted the children or provided any financial support for them after his release, but stated he had not done so because of the protective order. Father did not, however, take any action in the family court or otherwise seek to enable contact with the children. Nor did he make child support payments. Overall, Father provided a total of only \$250 in financial support since the parents' separation in December 2013.

¶6 Anticipating Father's release, Mother filed a termination petition in August 2016. She later amended the petition to assert statutory grounds of abandonment, neglect, chronic substance abuse, and prior severance. *See* Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(1)-(3), (10). After an April 2017 termination adjudication hearing, the superior court found severance to be warranted based on abandonment, neglect, and prior severance, and further found severance to be in the children's best interests.

¶7 Father timely appealed, and we have jurisdiction under A.R.S. § 8-235(A).

DISCUSSION

¶8 The superior court is authorized to terminate a parent-child relationship if clear and convincing evidence establishes at least one statutory ground for severance, and a preponderance of the evidence shows severance to be in the child's best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). We review a severance ruling for an abuse of discretion, deferring to the superior court's credibility determinations and factual findings. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004); *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

¶9 One statutory ground for severance is that "the parent has abandoned the child." A.R.S. § 8-533(B)(1). "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.

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A.R.S. § 8-531(1). The court assesses abandonment objectively based on the parent's conduct, not subjective intent. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249–50, ¶ 18 (2000). The key consideration is whether the parent, under the unique circumstances of the case, “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 ¶¶ 18, 20; *see also* A.R.S. § 8-531(1).

¶10 Father argues that the superior court erred by granting severance based on abandonment, noting that he had a relationship with the children before being incarcerated, that he wrote to the children and called them several times while in prison, and that imprisonment alone does not justify severance on this basis. But when obstacles—such as imprisonment—inhibit a parent's ability to maintain a relationship with his children, “[t]he burden to act as a parent rests with the parent, who should assert his legal rights at the first and every opportunity” and “must act persistently to establish the relationship however possible.” *Michael J.*, 196 Ariz. at 250–51, ¶¶ 22, 25.

¶11 Here, the evidence supports the superior court's conclusion that Father maintained only minimal contact with the children. After the parents separated in December 2013 and before his January 2015 arrest, Father elected to see the children only occasionally, despite his right to parenting time, and his hostile conduct during such visits limited even those interactions. He wrote letters to the children for several months after his arrest, but stopped sending any correspondence in November 2015, a year before his release. He called the children only three times over the course of his two-year sentence, and never sent gifts or any financial support. Although Father testified to slightly more contact (sending Christmas gifts, making “several” phone calls, and writing “all the time”), we defer to the superior court's resolution of evidentiary conflicts. *See Jesus M.*, 203 Ariz. at 280, ¶ 4.

¶12 Father also argues that the abandonment finding was improper because Mother prevented his contact with the children, first by failing to take the children to visit Father in prison and then by obtaining an order of protection upon his release from confinement. This court has recognized that “a parent who has persistently and substantially restricted the other parent's interaction with their child may not prove abandonment based on evidence that the other has had only limited involvement with the child.” *Calvin B. v. Brittany B.*, 232 Ariz. 292, 293–94, ¶ 1 (App. 2013) (as modified). But even when faced with obstacles to a continuing parental relationship, a parent must nevertheless “act persistently to establish the

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relationship however possible and must vigorously assert his legal rights.” *Michael J.*, 196 Ariz. at 250, ¶ 22 (citations omitted).

¶13 Here, Father’s minimal actions to maintain a relationship with his children predated any obstacle Mother created. He only took advantage of occasional visits with the children even before his incarceration, and after his arrest that contact trickled off to only letters, and soon to nothing. After his release, after being served with an order of protection, Father took no action—for instance, seeking to modify the protective order or petitioning the family court to enforce parenting time—to ensure a continued relationship with the children. *Compare Calvin B.*, 232 Ariz. at 297–98, ¶¶ 22–29 (reversing an abandonment finding when a father sought and obtained a parenting time order in the face of the mother’s restriction on his access to the child, and “throughout the child’s life, [father] actively sought more involvement with their son than [mother] would allow”).

¶14 Accordingly, in light of Father’s failure to provide any support, to maintain any contact with the children, or to make any efforts to resume contact with the children, the record supports the superior court’s finding of abandonment. Because we affirm the severance on this statutory ground, we need not address the alternative grounds found by the court. *Jesus M.*, 203 Ariz. at 280, ¶ 3.

¶15 Father next argues that the superior court erred by finding severance to be in the children’s best interests. Termination is in a child’s best interests if the child would benefit from severance or if a continued relationship with the parent would harm the child. *Mary Lou C.*, 207 Ariz. at 50, ¶ 19. Father claims that the court improperly relied on the existence of a statutory ground for severance (neglect based on domestic violence) to establish best interests, and that in any event, the record does not provide a factual basis establishing domestic violence.

¶16 Although Father correctly notes that a statutory ground establishing a basis for severance does not compel the conclusion that termination is in the child’s best interests, *see Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4, ¶ 14 (2016), the record in this case supports the court’s best interests finding. Father argues that the incidents of domestic violence are too old to present a risk of harm to the children, but the record shows a pattern of continued violence against Mother, including in the children’s presence, that stopped only when Father was incarcerated. And the record supports the court’s conclusion that the children would benefit by being freed for adoption by Mother’s soon-to-be husband, who has already developed a parent–child bond with them. *See id.* at 3–4, ¶¶ 12, 15; *Raymond*

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F. v. Ariz. Dep't of Econ. Sec., 224 Ariz. 373, 379, ¶ 30 (App. 2010). Accordingly, the court did not abuse its discretion by finding severance to be in the children's best interests.

CONCLUSION

¶17 We affirm.



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