

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JOSHUA S., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, J.S., J.S., L.S., *Appellees*.

No. 1 CA-JV 19-0070
FILED 10-29-2019

Appeal from the Superior Court in Maricopa County
No. JD530593
The Honorable David B. Gass, Judge

AFFIRMED

COUNSEL

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

Arizona Attorney General's Office, Mesa
By Lauren J. Lowe
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Maria Elena Cruz and Judge Samuel A. Thumma joined.

C A T T A N I, Judge:

¶1 Joshua S. (“Father”) appeals from the superior court’s order terminating his parental rights as to three children. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Father and Teresa S. (“Mother”) are the parents of Ja., born in 2012, Jo., born in 2014, and L., born in 2016.¹

¶3 In January 2017, the Department of Child Safety (“DCS”) took Jo. and L. into care after Jo.’s daycare provider reported suspicious bruises on his face, torso, and legs. Mother told DCS that Father had absconded with Ja. after a methamphetamine-fueled argument the previous month, and DCS coordinated with police in searching for Ja. as a missing child. Meanwhile, the superior court found all three children dependent.

¶4 In July 2017, Seattle police located Ja., and he was returned to Arizona. Police officers reported that the person babysitting Ja. when they arrived was a sex offender, and DCS noted that the then-four-year-old Ja. displayed significant developmental delays and had 11 cavities, necessitating extensive dental work.

¶5 That same month, the DCS case manager spoke with Father by telephone, describing why the children had been taken into care and discussing the anticipated case plan and services for Father. Father responded that he was already in the process of moving back to Arizona to reunify with the children. Father did not, however, contact DCS after returning to Arizona, and in mid-August, he was arrested in Arizona on pre-existing domestic violence charges. Father eventually pleaded guilty to felony domestic violence offenses and possession of dangerous drugs,

¹ The court also terminated Mother’s parental rights as to these three children, but she is not a party to this appeal.

JOSHUA S. v. DCS, et al.
Decision of the Court

and he was sentenced to 2.5 years in prison. He remained incarcerated for the duration of the dependency proceedings.

¶6 The case manager met with Father at the jail in August 2017. At that time, Father admitted having no contact with Jo. since November 2016 and no relationship with L. since birth, but he claimed to have had a normal parent-child relationship with Ja. The case manager urged Father to participate in any relevant classes available to him while in custody, and specifically encouraged him to stay in contact with the children by sending them cards, gifts, and letters through DCS. And in bi-monthly service letters and at the court hearings Father attended telephonically, the DCS case manager reiterated the importance of staying in touch with the children.

¶7 Nevertheless, for the next year, Father had no contact with the children. Nor did he express any concern that some barrier beyond his control was preventing him from contacting them. Not until a hearing in late August 2018 – when the court changed the case plan to severance and adoption – did Father first assert that DCS had not provided him an address to which he could send letters for the children. Father did begin to send the children letters thereafter.

¶8 Within a few days after the August hearing, DCS moved to terminate Father’s parental rights on grounds including abandonment and 15 months’ time in care. *See* A.R.S. § 8-533(B)(1), (8)(c).

¶9 At the January 2019 termination adjudication hearing, Father testified that he previously had a “great relationship” with his children and that he had been “taking perfectly fine care of [Ja.]” before DCS got involved. He described receiving 16 certificates for classes he took while in custody, including anger management, parenting, and drug relapse prevention.

¶10 Father also claimed that the case manager never gave him an address to which to send cards for the children despite his repeated requests for contact information, and that he never received DCS’s bi-monthly service letters, which included that information. He testified that, lacking an address for DCS, he eventually sent letters for his children to his own attorney, and noted that he sent weekly letters after finally getting DCS’s address in November 2018. Father also claimed to have requested telephonic and in-person visitation throughout the case and testified that he had done everything in his power to maintain contact.

JOSHUA S. v. DCS, et al.
Decision of the Court

¶11 The superior court terminated Father’s parental rights as to all three children, finding grounds for severance based on abandonment and 15 months’ time in care and further finding that severance would be in the children’s best interests. Father timely appealed, and we have jurisdiction under A.R.S. § 8-235(A).

DISCUSSION

¶12 The superior court is authorized to terminate a parent–child relationship if clear and convincing evidence establishes at least one statutory ground for severance and a preponderance of the evidence shows severance to be in the child’s best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). We review a severance ruling for an abuse of discretion, deferring to the superior court’s credibility determinations and factual findings. *Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004); *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

¶13 Father challenges the superior court’s findings of statutory grounds supporting severance; he does not contest the court’s best-interests finding. Specifically, he argues that he did not abandon the children, and he asserts that first Mother and then DCS interfered with his efforts to maintain contact and build a normal parental relationship with the children.

¶14 Under A.R.S. § 8-533(B)(1), severance may be warranted on the ground that “the parent has abandoned the child.” “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 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).

¶15 The abandonment assessment is based on the parent’s conduct, not his subjective intent. *See Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 18 (2000). A parent’s imprisonment neither suffices to establish abandonment nor precludes a finding of abandonment. *Id.* at 250,

JOSHUA S. v. DCS, et al.
Decision of the Court

¶ 22. Rather, an incarcerated parent “must act persistently to establish the [parent-child] relationship however possible and must vigorously assert his legal rights to the extent necessary.” *Id.* The key consideration remains whether, under the particular circumstances of the case, the 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.” *Id.* at ¶¶ 18, 20; *see also* A.R.S. § 8-531(1).

¶16 Even before DCS’s involvement with the children, Father’s relationship with Jo. and L. was tenuous at best. Early in the dependency, he acknowledged having no relationship with Jo. since November 2016 and never establishing a relationship with L. After leaving Arizona with Ja., Father had essentially no contact with Jo. and L., either directly or indirectly. Although he asserts that Mother failed to tell him that Jo. and L. had been removed by DCS, the fact that he did not realize anything was amiss for almost six months undermines his assertion that he had an existing relationship with Jo. and L.

¶17 Father maintained a relationship with Ja. until July 2017, but his contacts with Ja. ended at that time. Father attributes his lack of contact with all three children thereafter to the limitations of his incarceration and to the case manager’s alleged failure to provide an address to which he could send letters. But the case manager testified that she provided Father the address on several occasions, and we defer to the superior court’s assessment of this conflicting evidence and will not reweigh the evidence on appeal. *See Jesus M.*, 203 Ariz. at 282, ¶ 12. Moreover, even assuming Father did not have the address, he offers no explanation for his failure to raise the issue for over a year (despite his regular telephonic appearances in court) or to sooner pursue the other avenues available to him (e.g., sending letters through his attorney, as he eventually did). *See Michael J.*, 196 Ariz. at 250, ¶ 22 (requiring a parent to “act persistently” and “vigorously assert his legal rights” to avoid abandonment).

¶18 By the time Father began sending letters in late 2018, he had been entirely out of touch with Ja. for over a year and with Jo. and L. for at least a year and a half. Father’s late-stage correspondence for a few months before the severance hearing represented only minimal efforts that did not preclude a finding of abandonment. *See* A.R.S. § 8-531(1) (defining abandonment to include “a parent [who] has made only minimal efforts to support and communicate with the child”).

JOSHUA S. v. DCS, et al.
Decision of the Court

¶19 Accordingly, we affirm the superior court's severance ruling based on abandonment. And because we affirm on this basis, we need not address Father's challenge to the alternative ground of 15 months' time in care. *See Jesus M.*, 203 Ariz. at 280, ¶ 3.

CONCLUSION

¶20 The ruling terminating Father's parental rights as to Ja., Jo., and L. is affirmed.



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