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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

TRAVION K., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, K.K., *Appellees*.

No. 1 CA-JV 18-0098
FILED 8-28-2018

Appeal from the Superior Court in Maricopa County
No. JD32883
The Honorable Alison Bachus, Judge

AFFIRMED

COUNSEL

David W. Bell Attorney at Law, Higley
By David W. Bell
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Cathleen E. Fuller
Counsel for Appellee

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MEMORANDUM DECISION

Presiding Judge David D. Weinzwieg delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge Paul J. McMurdie joined.

WEINZWIEG, Judge:

¶1 Travion K. (“Father”) appeals the juvenile court’s order terminating his parental rights to K.K. We affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Father and Brittney P. (“Mother”) are the biological parents of K.K., born in November 2015.¹

¶3 Mother called the Department of Child Safety (“DCS”) in July 2016 because she could not meet K.K.’s basic needs. She had lost track of Father, but told DCS that he was homeless, abusive and had used illegal substances. Father had never contributed financial assistance or basic necessities to care for the child, aside from one pack of diaper wipes. Father’s presence in K.K.’s early life was erratic and infrequent. He paid weekly visits after K.K. was born but then vanished in March or April 2016, ending all communication. Mother opined that K.K. should be placed with a foster family for possible adoption.

¶4 DCS took temporary custody of K.K. and filed a dependency petition against both parents, alleging that Father had neglected and abandoned the child, abused illegal substances and engaged in domestic violence. DCS tried but could not find Father and thus served him via publication.

¶5 Meanwhile, Father was arrested in September 2016 and charged with criminal trespass and theft. He had allegedly eluded security at a Drake concert in downtown Phoenix, boarded the artist’s tour bus and stole a case of jewelry; he then drifted to Arizona State University, entered a dorm room without permission and asked a female student for sex.

¶6 DCS learned of Father’s whereabouts and informed him, in writing, that DCS had temporary custody of K.K. and had filed a

¹ Mother is not a party to this appeal.

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dependency action. The juvenile court conducted an October 2016 pretrial hearing in K.K.'s dependency action. Father knew about the hearing but he refused transport to the court and did not attend.² The court chose not to proceed in Father's absence and continued the hearing to December 2016. This additional time enabled DCS to personally serve Father rather than rely on service via publication.

¶7 Father attended the December 2016 hearing, where he denied the allegations in the dependency petition. The court read Father the standard Form 1 Notice to Parent in Dependency Action and Father signed it. The Form 1 Notice directed that Father is "required to attend all court hearings" and warned the court might "terminate [his] parental rights" and find he "waived [his] legal rights and admitted the allegations in the dependency petition" if he failed to attend later proceedings without good cause.

¶8 Father asked the court to order that DCS must facilitate and pay for Skype videoconferences between Father and K.K. during his incarceration. The court said that Skype visits were allowed, but Father must pay for the Skype connection "much like a parent who is incarcerated who wants to call their child."

¶9 The court found K.K. dependent as to Father after a contested dependency hearing in April 2017. Thereafter, in July 2017, the court changed the case plan to severance and adoption. Father received and signed a Form 3 Notice to Parent in Termination Action, which directed him to attend the termination hearing and warned his legal rights could be waived and parental rights terminated if he failed to appear.

¶10 DCS moved to terminate Father's parental rights on July 18, 2017, based on abandonment. DCS alleged that Father had abandoned K.K. by failing to maintain a normal parental relationship without just cause and failing to provide reasonable support, regular contact or normal supervision. It further alleged that Father "did not provide for or visit with his child [f]rom September 7, 2016 to present [and] has not attempted to establish a relationship with his child," and "has not attempted to contact his child and made no attempts whatsoever to establish a relationship with him."

² Counsel was appointed to represent Father and attended all hearings on his behalf.

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¶11 Father never talked to or visited (by Skype or otherwise) with K.K. during his incarceration, but sent him 15 postcards in the final five months before his release. Father was released from prison on January 31, 2018. The court reminded Father about the upcoming severance hearing, the importance of his attendance and the “consequences for failing to appear.”

¶12 A contested severance hearing was conducted on February 20, 2018. Father did not attend. His attorney could not explain his absence. Father did not contact DCS and did not contact or try to visit K.K. after his release. At the hearing, the court remarked that it was “surprised” by Father’s absence because it had “taken great pains to explain to him that he needed to be here after his release” on “many, many occasions” and even explained how to arrange transportation. It found “that father has failed to appear without good cause” and thus “waived his legal rights and admitted the allegations” in the motion to terminate.

¶13 The court proceeded with the severance hearing and heard the evidence and argument presented by DCS and Father’s counsel. It then found that Father abandoned K.K. and that termination was in K.K.’s best interests. Father timely appealed. We have jurisdiction pursuant to Ariz. Const. art. 6, § 9, and A.R.S. § 8-235(A).

DISCUSSION

¶14 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 juvenile court may terminate a parent-child relationship upon clear and convincing evidence of at least one statutory ground in A.R.S. § 8-533(B) and proof that termination is in a child’s best interests by a preponderance of the evidence. *Id.* at 248-49, ¶ 12. We affirm a severance order unless it is clearly erroneous. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002). We accept the court’s findings of fact unless no reasonable evidence supports them, *id.*, and view the evidence in the light most favorable to upholding the order. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, 97, ¶ 20 (App. 2009).

¶15 On appeal, Father argues that insufficient evidence exists to support the court’s finding that he abandoned K.K. He does not contest that termination is in K.K.’s best interests.

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1. Failure to Appear.

¶16 Father failed to attend the severance trial without good cause and despite frequent reminders and warnings from the court and DCS. Father signed two court forms detailing his obligation to attend all proceedings, and the potential ramifications of his failure to appear. Only weeks before the trial, the court reminded and admonished Father “of the consequences for failing to appear,” which “Father acknowledge[d].”

¶17 On this record, the court properly found that Father waived his rights and deemed Father to have admitted the factual allegations in the termination motion, including that Father failed to maintain a normal parental relationship with K.K., failed to provide K.K. with reasonable support or normal supervision, failed to maintain regular contact and “ha[d] not attempted to contact his child and made no attempts whatsoever to establish a relationship with him.” A.R.S. § 8-863(C); Ariz. R.P. Juv. Ct. 66(D)(2).

¶18 The court was still required to hear and assess the evidence, which it did. See *Manuel M. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 205, 212, ¶ 23 (App. 2008) (noting that “a parent’s failure to appear does not relieve the juvenile court of its obligation to assess the ‘record and evidence’ presented and to determine whether the state has proven a statutory ground for termination”).

2. Abandonment.

¶19 Parental rights may be terminated if parents abandon their 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 the parent has made only minimal efforts to support and communicate with the child.” A.R.S. § 8-531(1).

¶20 To determine if Father abandoned K.K., the court must consider whether he “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. “[A]bandonment is measured not by a parent’s subjective intent, but by the parent’s conduct.” *Id.* When circumstances prevent a parent “from exercising traditional methods of bonding with [the] child, [the parent] must act persistently to establish the relationship however possible and must vigorously assert his legal rights to the extent necessary.” *Id.* at 250, ¶ 22.

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¶21 DCS provided ample evidence to support the court's finding that Father abandoned K.K. by failing to maintain a normal parental relationship without just cause, failing to provide reasonable support, failing to maintain regular contact and failing to provide normal supervision. To begin, Father provided no financial assistance or basic necessities to raise and care for K.K., aside from one pack of baby wipes.

¶22 Father failed to maintain minimal, let alone regular, contact with K.K. He visited K.K. for a few months, disappeared in March or April 2016 and was incarcerated in September 2016. Neither Mother nor DCS knew of his whereabouts.

¶23 Father never visited with or spoke to K.K. while incarcerated. Father twice expressed interest in teleconference visits (Skype) with K.K., but after the court authorized such contact, Father refused to pay the cost and never pursued it further. Abandonment is not disproven with mere expressions of interest in establishing a relationship; rather, persistent action is required. *See Michael J.*, 196 Ariz. at 250, ¶ 22. Nor was DCS required to facilitate and pay for teleconference visits before moving to terminate Father's parental rights on the ground of abandonment. *See Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, 510, ¶ 11 (App. 2008) ("[N]either § 8-533 nor federal law requires that a parent be provided reunification services before the court may terminate the parent's rights on the ground of abandonment.").

¶24 Father did not send any letters to K.K. for the many months of his incarceration, until after DCS moved for termination, when Father sent 15 postcards in the final months before his release. The court perceived these efforts as merely tactical; a post-petition illusion of familial relations. *See Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 8 (1990) (noting abandonment cannot be defeated "merely by post-petition attempts to reestablish a parental relationship").

¶25 And last, Father never contacted K.K. after he was released from jail in January 2018. That is, although he was free and able to move as he pleased, Father never called or visited his child once following his release. He also skipped the severance trial at which the juvenile court was to consider and decide his child's future.

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CONCLUSION

¶26 The record includes reasonable evidence to support the juvenile court's decision. We affirm.



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