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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JOHNNY R., *Appellant*,

v.

LEONARD D., LISA D., G.R., *Appellees*.

No. 1 CA-JV 19-0090
FILED 10-17-2019

Appeal from the Superior Court in Maricopa County
No. JS519024
The Honorable Cynthia L. Gialketsis, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Maricopa County Legal Defender's Office, Phoenix
By Jamie R. Heller
Counsel for Appellant

Stuart & Blackwell PLLC, Chandler
By Cory A. Stuart
Counsel for Appellees

MEMORANDUM DECISION

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Paul J. McMurdie joined.

PERKINS, Judge:

¶1 Johnny R. (“Father”) appeals the superior court’s order terminating his parental relationship with his daughter G.R. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Father and Lisa D. (“Mother”) are the parents of G.R., born in January 2014. After an off and on relationship involving domestic violence and substance abuse by Father, the parents married in December 2012. The strife continued during the marriage, and in February 2015, Mother left Father, moved to a new home with G.R., and filed for divorce. Father was in and out of custody after that time. This led to a release order prohibiting Father from contacting mother, though it allowed for supervised contact with G.R.

¶3 In October 2015, after Father failed to appear in family court (even though he was not in custody), the court issued a default divorce decree. The court granted Mother sole custody of G.R. and granted Father limited parenting time if supervised by a court-appointed official. The court also ordered Father to pay \$280 per month in child support and contribute to G.R.’s medical and dental expenses. Father made inconsistent child support payments after the decree. In November, Father called Mother while intoxicated and threatened to harm her, her family, and himself. One month later, Mother married Leonard R. (“Stepfather”).

¶4 In February 2016, Mother and her family supervised a one-hour visit between G.R., Father, and G.R.’s paternal grandmother. Father emailed Mother several times through April 2016 asking to see G.R., even though he was still prohibited from contacting Mother under the terms of his previous release order. However, Father did not arrange for any supervised visits with G.R. Mother told Father’s probation officer about the emails, and Father ceased contact with Mother after April. Also in April, Father was placed on five years’ probation. In September 2016, Mother

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obtained an order of protection against Father; G.R. was included in the order. Father complied with that order and had no contact with Mother or G.R.

¶5 After the order of protection expired in August 2017, Father had no contact with G.R. and did not enforce his supervised visitation. He attended several rehabilitation programs over the next year and a half and achieved about four months of sobriety before the termination hearing. In July 2018, Father attempted to pursue his visitation rights through family court, though the court dismissed his petition because he filed it under an incorrect case number.

¶6 In August 2018, Mother petitioned to terminate Father's parental rights to G.R. under the abandonment and chronic substance-abuse grounds. In October 2018, Father refiled his family court petition under the correct case number, but the court placed the case on the inactive calendar pending the outcome of the termination petition. In December 2018, Father sent G.R. a Christmas gift. The superior court held a contested termination hearing and found that Mother and Stepfather had failed to prove the substance-abuse ground, but issued a ruling terminating Father's parental rights under the abandonment ground. Father timely appealed the court's ruling. We have jurisdiction pursuant to the Arizona Constitution Article 6, Section 9 and A.R.S. §§ 8-235(A), 12-120.21(A)(1), and -2101(A)(1).

DISCUSSION

¶7 We review the termination of parental rights for an abuse of discretion. *Sandra R. v. Dep't of Child Safety*, 246 Ariz. 180, 183, ¶ 6 (App. 2019) (review granted Aug. 27, 2019). As the trier of fact, the juvenile court is in the "best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Oscar F. v. Dep't of Child Safety*, 235 Ariz. 266, 269, ¶ 13 (App. 2014). Accordingly, we will not reweigh the evidence on review. *Id.* "Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence." *Santosky v. Kramer*, 455 U.S. 745, 747-48 (1982). "[S]uch a standard adequately conveys to the factfinder the level of subjective certainty about his factual conclusions necessary to satisfy due process." *Id.* at 769. This court will uphold the trial court's findings of fact "if supported by adequate evidence in the record." *Christy C. v. ADES*, 214 Ariz. 445, 452, ¶ 19 (App. 2007) (quoting *State v. Smith*, 123 Ariz. 243, 247 (1979)).

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¶8 To terminate a parent’s parental rights the juvenile court must find at least one statutory ground under A.R.S. § 8-533 by clear and convincing evidence, A.R.S. § 8-533(B), and that termination is in a child’s best interests by a preponderance of the evidence, *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41 (2005).

I. Termination Ground

¶9 On appeal, Father argues that the superior court erred in terminating his parental rights under the abandonment ground because reasonable evidence did not support the court’s determination. Father also asserts that the superior court failed to consider the severe restrictions placed on him by the divorce decree and by Mother, who interfered with his ability to maintain a parent-child relationship with G.R.

¶10 In its ruling, the court considered Father’s arguments but nonetheless found that “Mother . . . did not interfere [or] restrict Father ‘from interacting with their child.’” Instead, the court found that Father did not

‘vigorously’ assert[] his legal rights to see his daughter. Father has not seen [her] since the one visit, with his mom, in 2016. Father has never arranged for any supervised visits with [G.R.] . . . Father has failed to undertake any of the myriad of responsibilities associated with parenting, but has left those obligations to others to fulfill.

Reasonable evidence supports the superior court’s findings.

¶11 The superior court may terminate parental rights when a “parent has abandoned [his] child.” A.R.S. § 8-533(B)(1).

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.

A.R.S. § 8-531(1). Abandonment is determined by a parent’s conduct, not by his subjective intent. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 18 (2000). When traditional means of bonding with his child are

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unavailable, a parent must act persistently to establish or maintain the relationship and must vigorously assert his legal rights “at the first and every opportunity.” *Id.* at ¶ 22 (quoting *Pima Cty. Juv. Severance Action No. S-114487*, 179 Ariz. 86, 97–98 (1994)).

¶12 Here, the court found that Mother established a *prima facie* case of abandonment. Since the parents’ divorce, Father maintained little contact with G.R. and provided her with inconsistent support. Father has only seen G.R. once since February 2015, and he owes more than \$8,400 in child support arrears (having paid approximately \$2,000 in support). Father provided G.R. with no other support, and Mother received no cards, gifts, or letters from him, except for a Christmas gift in December 2018. Focusing on the six months between December 2017 and May 2018 (just before Mother filed the petition to terminate), Father knew the order of protection had expired, but he made no effort to contact G.R. or otherwise pursue his visitation rights. He made only one \$280 child support payment during this time and sent G.R. no cards, gifts, or letters. Even disregarding the year that Father had an active order of protection against him, the evidence supports the court’s finding that he failed to maintain a normal parent-child relationship with G.R. or provide her with reasonable support for at least six months.

¶13 Father argues that he had cause for abandoning G.R. because both Mother and the terms of the divorce decree restricted his ability to contact her or maintain a normal parent-child relationship with her. Although the divorce decree limited custody of G.R. to Mother, Father could visit her if supervised by a court-appointed official. Yet, Father took no actions to assert his parental rights until July 2018. He knew he was divorced by December 2015 but did not seek out a copy of the decree until 2018. He never arranged for a supervised visit with G.R., even after the order of protection expired in August 2017. Father’s inaction supports the court’s finding that he did not vigorously assert his parental rights, and instead allowed his relationship with G.R. to languish.

II. Best Interests

¶14 Father next argues reasonable evidence did not support the superior court’s finding that severance was in G.R.’s best interest.

¶15 Terminating a parent-child relationship is in a child’s best interests if she will benefit from the termination or will be harmed if the relationship continues. *See Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 3–4, ¶ 12 (2016); *Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5 (1990). Relevant

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factors in this determination include whether: (1) the current placement is meeting the child's needs, (2) an adoption plan is in place, and (3) the child is adoptable. *Demetrius L.*, 239 Ariz. at 5, ¶ 16. Courts "must consider the totality of the circumstances existing at the time of the severance determination, including the child's adoptability and the parent's rehabilitation." *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 148, ¶ 1 (2018).

¶16 Moreover, "[i]n a best interests inquiry, . . . we can presume that the interests of the parent and child diverge because the court has already found the existence of one of the statutory grounds for termination by clear and convincing evidence." *Kent K.*, 210 Ariz. at 286, ¶ 35; *see also Maricopa Cty. Juv. Action No. JS-6831*, 155 Ariz. 556, 559 (App. 1988) ("In most cases, the presence of a statutory ground will have a negative effect on the children[.]" which may support a best-interests finding.). Once a juvenile court finds that a parent is unfit, the focus shifts to the child's interests. *Kent K.*, 210 Ariz. at 285, ¶ 31. Thus, in considering best interests, the court must balance the unfit parent's "diluted" interest "against the independent and often adverse interests of the child in a safe and stable home life." *Id.* at 286, ¶ 35. Of foremost concern in that regard is "protect[ing] a child's interest in stability and security." *Id.* at ¶ 34 (citing *Pima Cty. Juv. Severance Action No. S-114487*, 179 Ariz. 86, 101 (1994)).

¶17 Here, citing Father's long and volatile history of substance abuse, the superior court properly found that maintaining Father's parental rights with G.R. would be a detriment to her. The record supports the court's finding that "Father is violent and inappropriate when he is drunk or high on drugs which could cause harm to [G.R.] or be harmful if she is exposed to these behaviors." The court also properly found that severance would benefit G.R. Mother and Stepfather had been providing for her needs for the past three years. G.R. was bonded with Stepfather who acted as her father figure, and he wished to adopt her. Mother testified that adoption by Stepfather would provide G.R. with stability and permanency. Overall, reasonable evidence supports the court's finding that severance was in G.R.'s best interests.

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CONCLUSION

¶18 We affirm the superior court's order terminating Father's parental rights.



AMY M. WOOD • Clerk of the Court
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