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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ANDREA W., *Appellant*,

v.

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

No. 1 CA-JV 17-0362
FILED 2-13-2018

Appeal from the Superior Court in Maricopa County
No. JD30168
The Honorable Jeanne M. Garcia, 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 Appellee, Department of Child Safety

MEMORANDUM DECISION

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Kent E. Cattani joined.

P E R K I N S, Judge:

¶1 Andrea W. (“Mother”) appeals the termination of her parental rights to her children, Al.A. (born 2007), D.A. (born 2008), and Ar.A. (born 2009) (collectively “the Children”). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Mother and Dallas A. are the parents of D.A. and Ar.A. The identity of Al.A.’s father is unknown. Neither Dallas A. nor the unknown father are parties to this appeal.¹

¶3 In June 2012, Dallas A. took the Children from Mother’s home in North Dakota and moved to Tennessee. Thereafter, Mother had limited contact with Dallas A. and no contact with the Children. Mother contacted local police in North Dakota and Minnesota but never filed a report. Though Mother attempted to contact Tennessee social services, she never filed a report or otherwise alerted Tennessee authorities. By March 2015, the Children were living with Dallas A. in Arizona. The Arizona Department of Child Safety (“DCS”) filed a dependency action in March 2015, alleging the Children were dependent as to Dallas A. because of substance abuse and as to Mother due to abandonment. DCS determined Mother was in North Dakota and ultimately notified her of the dependency.

¶4 Mother first appeared at a telephonic hearing regarding the dependency in October 2015. Mother thereafter failed to keep in contact with DCS and in July 2016, the juvenile court changed the case plan to severance and adoption.

¹ We draw the facts from evidence presented to the juvenile court and view the facts and all reasonable inferences therefrom in the light most favorable to upholding the juvenile court’s order. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 13 (App. 2002).

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¶5 Mother visited the Children for the first time in four years in August 2016, a month after the case plan changed to severance and adoption. Thereafter, Mother visited the Children two more times before the termination hearing. Mother also engaged in sporadic telephone contact with the Children, which fluctuated between periods of prolonged absence and periods of intense contact. The DCS caseworker reported that Mother would often discuss inappropriate subjects during her telephonic visits with the Children. Mother also provided two gift packages and a few cards to the Children between 2012 and the conclusion of the severance proceedings. The juvenile court held a three-day evidentiary hearing in March and May 2017 and terminated Mother's parental rights to the Children on the grounds of abandonment.

¶6 Mother and the Children are subject to the Indian Child Welfare Act ("ICWA"). DCS made efforts to involve Mother's tribe in the severance action; however, the tribe failed to prosecute its motion to transfer jurisdiction. The juvenile court allowed Mother's tribe to participate in the severance hearing, heard testimony from a representative of the tribe regarding ICWA compliance, and made findings as to the applicable provisions of ICWA. Mother now appeals.

DISCUSSION

¶7 Parental care and control of one's children is a fundamental right, but it is not absolute. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 24 (2005). The juvenile court may terminate a parent's rights on clear and convincing evidence of one of the statutory grounds in Arizona Revised Statutes ("A.R.S.") section 8-533(B), and upon finding, by a preponderance of the evidence, that termination is in the best interests of the child. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248-49, ¶ 12 (2000). The court must consider the circumstances as they exist at the time of the termination hearing. *Shella H. v. Dep't of Child Safety*, 239 Ariz. 47, 50, ¶ 12 (App. 2016).

¶8 The juvenile court is best situated "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 view the facts in the light most favorable to upholding the juvenile court's order. *Ariz. Dep't of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, 549, ¶ 7 (App. 2010). We review the juvenile court's termination order for abuse of discretion and will affirm the order unless the factual findings are clearly erroneous. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2 (App. 1998).

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¶9 On appeal, Mother challenges the juvenile court’s findings as to abandonment and the best interests of the Children. Mother does not challenge any findings related to ICWA.

I. Abandonment

¶10 The juvenile court severed Mother’s parental rights as to the Children after finding Mother had abandoned the Children. *See* A.R.S. § 8-533(B)(1). Abandonment is:

[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).

¶11 We have previously held that the juvenile court must consider each of the factors in A.R.S. § 8-531(1) and determine whether the parent has taken steps to establish or strengthen the parent's emotional connection with his child. *Kenneth B. v. Tina B.*, 226 Ariz. 33, 37, ¶¶ 18, 21 (App. 2010). While reasonable support, regular contact, and normal supervision may vary from case to case, abandonment is measured by a parent’s conduct and not his subjective intent. *Michael J.*, 196 Ariz. at 249–50, ¶¶ 18, 20. When a parent has no existing relationship with the child, the parent must act persistently to establish a normal parental relationship and “vigorously assert” his legal rights. *Id.* at 250, ¶ 22; *see also Pima Cty. Juv. Severance Action No. S-114487*, 179 Ariz. 86, 97 (1994) (explaining that when a parent has no relationship with his child, he must “act, and act quickly”). Here, Mother, without just cause, had no contact with the Children from June 2012 through October 2015. This establishes a *prima facie* case of abandonment. A.R.S. § 8-533(B)(1).

¶12 Mother testified that after she lost contact with the Children in 2012, her efforts to reengage with them amounted to “hope” they would be returned. On learning of the dependency action in October 2015, Mother waited until at least August 2016, four years after last seeing the Children, to visit them in person. Moreover, the juvenile court heard testimony that Mother’s telephone contact with the Children was inconsistent and often contained inappropriate subject matter. Finally, Mother failed to provide even minimal financial support and failed to reestablish a normal parental

relationship with the Children. Under these circumstances, reasonable evidence supports the juvenile court's finding of abandonment.

II. Best Interests Determination

¶13 Mother argues the juvenile court erred in determining severance was in the Children's best interests, arguing the Children will not be harmed if Mother retains her parental rights.

¶14 Termination of the parent-child relationship is in the child's best interests when the child would benefit from the termination or be harmed by continuation of the relationship. *Jose M. v. Eleanor J.*, 234 Ariz. 13, 17, ¶ 21 (App. 2014). A child benefits from termination when the child is adoptable or a current adoption plan is in place. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 3-4, ¶ 12 (2016). When a statutory ground for severance has been proven, the juvenile court must balance the child's interest in a safe and stable home against the unfit parent's "diluted" interest in the care of the child. *Id.* at 4, ¶ 15. Importantly, a child's best interests are served when the parent has a finite window of opportunity for remediation. *See Maricopa Cty. Juv. Action No. JS-501568*, 177 Ariz. 571, 577 (App. 1994).

¶15 Here, the juvenile court found, by a preponderance of the evidence, that severance was in the Children's best interests. At trial, the DCS caseworker testified DCS located a relative of the Children who is ICWA compliant and expressed interest in adopting them. Moreover, the juvenile court found that, in the event the relative cannot adopt, the Children are adoptable. The caseworker testified severance was in the Children's best interests because it would provide them with permanency in a safe and stable home. Accordingly, the juvenile court did not abuse its discretion in finding that the termination of Mother's parental rights was in the Children's best interests.

CONCLUSION

¶16 For the foregoing reasons, we affirm the order terminating Mother's parental rights.

