

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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NICHOLAS M., *Appellant,*

*v.*

DEPARTMENT OF CHILD SAFETY, G.S., *Appellees.*

No. 1 CA-JV 17-0254  
FILED 1-30-2018

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Appeal from the Superior Court in Maricopa County  
No. JD508879  
The Honorable Rodrick Coffey, Judge

**AFFIRMED**

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COUNSEL

The Stavris Law Firm, PLLC, Scottsdale  
By Christopher Stavris  
*Counsel for Appellant*

Arizona Attorney General's Office, Phoenix  
By Jennifer L. Holder  
*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Chief Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Michael J. Brown and Judge Maria Elena Cruz joined.

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**T H U M M A**, Chief Judge:

¶1 Nicholas M. (Father) challenges the superior court's order terminating his parental rights to his biological child G.S. Because Father has shown no error, the order is affirmed.

**FACTS<sup>1</sup> AND PROCEDURAL HISTORY**

¶2 G.S. was born in 2012. At birth, G.S. tested positive for methadone and opiates and the Department of Child Safety (DCS) took G.S. into care. At that time, Father's whereabouts were unknown. DCS' dependency petition alleged Father was unable to parent due to neglect, failure to protect and failure to provide G.S. with the necessities of life. In May 2013, the superior court found G.S. dependent as to Father, noting Father had been incarcerated since the child's birth, and adopted a family reunification case plan.

¶3 After Father was released from custody in December 2013, he failed to contact DCS, did not attend court hearings and his whereabouts were unknown. By February 2014, G.S.' mother had absconded with the child and their whereabouts were unknown until September 2015.<sup>2</sup> Notwithstanding this absconder status, Father stated he had contact with G.S. weekly or every other week in 2014, and saw G.S. four or five times in 2015.

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<sup>1</sup> This court views the evidence in a light most favorable to sustaining the superior court's findings. *See Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207 ¶ 2 (App. 2008).

<sup>2</sup> Mother's parental rights have been terminated and she is not a party to this appeal.

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¶4 In March 2016, Father again was taken into custody, where he remained until February 2017. DCS' July 2016 motion to terminate alleged Father abandoned G.S. and that termination was in the child's best interests. *See* Ariz. Rev. Stat. (A.R.S.) §§ 8-531(1), -533(B)(1) (2018).<sup>3</sup> The court held a one-day severance trial in April 2017. By that time, G.S. had been in care for nearly four years. At trial, the court denied Father's oral motion to continue so that he could participate in additional services. The court received exhibits, heard testimony from a DCS unit supervisor, Father and G.S.'s paternal grandfather and heard argument. The court then granted DCS' motion to terminate. This court has jurisdiction of Father's timely appeal pursuant to Article 6, Section 9 of the Arizona Constitution and A.R.S. §§ 8-235(A), 12-2101(A) and 12-120.21(A) and Arizona Rules of Procedure for Juvenile Court 103 and -04.

**DISCUSSION**

¶5 As applicable here, to terminate parental rights, a court must find by clear and convincing evidence that at least one statutory ground articulated in A.R.S. § 8-533(B) has been proven and must find by a preponderance of the evidence that termination is in the best interests of the child. *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). Because the superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts," this court will affirm an order terminating parental rights so long as it is supported by reasonable evidence. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93 ¶ 18 (App. 2009) (citation omitted).

¶6 Father first argues that there was insufficient evidence to support the abandonment finding. By statute,

"Abandonment" means 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

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<sup>3</sup> Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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constitutes prima facie evidence of abandonment.

A.R.S. § 8-531(1). “[A]bandonment 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. “What constitutes reasonable support, regular contact, and normal supervision varies from case to case.” *Id.* at 250 ¶ 20 (citation omitted).

¶7 Father has not shown that the superior court abused its discretion in finding DCS had shown abandonment. Father was incarcerated during a significant portion of G.S.’ life. While in custody, to avoid abandonment, Father was required to “do something, because conduct speaks louder than words or subjective intent.” *Michael J.*, 196 Ariz. at 250 ¶ 22 (citation omitted). While in custody from November 2012 to December 2013, Father did not send any cards, gifts, letters or financial support to G.S. During Father’s second incarceration from March 2016 to February 2017, Father sent one letter to G.S. but no cards, gifts or financial support.

¶8 Although Father testified he had contact with G.S. weekly or every other week in 2014, and saw G.S. approximately four or five times in 2015, the superior court, in assessing credibility, was not required to accept or give full weight to those statements. Moreover, by Father’s own account, in June 2015, he lost contact with Mother and G.S., yet made no effort to try to locate G.S., contact DCS or contact the police regarding G.S.’s welfare. *See Matter of Yuma Cty. Juv. Ct. Action No. J-87-119*, 161 Ariz. 537, 540 (App. 1989) (affirming termination when father failed to conduct minimally diligent search to find his child; “[t]he most salient point is that the father’s failure to do anything . . . is powerful evidence of his intent”).

¶9 Father argues that, factually, this case “is distinguishable from *Michael J.* in multiple aspects.” Although the facts here are different, Father has not shown the *Michael J.* legal framework does not apply or that the record could not support a finding that Father did not provide “reasonable support, regular contact, and normal supervision.” *Michael J.*, 196 Ariz. at 250 ¶ 20 (citation omitted). The superior court was not obligated to accept Father’s statements that he “provided food, diapers and clothing” for G.S. “for approximately a year and a half.” And even accepting these statements as true would not address the other three years G.S. was in care before the trial. Father’s complaints about DCS’ purported failures to

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contact him ignore that, particularly while in custody, he was required to “do something, because conduct speaks louder than words or subjective intent.” *Michael J.*, 196 Ariz. at 250 ¶ 22 (citation omitted). Finally, Father’s testimony that he is parenting two of his other children does not prevent a finding that he abandoned G.S. The superior court found that “Father’s efforts to parent [G.S.] are minimal at best” and Father fell “significantly short of his obligation to ‘act persistently to establish the relationship however possible and must vigorously assert his legal right to the extent necessary.’” *See also Michael J.*, 196 Ariz. at 250. The record fully supports these findings.

¶10 Father also claims there was no support for the best interests finding. Best interests focuses on whether the child would benefit from termination or, in the alternative, whether continuation of the parent-child relationship would be harmful. *Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, 50 ¶ 19 (App. 2004). Father asserts “he loves his child, would not want to hurt his child and wants his child to know where he comes from.” Accepting these assertions as true, the record shows G.S. is living in a prospective adoptive home with some of his siblings and he is thriving. This potentially-adoptive placement sufficiently supports the superior court’s finding that termination would benefit G.S., meaning termination was in his best interests. *Mary Lou C.*, 207 Ariz. at 50 ¶ 19. “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.” *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4 ¶ 12 (2016).

CONCLUSION

¶11 Because Father has shown no error, the superior court’s order terminating his parental rights to G.S. is affirmed.



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