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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ZACHARY G.,
Appellant,

v.

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

No. 1 CA-JV 21-0323
FILED 5-31-2022

Appeal from the Superior Court in Maricopa County
No. JD38904
The Honorable Michael J. Herrod, Judge

AFFIRMED

COUNSEL

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

Arizona Attorney General's Office, Tucson
By James William Rappaport
Counsel for Appellee

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MEMORANDUM DECISION

Presiding Judge David D. Weinzweig delivered the decision of the Court, in which Judge Brian Y. Furuya and Judge Jennifer M. Perkins joined.

WEINZWEIG, Judge:

¶1 Zachary G. appeals from the juvenile court’s order terminating his parental rights to a child. We affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 This case is about a minor child named Kevin, born in April 2016, who has lived in Arizona since his birth.¹ His biological mother is named Denise (“Mother”). Zachary contends that Kevin is his biological son, but he has not shown paternity. He has lived in Wisconsin since Kevin’s birth. Zachary is now incarcerated in Wisconsin, and has spent nearly 80 percent of Kevin’s life in Wisconsin prisons, serving four different sentences.

¶3 In January 2020, the Department of Child Safety (“DCS”) took Kevin into custody. Mother was unemployed, homeless and unable to meet Kevin’s basic needs. She left Kevin with his maternal grandmother, but provided no authority for grandmother to consent to Kevin’s medical treatment or education. The juvenile court found Kevin dependent as to Mother and Zachary. Zachary did not contest the dependency petition.

¶4 DCS petitioned the juvenile court to terminate Zachary’s parental rights in April 2021, alleging abandonment and length-of-incarceration grounds. *See* A.R.S. § 8-533(B)(1), (4). The court held a contested termination hearing in October 2021, and terminated Zachary’s parental rights on each ground. Zachary timely appealed. We have jurisdiction. *See* A.R.S. §§ 8-235(A), 12-120.21(A)(1), -2101(A)(1).

DISCUSSION

¶5 To terminate parental rights, a court must find clear and convincing evidence of at least one statutory ground set forth in A.R.S. § 8-533(B), and that termination is in a child’s best interests by a preponderance

¹ We use a pseudonym to protect the child’s identity.

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of the evidence. *Jeffrey P. v. Dep't of Child Safety*, 239 Ariz. 212, 213, ¶ 5 (App. 2016). We accept the court's factual findings unless reasonable evidence does not support them, and will affirm the termination order unless it is clearly erroneous. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

¶6 Parental rights may be terminated if parents abandon their children. 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 "normal supervision." A.R.S. § 8-531(1). A parent's "[f]ailure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment." *Id.* Abandonment is measured by a parent's conduct, not the parent's subjective intent. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 18 (2000). The court evaluates "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." *Id.* at 249-50, ¶ 18. Even when circumstances like incarceration 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.

¶7 The juvenile court determined that Zachary abandoned Kevin. It found that Zachary "had some relationship with [Kevin] in the past, but that [Zachary] has only recently started to initiate any contact with the child." The record contains ample evidence to support the court's finding of abandonment. Zachary has been incarcerated in Wisconsin prisons for nearly 80 percent of Kevin's life, including when Kevin was born, when the court terminated his parental rights, and today. He has never requested parenting time or visitation with Kevin, has never provided financial assistance to Kevin and has never sent any cards, letters or gifts to Kevin. Since Kevin was removed in December 2020, Zachary has never called his case manager and never asked about Kevin's welfare.

¶8 Even when released from prison, Zachary has never left Wisconsin to see Kevin in Arizona. And when given the chance in Wisconsin to parent Kevin in 2017, Zachary left after two weeks, forcing maternal grandmother to retrieve the child and return to Arizona.

¶9 Still, Zachary emphasizes his occasional calls to Kevin since April 2021, when DCS petitioned to terminate his parental rights. But that nominal, belated effort is not enough to reestablish a parental relationship.

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See Maricopa Cnty. Juv. Action No. JS-500274, 167 Ariz. 1, 8 (1990) (prima facie case of abandonment not “rebutted merely by post-petition attempts to reestablish a parental relationship”).

¶10 We affirm the juvenile court’s order on abandonment grounds and, therefore, need not address the length-of-incarceration ground. *See Michael J.*, 196 Ariz. at 251, ¶ 27.

CONCLUSION

¶11 Affirmed.



AMY M. WOOD • Clerk of the Court
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