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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

IN RE TERMINATION OF PARENTAL RIGHTS AS TO M.S.

No. 1 CA-JV 23-0087
FILED 9-14-2023

Appeal from the Superior Court in Maricopa County
No. JD40012
The Honorable Michael J. Herrod, Judge

AFFIRMED

COUNSEL

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

Arizona Attorney General's Office, Mesa
By Emily M. Stokes
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which
Presiding Judge Jennifer B. Campbell and Judge Anni Hill Foster joined.

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C A T T A N I, Judge:

¶1 Ronald S. (“Father”) appeals the superior court’s ruling terminating his parental rights as to his son, M.S. (“Child”). For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Father and Dru H. (“Mother”) are the parents of Child, who was born in November 2016.¹

¶3 Father was convicted of multiple burglary, trafficking, theft, and marijuana offenses less than a year after Child’s birth, and he was jailed for several months as a condition of probation. Father was incarcerated for a new trafficking offense in November 2018. Father had no in-person contact with Child from then until after his release in October 2021.

¶4 In October 2020, while Father remained incarcerated, the Department of Child Safety (“DCS”) took Child into care when Mother tested positive for fentanyl upon the birth of another child. Child and his siblings were placed in a kinship placement with the siblings’ grandparents. The superior court later found Child dependent as to Father.

¶5 Because Father was incarcerated, DCS encouraged him to participate in any services available to him in prison. Father did not request calls or in-person visits with Child, and DCS did not otherwise arrange visitation. According to Father, while he was in prison, he sent Child two letters.

¶6 Father was released from prison in October 2021. DCS offered him reunification services including supervised visitation, a parenting skills program, and drug testing. Father never submitted to drug testing, and although he initially engaged in the parenting program, he soon stopped participating. Father visited Child five or six times over the five months after his release, bringing gifts when he was able.

¶7 In March 2022, DCS moved to terminate Father’s parental rights based on abandonment and 15 months’ time in care. Around the same time, Father moved to Virginia without informing DCS, and he did not contact Child (or Child’s placement, or DCS) for at least five more months. After Father contacted DCS in August 2022, DCS referred his case

¹ Mother’s parental rights have also been terminated, but she is not a party to this appeal.

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for supervised virtual visitation and Child's placement facilitated phone call visits, although scheduling the visits proved difficult because Father often failed to respond to calls or texts. Father later confirmed that the placement never prevented contact with Child.

¶8 Father and his DCS case manager testified at the termination adjudication hearing in November 2022. After consideration, the superior court terminated Father's parental rights, finding that both abandonment and 15 months' time in care provided statutory grounds for severance and that severance would be in Child's best interests. *See* A.R.S. § 8-533(B)(1), (8)(c). Father timely appealed, and we have jurisdiction under A.R.S. § 8-235(A).

DISCUSSION

¶9 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 resolution of conflicting facts. *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 151, ¶ 18 (2018); *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).

¶10 Father challenges the existence of statutory grounds for severance; he does not contest the superior court's best-interests finding. Abandonment, one of the statutory grounds at issue here, 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); *see also* A.R.S. § 8-533(B)(1). Abandonment is assessed objectively based on the parent's conduct, not his subjective intent. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249-50, ¶ 18 (2000). A parent thus must "act persistently" to establish or develop the parental relationship despite any obstacles, including by "vigorously" asserting his

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parental rights. *Id.* at 250–51, ¶¶ 22, 25 (citation omitted). A parent’s imprisonment thus neither suffices to establish abandonment nor precludes a finding of abandonment. *Id.* at 250, ¶ 22. As in any case, the key consideration remains whether, under the circumstances presented, 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 249–50, ¶¶ 18, 20; *see also* A.R.S. § 8–531(1).

¶11 Father asserts that DCS “obstructed” and “suppress[ed]” his relationship with Child by failing to schedule in-person or telephonic visitation while he remained in prison. But Father had not had in-person contact with Child for years even before DCS took Child into care. And Father did not ask DCS (or, failing that, the superior court) to facilitate visits while he was incarcerated. *See Shawanee S. v. Ariz. Dep’t of Econ. Sec.*, 234 Ariz. 174, 178–79, ¶ 16 (App. 2014) (noting a parent’s obligation to “voice their concerns about services to the juvenile court in a timely manner”). Despite knowing he could send Child cards or letters, Father sent only two. Even after his release, Father visited Child only five or six times overall, and he dropped out of contact entirely for at least five months when he moved out of state. Although Father occasionally brought Child gifts when financially able, he did not otherwise provide monetary support.

¶12 The record thus supports the superior court’s findings that, despite Father’s desire to have a relationship with Child, he made only minimal objective efforts to build and maintain that relationship. *See Michael J.*, 196 Ariz. at 249–50, ¶ 18. Accordingly, we affirm the court’s severance ruling based on abandonment. And because we affirm the termination on this basis, we need not address Father’s challenge to the alternative statutory ground of 15 months’ time in care. *See Jesus M.*, 203 Ariz. at 280, ¶ 3.

CONCLUSION

¶13 We affirm.



AMY M. WOOD • Clerk of the Court
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