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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JASON A., *Appellant*,

v.

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

No. 1 CA-JV 18-0170
FILED 10-23-2018

Appeal from the Superior Court in Maricopa County
No. JD32222
The Honorable Alison Bachus, Judge

AFFIRMED

COUNSEL

Robert D. Rosanelli, Phoenix
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Sandra L. Nahigian
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Chief Judge Samuel A. Thumma delivered the decision of the Court, in
which Presiding Judge James P. Beene and Judge James B. Morse Jr. joined.

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T H U M M A, Chief Judge:

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

FACTS¹ AND PROCEDURAL HISTORY

¶2 In February 2016, the Department of Child Safety (DCS) took J.A. (born in 2008) and another child into care after receiving reports that the children's mother (Mother) could not be located and that J.A. was being cared for by an unknown "individual selling drugs out of his car and home." DCS later learned Mother was in custody in Kentucky on drug charges.² Father's whereabouts originally were unknown. DCS later learned he was in custody in California from January through March 2016 and then on probation until at least September 2017. DCS' dependency petition alleged Father had neglected J.A. and failed to maintain a normal parental relationship.

¶3 In August 2016, after service by publication, J.A. was found dependent as to Father, with the court adopting a case plan of family reunification. Father's mother (Grandma) appeared at the August 2016 hearing "on [Father's] behalf," with the court informing Grandma that Father must appear personally. Although Grandma relayed that information to Father, he failed to establish or maintain contact with DCS (and accordingly failed to participate in services). Father also generally failed to appear at hearings, including at an August 2017 hearing where the court changed the case plan to severance and adoption. As amended, DCS' motion to terminate, alleged abandonment and nine-months time-in-care. *See* Ariz. Rev. Stat. (A.R.S.) §§ 8-533(B)(1) & (8)(a).³

¹ 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).

² Mother's parental rights to J.A. were terminated in May 2018, and she is not a party to this appeal.

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

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¶4 Father appeared telephonically at the October 2017 initial termination hearing and contested DCS' allegations. At that hearing, and in subsequent emails from the caseworker, DCS informed Father of the court-ordered services to be completed, including rule-out drug testing, parenting classes and telephone visitation. Based on the recommendation of J.A.'s therapist, Father was to establish consistent phone contact with J.A. for 60 days as a prerequisite to in-person visitation.

¶5 At a March 2018 termination adjudication hearing, the court received evidence, heard testimony from Father and the DCS caseworker and heard argument of counsel. Father testified he learned of the dependency through Grandma while in jail in California. Father testified that, upon his release in March 2016, he had phone contact with J.A. "whenever [Grandma] had him, so like every week." Father also testified, however, that contact was "every other day" or "every other week." And Father testified to speaking on the phone with J.A. every Wednesday as arranged by J.A.'s first placement, stating that the calls continued until October 2017. DCS confirmed placement facilitated weekly calls, but stated that they ended in late 2016 or early 2017 when the number Father had been using was disconnected.

¶6 Father testified he moved to Arizona "sometime between August and September" 2017, and had in-person contact with J.A. "five or six times from September to November" 2017 during Grandma's visits and at her residence. Although confirming they approved visits between Grandma and J.A., the DCS caseworker's testimony suggested much of the in-person contact alleged by Father did not occur. Among other things, the caseworker testified that, by June 2017, Father had not seen J.A. for "a couple of years" and that telephone contact had been far more sporadic than Father claimed.

¶7 Father admitted he did not contact DCS between February 2016 and October 2017 and did not visit the DCS office after moving to Arizona, stating he was "in transition." Father testified that after the October 2017 hearing, he called the DCS caseworker, left a voicemail, texted and e-mailed but received no response. The caseworker, by contrast, testified Father never contacted him, other than a February 2018 e-mail, to which the caseworker responded.

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¶8 Father failed to complete the required services. Father failed to complete drug tests and did not contact J.A. via telephone or provide a phone number allowing for any contact. Father never sent J.A. any gifts, cards, or letters, and at the time of trial had not provided financial support for J.A. for at least two years.

¶9 After taking the matter under advisement, the superior court granted the motion to terminate based on abandonment and nine-months time-in-care. The court found Father's testimony regarding his contact with J.A. "completely lack[ed] credibility," and Father "had, at best, sporadic contact with J.A. since the beginning of this case in 2016." This court has jurisdiction over Father's timely appeal from that decision pursuant to Article 6, Section 9, of the Arizona Constitution, A.R.S. §§ 8-235(A), 12-2101(A) and 12-120.21(A) and Ariz. R.P. Juv. Ct. 103-104.

DISCUSSION

¶10 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).

¶11 Father argues that DCS failed to show abandonment by clear and convincing evidence. 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 constitutes prima facie evidence of abandonment.

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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. Therefore, questions of abandonment . . . are questions of fact for resolution by the trial court.” *Id.* at 250 ¶ 20 (citations omitted).

¶12 The trial evidence supports the abandonment finding. Despite learning of the dependency and the need to participate while in custody in California, upon his release in March 2016, Father did not contact DCS and, as a result, did not participate in services, “thereby fail[ing] to assert his legal rights.” *Michael J.*, 319 Ariz. at 250 ¶ 23. Although Father claims he regularly spoke with J.A. by telephone until October 2017 and saw J.A. in person five to six times, the caseworker testified that Father’s supervised contact with J.A. ended in late 2016 or early 2017. The caseworker also testified Father never sent J.A. cards, gifts, or letters. When questioned by the court, Father was unable to provide “basic information” about J.A. that he would have learned through regular phone contact. The court also found Father’s testimony about his contacts with J.A. “completely lack[ed] credibility.” This evidence is sufficient to support the finding that DCS proved abandonment.

¶13 Father first appeared in court in October 2017, more than 18 months after learning J.A. was in care and shortly after DCS filed the motion to terminate. Even after he appeared and was told of the services required of him, Father chose not to communicate consistently with DCS, initiate supervised telephone calls with J.A. or participate in other required services, including drug testing. Father testified that he had technical problems e-mailing the caseworker, stating that he “didn’t get the e-mails personally” and that his attempted reply to the caseworker went to his attorney instead of the caseworker. Yet copies of the e-mail exchange show Father later responded using the e-mail address the caseworker used when sending messages to Father. Father was informed of court proceedings and service requirements by his attorney, the caseworker and Grandma. Father also admitted he understood from the caseworker’s e-mail and the October 2017 hearing that he was required to complete drug testing and establish phone contact with J.A., yet he failed to do so. This failure to stay in communication and participate in services is consistent with the superior court’s finding that Father had not been in consistent contact with J.A.

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¶14 Although Father and the caseworker offered conflicting testimony regarding the quality and frequency of Father's contact with J.A. and DCS, this court defers to the judgment of the superior court, "which had the opportunity to assess the credibility, attitude and condition of the parties at trial." *Matter of Appeal in Pima County Severance Action No. S-1607*, 147 Ariz. 237, 239 (1985). Even assuming Father spoke on the phone with J.A. during Grandma's bi-weekly visits and saw J.A. five or six times in late 2017, such "sporadic contact" does not amount to a "normal parental relationship," or "vigorous[] assert[ion]" of Father's legal rights. *See Michael J.*, 196 Ariz. at 250-251 ¶¶ 22, 25. On this record, Father has not shown that the court erred in terminating his parental rights based on abandonment.⁴

CONCLUSION

¶15 Because Father has shown no error, the superior court's order terminating his parental rights to J.A. is affirmed.



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

⁴ Given this conclusion, the court need not address Father's arguments addressing the nine-months time-in-care ground. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280 ¶ 3 (App. 2002). In addition, although Father does not challenge the best interests finding, the trial evidence shows J.A. is in a potential adoptive placement that is meeting his needs, supporting the superior court's best interests finding. *See Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, 288 ¶ 26 (App. 2011).