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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

KEVIN A., *Appellant*,

v.

KASEY C., T.A., *Appellees*.

No. 1 CA-JV 21-0035
FILED 7-29-2021
AMENDED PER ORDER FILED 7-29-2021

Appeal from the Superior Court in Maricopa County
No. JS19557
The Honorable Lindsay P. Abramson, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Denise L. Carroll Esq., Scottsdale
By Denise Lynn Carroll
Counsel for Appellant

Law Office of Justin Fernstrom, Mesa
By Justin Fernstrom
Counsel for Appellee Kasey C.

MEMORANDUM DECISION

Judge Randall M. Howe delivered the decision of the Court, in which Presiding Judge Jennifer M. Perkins and Judge Maria Elena Cruz joined.

H O W E, Judge:

¶1 Kevin A. (“Father”) appeals the juvenile court’s order terminating his parental rights to T.A. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Father and Kasey C. (“Mother”) are the biological parents of T.A., born June 2011. After Mother and Father, who never married, ended their relationship, Mother moved to Tucson with T.A. In 2012, Father petitioned the family court and was awarded visitation and ordered to pay child support. Thereafter, Father maintained a sporadic relationship with T.A. but never paid child support. Around 2014 or 2015, Mother and T.A. moved back to Phoenix, and in August 2016, Mother started dating Mark A. (“Stepfather”).

¶3 In October 2016, Father stopped having contact with T.A. and sent no letters, cards, or presents. A month later, Mother turned Father in to the police because he had an outstanding felony warrant. Thereafter, Father was in and out of prison for a total of two years for various offenses.

¶4 In April 2018, Mother petitioned to terminate Father’s parental rights based on abandonment. In October 2018, Mother and Stepfather married. In April 2020, Father was released from prison and owed more than \$44,000 in child support. In September 2020, one month before the termination hearing, Father sent T.A. a letter stating, among other things, that he would write to her more often. But Father never wrote any other letters to T.A. and – aside from that single letter – had no contact with T.A. since October 2016.

¶5 A termination hearing was held in October 2020. Mother testified that after October 2016, Father never contacted her to see T.A. and never moved the family court to modify the family court orders. She testified that she had never interfered with Father’s ability to exercise his visitation rights and that she has had the same email – which Father had access to – for years. Mother testified that she did cut off contact with

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Father's family after Father was arrested because T.A.'s paternal grandparents lied to T.A. about where her Father was. She said that T.A.'s paternal grandparents reached out to her for about a month, but she did not respond to them and that the paternal grandparents made no other efforts to contact her after that. Mother also testified that she cut off contact with Father's girlfriend.

¶6 Mother testified that termination of Father's parental rights was in T.A.'s best interests because T.A. does not know Father, since he has not been involved in her life for four years. She testified that Stepfather received a certification for adoption and that Stepfather would adopt T.A., thereby giving T.A. permanency. Stepfather testified that he has cared for T.A., that he sees himself as T.A.'s father, and that T.A. made the decision to call him "dad." He also testified that he is committed to adopting T.A.

¶7 Father testified that he did not pay child support through the court, but instead sent Mother money when she needed it. Father testified that in 2017, he reached out to Mother but "she blocked everybody," "switched her phone numbers," and that he "had no idea where she moved." He testified he could have contacted the family court to get Mother's current contact information. He also testified that he had three or four emails for Mother and that he sent her about 10 emails between 2017 and 2018 but admitted that he did not bring any of those emails to court. Father admitted that he knew how to use the family court system but never petitioned the family court to enforce his visitation rights once he was released from prison. He also admitted that coming back into T.A.'s life would traumatize her.

¶8 The juvenile court terminated Father's parental rights to T.A. based on abandonment. The court found that Father did not provide T.A. reasonable support, that he owed \$44,000 in child support, and that he had sent T.A. only a single letter in September 2020. The court also found that termination of Father's parental rights was in T.A.'s best interests because she had a strong bond with Stepfather, who was willing and able to adopt her. The court also found Father's testimony that Mother prevented him from exercising his parental rights not credible. Father timely appealed.

DISCUSSION

¶9 Father argues that no reasonable evidence supports the juvenile court's termination order. We review a juvenile court's termination order for an abuse of discretion. *E.R. v. Dep't of Child Safety*, 237 Ariz. 56, 58 ¶ 9 (App. 2015). We will affirm an order terminating parental rights so long

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as reasonable evidence supports the order. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93 ¶ 18 (App. 2009). To terminate parental rights, a court must find by clear and convincing evidence that at least one statutory ground in A.R.S. § 8-533 has been proved and must find by a preponderance of the evidence that termination is in the child's best interests. *Jennifer S. v. Dep't of Child Safety*, 240 Ariz. 282, 286 ¶ 15 (App. 2016). "The juvenile court, as the trier of fact in a termination proceeding, is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280 ¶ 4 (App. 2002).

¶10 The juvenile 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). A parent's conduct, not a parent's subjective intent, determines abandonment. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249 ¶ 18 (2000). When traditional means of bonding with a child are 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 251 ¶ 25.

¶11 Reasonable evidence supports the juvenile court's order terminating Father's parental rights. Father admitted that from October 2016 to September 2020 he had no contact with T.A. Father sent a single letter to T.A. in September 2020 and promised to send more letters, but never did. Father never paid child support and owed \$44,000. He also never sent any gifts or cards to T.A. during that time frame.

¶12 Relying on *Calvin B. v. Brittany B.*, 232 Ariz. 292 (App. 2013), Father argues that Mother impeded his ability to have a parent-child relationship with T.A. because Mother turned him into the police, cut off contact with his family, and did not communicate with him. "A parent may

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not restrict the other parent from interacting with their child and then petition to terminate the latter's rights for abandonment." *Id.* at 297 ¶ 21.

¶13 In *Calvin B.*, the mother impeded the father's ability to see his son by reducing the number of visits between them, obtaining an order of protection against the father, and eventually prohibiting the father from seeing son altogether. *Id.* at 294–95 ¶¶ 7–8. The father attempted to exercise his parental rights by contacting the mother's parents, filing various pleadings in the family court, completing a required parenting course, and texting the mother multiple times. *Id.* at 294–95 ¶¶ 3, 5–6, 8. This Court found that the father “actively sought more involvement” with his son than the mother would allow. *Id.* at 297 ¶ 22.

¶14 Unlike the father in *Calvin B.*, however, Father did not vigorously assert his legal rights to maintain a relationship with T.A. Father testified that he had three or four email addresses for Mother and that the family court had ordered that he and Mother communicate by email. While Father stated that he emailed Mother about 10 times between 2016 and 2017, he produced no emails at the hearing. He also testified that he could have obtained Mother's contact information if he had contacted the family court and that he could have petitioned the family court to enforce his visitation rights but did not. Mother testified that she did not interfere with Father's ability to exercise his visitation rights and that Father never contacted her after October 2016. While Father testified that Mother prevented him from having contact with T.A., the juvenile court did not find his testimony credible, and we defer to the juvenile court's credibility finding. *See Matter of Appeal in Pima Cty., Juvenile Action No. S-139*, 27 Ariz. App. 424, 427 (1976). Reasonable evidence supports the juvenile court's finding that Father abandoned T.A.

¶15 Father argues next that termination of his parental rights was not in T.A.'s bests interests because termination would deny T.A. the opportunity to have him in her life and would deprive her of a relationship with his family. Father also argues that T.A. would suffer no detriment to having him in her life. Termination of parental rights is in a child's best interests if the child will benefit from the termination or will be harmed if the relationship continues. *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 150 ¶ 13 (2018). In determining whether the child will benefit from termination, relevant factors are whether the current placement is meeting the child's needs, an adoption plan is in place, and if the child is adoptable. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 3–4 ¶ 12 (2016).

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¶16 Reasonable evidence supports the juvenile court's finding that termination of Father's parental rights was in T.A.'s best interests. Mother testified that T.A. calls Stepfather "daddy," and that Stepfather was certified to adopt T.A. Mother also testified that termination of Father's parental rights would give T.A. permanency. Stepfather testified that he has cared for T.A., that he sees himself as T.A.'s father, and that T.A. made the decision to call him "dad." He also testified that he is committed to adopting T.A. Moreover, Father admitted that reentering T.A.'s life would be traumatic for her. Reasonable evidence supports the juvenile court's order terminating Father's parental rights to T.A.

CONCLUSION

¶17 For the foregoing reasons, we affirm.



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