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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JULIO O., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, L.T., J.T., E.T., M.T., *Appellees*.

No. 1 CA-JV 18-0052
FILED 8-14-2018

Appeal from the Superior Court in Maricopa County
No. JD529248
JS518709
The Honorable Colleen L. French, Judge *Pro Tempore*

AFFIRMED WITH DIRECTIONS

COUNSEL

Robert D. Rosanelli, Attorney at Law, Phoenix
By Robert D. Rosanelli
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Amanda Adams
Counsel for Appellee, Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Michael J. Brown delivered the decision of the Court, in which Judge Jennifer M. Perkins and Judge Lawrence F. Winthrop joined.

B R O W N, Judge:

¶1 Julio O. (“Father”) appeals the termination of his parental rights to his four children. For the following reasons, we affirm the juvenile court’s order terminating Father’s parental rights, subject to correction of the court’s written findings.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Father is the parent of L.T., born in 2003, J.T., born in 2005, E.T., born in 2007, and M.T., born in 2009 (collectively, “the children”). Father and the children’s mother (“Mother”), who is not a party to this appeal, lived together until 2010, when Father was sentenced to prison for three years for driving under the influence.

¶3 The children visited Father once in prison in 2011, which was the last time Father and the children have seen each other. Following his release from prison in 2013, immigration authorities detained Father for two years. Thereafter, Father has resided in Mexico; he is not legally allowed to return to the United States.

¶4 In September 2015, the Department of Child Safety (“DCS”) received a report that the children were living in a tent in the backyard of a residence, were not attending school, and Mother was addicted to drugs. DCS took temporary custody of the children and filed a dependency petition alleging the children were dependent due to Father’s abandonment and neglect.¹ The Department unsuccessfully attempted to locate Father, and the juvenile court granted DCS’s dependency petition in December 2015.

¶5 In August 2016, DCS unsuccessfully attempted to locate Father through a parent-locate service. In April 2017, the juvenile court approved changing the case plan from family reunification to severance

¹ DCS also alleged the children were dependent as to Mother based upon neglect and her drug addiction.

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and adoption. DCS then filed a motion for termination of parental rights, alleging Father abandoned the children under Arizona Revised Statutes (“A.R.S.”) section 8-533(B)(1) (West 2014) because he had no contact with the children and failed to provide financial support since at least September 2015.²

¶6 According to the April 5, 2017 progress report, E.E. informed DCS that Father was living in Mexico and was aware the children were “in care.” In June, DCS again attempted to locate Father through a parent-locate service. As stated in the July 14, 2017 progress report, the Mexican Consulate contacted DCS through voice mail, reporting that Father had been located in Mexico. DCS then requested that the Mexican Consulate provide Father’s contact information.

¶7 At an August 2017 hearing, DCS informed the juvenile court it had located Father in Mexico and the court appointed counsel for Father. In its December 7, 2017 progress report, DCS reported that Father had not “maintained any type of contact with his children or the Department” for more than two years. DCS stated that absent “knowing that he lives in Mexico,” Father had not provided any information regarding his living arrangement to coordinate services in Mexico. Nor had Father provided proof of housing, employment, or any other documents to DCS.

¶8 In February 2018, the juvenile court conducted a termination hearing during which DCS presented testimony from the DCS specialist outlining Father’s lack of contact with the children. Without a showing of good cause, Father was absent for the first 32 minutes of the hearing, but then joined by phone and the court permitted him to testify. The court granted DCS’s motion based on abandonment and found that termination was in the children’s best interests.³

² The motion also alleged grounds for termination of Mother’s parental rights. After a separate contested severance hearing in August of 2017, the court terminated Mother’s rights as to three of the children. One child, L.T., did not wish to be adopted, and DCS did not pursue termination of Mother’s parental rights as to L.T. at that time. The termination of Mother’s rights to the other children is not at issue in this appeal.

³ The juvenile court’s written order, which was drafted by DCS, mistakenly failed to state that the court terminated Father’s parental rights to E.T. Although Father does not raise this issue on appeal, the termination

DISCUSSION

¶9 Father challenges the sufficiency of the evidence supporting the juvenile court’s severance ruling. To terminate parental rights, the juvenile court must find by clear and convincing evidence the existence of at least one of the statutory grounds for termination enumerated in A.R.S. § 8-533(B), and must also find by a preponderance of the evidence that termination is in a child’s best interests. *Ariz. R.P. Juv. Ct.* 66(C); *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12 (2000). “[W]e view the evidence and reasonable inferences . . . in the light most favorable to sustaining the court’s decision.” *Jordan C. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009) (citation omitted). We will affirm the ruling when the termination order is supported by reasonable evidence. *Id.*

¶10 The juvenile court may terminate parental rights if “the parent has abandoned the child.” A.R.S. § 8-533(B)(1). “Abandonment” is defined as:

[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). A court determines abandonment based on the parent’s conduct, not the “parent’s subjective intent.” *Michael J.*, 196 Ariz. at 249, ¶ 18. “What constitutes reasonable support, regular contact, and normal supervision varies from case to case.” *Pima Cty. Juv. Severance Action No. S-114487*, 179 Ariz. 86, 96 (1994). Reasonable support may be evidenced by the parent sending the child “gifts, clothes, cards and food,” as well as contributing funds to support the child’s upbringing. *Kenneth B. v. Tina B.*, 226 Ariz. 33, 37, ¶ 20 (App. 2010). The court should also determine “whether the parent has taken steps to establish and strengthen the emotional bonds linking him or her with the child.” *Id.* at ¶ 21. “The

hearing transcript and the corresponding minute entry make it clear that the court terminated Father’s parental rights as to all four children. We therefore direct the court to amend its written order consistent with the transcript and minute entry.

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burden to act as a parent rests with the parent, who should assert his legal rights at the first and every opportunity.” *Michael J.*, 196 Ariz. at 251, ¶ 25.

¶11 The juvenile court found that Father “abandoned the children and failed to maintain a normal parental relationship with the children without just cause by failing to provide reasonable support, failing to maintain regular contact, and/or failing to provide normal supervision” since at least September 2015. Reasonable evidence supports the court’s findings.

¶12 The DCS specialist testified that during the pendency of the matter, Father did not send any support, maintain regular contact, and failed to make any efforts to provide support or communicate with the children. She also testified that Father’s failure to provide support and maintain contact with the children was in excess of six months.

¶13 Moreover, as Father acknowledged at trial, he failed to have any contact with the children for at least the six months preceding the termination hearing. *See* A.R.S. § 8-531(1). Father also failed to take advantage of opportunities to cultivate relationships with the children. For instance, when DCS spoke to Father through the Mexican Consulate, DCS asked Father for his address and phone number, and instead of providing his information, he told the caseworker to contact him through the Mexican Consulate, making it difficult to arrange for services to be coordinated in Mexico. Additionally, DCS encouraged Father to send the children gifts, letters, and cards, which he failed to do. And although Father contends he “has acted persistently, despite considerable obstacles, to maintain a parental relationship with the children,” we do not reweigh the evidence on appeal. *See Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 336, ¶ 14 (App. 2004) (“[O]ur function on review is not to reweigh the evidence before the juvenile court or supersede its assessment of the evidence with our own.”).

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CONCLUSION

¶14 For the foregoing reasons, we affirm the severance order, and we direct the juvenile court to amend its written findings to reflect that the court terminated Father's parental rights as to all four children.



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