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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



DIVISION ONE
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**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

TRICIA L.,) 1 CA-JV 09-0187
)
Appellant,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Ariz.R.P.Juv.Ct.
ARIZONA DEPARTMENT OF ECONOMIC) 103(G); ARCAP 28)
SECURITY, TRICIA V.,)
Appellees.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD16786

The Honorable Crane McClennen, Judge

AFFIRMED

Jennifer Perkowski
Attorney for Appellant

Mesa

Terry Goddard, Attorney General
By Eric Devany, Assistant Attorney General
Attorneys for Appellees

Mesa

I R V I N E, Judge

¶1 Tricia L. ("Mother") appeals the juvenile court's order terminating her parent-child relationship with T.V. For the following reasons, we affirm.¹

FACTS AND PROCEDURAL HISTORY

¶2 Mother is the biological parent of T.V. (born in 2007). On January 24, 2008, Mother was arrested pursuant to an outstanding warrant.² While in jail, Mother asked her mother (T.V.'s grandmother) to retrieve T.V. from the babysitter's house. T.V.'s grandmother and Viola B. (T.V.'s aunt) picked up T.V. and returned her to Viola B.'s house, where T.V. proceeded to live.

¶3 In May 2008, Viola B. filed a dependency petition alleging that Mother was unable to provide care for T.V. because she was in prison. The juvenile court noted that T.V. was in need of proper and effective parental care and control, and that Mother was not willing to exercise or was not capable of exercising such care and control. The court found T.V. dependent as to Mother and Father and set the case plan for family

¹ The court also severed Father's parent-child relationship with T.V. Father is not a party to this appeal.

² In November 2005, Mother was arrested and charged with possession of heroin with intent to distribute less than one hundred grams while crossing the United States border from Mexico. Mother failed to appear at the initial appearance, causing an arrest warrant to be issued. Mother was later found guilty and sentenced to twenty-seven months' imprisonment.

reunification. Following a subsequent review hearing, the court changed the case plan to severance and adoption.

¶4 On April 10, 2009, the Arizona Department of Economic Security ("ADES") filed a motion to terminate parental rights as to Mother and Father. The motion alleged that Mother and Father abandoned T.V., failed to maintain a normal parental relationship, failed to maintain regular contact with T.V. since the beginning of the dependency proceedings, failed to provide financial support to child or caregiver, and current relationship status with child has continued for a period over six calendar months. At the hearing on the severance motion, Mother, Viola B., and multiple case workers testified. The court found by clear and convincing evidence "that Mother's sentence is of such length that [T.V.] will be deprived of a normal home for a period of years." The court further found by clear and convincing evidence that Mother abandoned T.V. Therefore, the court granted the motion for termination of Mother's parental rights, finding that termination of Mother's parental rights was in T.V.'s best interests.

¶5 Mother filed a timely notice of appeal. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 8-235(A) (2007) and Arizona Rule of Procedure for the Juvenile Court 103(A).

DISCUSSION

¶6 Mother argues that there was insufficient evidence to support the court's finding that she abandoned T.V. under A.R.S. § 8-533(B)(1) (Supp. 2009).³ We disagree.

¶7 We will not disturb a juvenile court's order unless the order is clearly erroneous. See *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002). "To justify termination of the parent-child relationship, the trial court must find, by clear and convincing evidence, at least one of the statutory grounds set out in section 8-533, and also that termination is in the best interest of the child." *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). The juvenile court may terminate parental rights upon finding a parent has abandoned the child. 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 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.

³ ADES maintains that Mother has waived her claim on appeal by failing "to develop any argument regarding abandonment." Finding no waiver on this basis, we address the merits of Mother's appeal.

A.R.S. § 8-531(1) (2007). Because abandonment is not measured by subjective intent but by a parent's conduct, the court must ask "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." *Michael J.*, 196 Ariz. at 249-50, ¶ 18, 995 P.2d at 685-86.

¶8 In its order terminating Mother's parental rights, the juvenile court made the following findings:

Mother has abandoned [T.V.]. From the time that [T.V.] has been in the physical custody of [Viola B.], the Mother has provided no support for [T.V.]. Since January 2008, the Mother has been in custody because of her criminal charges. Although those "circumstances prevented the Mother from exercising traditional methods of bonding with her child," AzDES has proved by clear and convincing evidence that the Mother has not acted persistently to establish the relationship however possible and has not vigorously asserted her legal rights to the extent necessary. *Michael J.* at ¶ 22. [Viola B.] listed her address and telephone number on the private dependency petition that she filed, and she testified that she is still living at that same address and has that same telephone number. The only time the Mother ever spoke to [Viola B.] was when the Mother called her own mother on a cell phone, and the Mother's mother happened to be at [Viola B.'s] house. The Mother never asked how [T.V.] was doing. Further, at the January 21, 2009, Initial Dependency Hearing when this Court made a dependency finding for the Mother, this Court ordered that visitation would be at the discretion of the

AzDES, but the Mother never asked that this court order AzDES to bring [T.V.] to the Federal Prison so that the Mother could visit with [T.V.].

. . . .

Further, it would be in [T.V.'s] best interest to terminate the parent-child [relationship] with both parents because [T.V.] then could be adopted. The child has been living with [Viola B.] for the last 1 ½ years, and has formed a parent-child relationship with [Viola B.]. The testimony presented was that [T.V.] has special needs, and that [Viola B.] was doing a proper job of taking care of [T.V.'s] special needs. This Court therefore finds that it would be in [T.V.'s] best interest to make permanent the relationship that she has with [Viola B.].

¶19 We conclude that the evidence in the record supports the juvenile court's findings. The CPS unit supervisor testified that Mother's location was unknown at the time of the initial dependency hearing. Mother's communication with CPS was limited to three letters, and Mother acknowledged that she never requested visitation with T.V. The supervisor opined that Mother and T.V. had no relationship and that Mother abandoned T.V. due to a lack of contact/communication. Similarly, a human services specialist testified that Viola B. is the only person that T.V. knew as her mother. Viola B. testified that Mother never provided any financial support for T.V. and never sent T.V. any cards or gifts. Therefore, the evidence more than adequately

supported the juvenile court's finding that Mother had abandoned T.V.

¶10 Mother also appears to argue that the juvenile court erred in terminating her parental rights to T.V. pursuant to A.R.S. § 8-533(B)(4). Nevertheless, finding the existence of any one of the enumerated statutory grounds is sufficient to justify termination. *Maricopa County Juv. Action No. JS-6520*, 157 Ariz. 238, 242, 756 P.2d 335, 339 (App. 1988). Because we conclude reasonable evidence supports termination pursuant to A.R.S. § 8-533(B)(1), we need not consider the additional grounds found by the juvenile court.

CONCLUSION

¶11 For the foregoing reasons, we affirm the juvenile court's severance order.

/s/

PATRICK IRVINE, Judge

CONCURRING:

/s/

DIANE M. JOHNSEN, Presiding Judge

/s/

PHILIP HALL, Judge