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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

PEDRO C.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, P.C.,
Appellees.

No. 1 CA-JV 18-0089
FILED 9-11-2018

Appeal from the Superior Court in Maricopa County
No. JD32958
The Honorable Lisa Daniel Flores, Judge

AFFIRMED

COUNSEL

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

Arizona Attorney General's Office, Tucson
By Autumn L. Spritzer
Counsel for Appellee DCS

MEMORANDUM DECISION

Judge Diane M. Johnsen delivered the decision of the Court, in which Presiding Judge Jennifer B. Campbell and Judge Maria Elena Cruz joined.

J O H N S E N, Judge:

¶1 Pedro C. ("Father") appeals the superior court order terminating his rights to his son based on abandonment. For the reasons stated below, we affirm the order.

FACTS AND PROCEDURAL BACKGROUND

¶2 The child was born in August 2016. Father saw him at the hospital the day he was born and signed his birth certificate. The Department of Child Safety ("DCS") took custody of the infant two days later because it received a report that he had tested positive for opiates and his mother had tested positive for opiates and amphetamine. After DCS took the child, Father went with the child's mother to see their son on one occasion in September 2016.

¶3 Other than that one visit, although Father knew DCS had custody of the infant, he did not contact DCS about him and made no effort to see him before Father was incarcerated in December 2016. DCS was trying to locate Father, but by his own account, he was "on the run," trying to avoid arrest. Eventually, unaware that Father had been taken into custody in December 2016, DCS moved to terminate his parental rights based on abandonment in May 2017.

¶4 DCS learned in August 2017 that Father was incarcerated. It then wrote him twice to inform him of the pending termination motion and urged him to send cards, gifts and letters to his child through the DCS case manager. Father, however, did not send anything to the case manager for the child, nor did he contact the case manager.

¶5 Father was briefly released from prison on October 2, 2017. He contacted the DCS case manager the next day and arranged to accompany the child's mother to a visit with their son. At the severance trial, the case manager testified she expected they would meet again so that she could coordinate reunification services with Father's probation services, but she lost contact with him. She tried without success to reach him by

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email and by "Wi-Fi number," but he did not respond. It turned out that Father had again been incarcerated, but he did not contact the case manager to inform her of his whereabouts. The case manager did not learn he had been arrested again until a hearing in the severance proceeding in January 2018.

¶6 Father, still incarcerated, appeared by telephone at the severance hearing in February 2018. The case manager testified Father never responded to her attempts to set up reunification services for him and never sent her any cards, letters, gifts or financial support for the child. Father acknowledged receiving a letter from DCS while he was in prison instructing him to send letters or gifts to the child through DCS, and admitted that he did not do so. He testified he had sent some drawings for the child to the child's maternal grandmother because he thought she was caring for the infant.

¶7 Father explained his failure to contact DCS after his visit in October 2017 by saying that he lost "my email address" and that it "was already too late when I went to check my email, because . . . I didn't have [any] way to get ahold of her." The child has special needs, including enlarged adenoids, and required tongue surgery and food therapy because he cannot drink liquids. Father admitted, however, that until he heard the case manager testify at trial, he had been unaware of most of the child's special needs.

¶8 Father acknowledged at trial that he has never provided any financial support for the child. He admitted that when he visited the infant with the child's mother in October 2017, he did not bring diapers or food for the child. He also admitted at trial that he has not provided normal supervision for the child and does not have a normal parent-child relationship with his son.

¶9 After hearing the DCS case manager and Father testify and reviewing other evidence in the record, the superior court found DCS proved the statutory ground of abandonment under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(1) (2018) by clear and convincing evidence and that termination was in the child's best interests.¹ The court found:

¹ Absent material change since the relevant date, we cite the current version of applicable statutes.

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Father did not act persistently to establish a relationship with [the child] and he did not vigorously assert his legal rights to the extent necessary to overcome the *prima facie* case of abandonment. In the eighteen months of the child's life, Father has seen him three times. Father believed the child was his after he was born, but did not send any financial support for the child, even during the periods of time that Father was out of custody. Father was aware of DCS involvement in the child's life . . . [and] could have, but did not, reach out to [DCS] or the Court to request information about his child or to establish contact with him. Father's actions demonstrate clearly and convincingly that he abandoned [the child].

¶10 We have jurisdiction of Father's timely appeal pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 8-235(A) (2018), 12-120.21(A)(1) (2018) and -2101(A)(1) (2018).

DISCUSSION

¶11 The right to custody of one's child is fundamental but not absolute. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248, ¶¶ 11-12 (2000). The superior court may terminate a parent-child relationship upon clear and convincing evidence of at least one of the statutory grounds in A.R.S. § 8-533(B). *Michael J.*, 196 Ariz. at 249, ¶ 12. Additionally, the court must find by a preponderance of the evidence that termination is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005).

¶12 We review a termination order for an abuse of discretion and will affirm unless no reasonable evidence supports the court's findings. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004). Because the superior court is in the best position to "weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings," we will accept its findings of fact unless no reasonable evidence supports them. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

¶13 Under Arizona law, "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

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cause for a period of six months constitutes prima facie evidence of abandonment.

A.R.S. § 8-531(1) (2018).

¶14 On appeal, Father argues insufficient evidence supports the court's finding that he abandoned the child. The evidence recounted above, however, provides ample support for the superior court's findings that Father abandoned the child by failing to maintain a normal parental relationship with him without just cause, failing to provide reasonable support, failing to maintain regular contact and failing to provide normal supervision.

¶15 Father argues he took "significant steps towards maintaining a normal parental relationship" with his son. He asserts he visited his son "when he could" and sent writings to the child "from custody." After seeing the child in the hospital immediately after he was born and once a month later, however, Father made no effort to see him again before he was incarcerated in December 2016. After seeing his child for only the third time in October 2017, Father failed to keep in touch with DCS about his whereabouts.

¶16 Father disregarded DCS's written instructions to send written communications to his son through the DCS case manager, explaining that he sent a handful of drawings to the child's maternal grandmother instead because he thought the child was with her. The superior court found Father's explanation "not credible because he has a motive to present himself in the best light to avoid having his parental rights terminated." The court noted that although the maternal grandmother was subpoenaed and present to testify, Father did not call her to corroborate his account. Moreover, the court did not abuse its discretion by concluding that even if Father had sent "some letters or drawings" to the grandmother for the child, "doing so would not qualify as even minimal effort to establish or maintain a relationship with the child."

¶17 Father also argues DCS should have made more of an effort to maintain his relationship with the child and suggests that DCS "denied" him visits. But he cites no legal authority for the proposition that DCS is required to provide reunification services to a parent who has abandoned a child; in any event, the record contains no evidence that he contacted DCS to inform it that he was incarcerated, let alone evidence that he asked DCS to arrange visits with the child during his incarceration.

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CONCLUSION

¶18 For the reasons stated above, we affirm the superior court's order terminating Father's parental rights to his son.



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