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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24.



DIVISION ONE
FILED: 07-22-2010
PHILIP G. URRY, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

CHRISTOPER V.,) 1 CA-JV 10-0041
)
Appellant,) DEPARTMENT C
v.)
) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz.R.P. Juv.
SECURITY, and LANDON M.,) Ct.; Rule 28 ARCAP)
)
Appellees.)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD16369

The Honorable Mark H. Brain, Judge Pro Tempore

AFFIRMED

Terry Goddard, Arizona Attorney General Phoenix
By Michael F. Valenzuela, Assistant Attorney General
Attorneys for Appellees

Robert D. Rosanelli Phoenix
Attorney for Appellant

K E S S L E R, Judge

¶1 Christopher V. ("Father") appeals the juvenile court's order terminating his parental relationship with his son, L.M. For the following reasons, we affirm.¹

FACTUAL AND PROCEDURAL HISTORY²

¶2 Father is the biological father of Landon M. ("L.M."), born in November 2005. Prior to L.M.'s birth, Father was arrested and pled guilty to one count of theft, a class 5 felony, and one count of burglary in the second degree, a class 3 felony.³ Father was sentenced to three years of supervised probation.

¶3 Father had no contact with L.M. during the first year of his life. After being approached by L.M.'s biological mother ("Mother") for help, Father's interaction with his son began to steadily increase. His relationship began with weekend visits and culminated in full-time custody in 2007. However, Father testified that due to probation responsibilities, he spent a majority of the work week away from home and was unable to spend any real time with L.M. In July of 2008, a year after obtaining

¹ The mother's parental rights were also terminated, but are not at issue in this appeal.

² On review, we examine the facts in the light most favorable to sustaining the juvenile court's judgment. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 250, ¶ 20, 995 P.2d 682, 686 (2000) (citing *In re Maricopa County Juvenile Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994)).

³ Although only seventeen, Father was sent to superior court as a repeat juvenile offender. Prior to his arrest he had eleven juvenile referrals and four adjudications.

custody, Father was arrested for violating his probation for a third time. On October 1, 2008, Father was sentenced to two terms of imprisonment to be served concurrently for a total of 2.5 years. Father was incarcerated throughout the dependency proceedings. Thus, during L.M.'s first four years of childhood, Father had only limited contact with him for one year.

¶14 Child Protective Services ("CPS") received a report in September 2008 that Mother had left L.M. with a friend for a couple of weeks.⁴ After determining that L.M. did not have an appropriate parent to provide for him, CPS took L.M. into custody on September 30, 2008. L.M. was placed with V., a non-relative with whom he had a relationship prior to the dependency proceedings.

¶15 In October 2008, the Arizona Department of Economic Security ("ADES") filed a dependency petition alleging L.M. to be a dependent child under Arizona Revised Statutes ("A.R.S.") section 8-201(13) (Supp. 2009).⁵ Father denied the allegations, but submitted the dependency issue to the juvenile court. The court found L.M. dependent as to Father.

¶16 The case plan goal was originally family reunification, but with no parent allegedly able to provide L.M.

⁴ Prior to this report, CPS had received other referrals concerning Mother leaving L.M. with inappropriate supervision.

⁵ We cite to the most current version of the statute when it has not been substantively revised since the date of the underlying conduct.

with a stable home life, it was changed to severance and adoption in August 2009.⁶

¶17 In September 2009, ADES filed a motion for termination of the parent-child relationship pursuant to A.R.S. §§ 8-533(B)(1) and (4) (Supp. 2009). A contested severance hearing was subsequently held in January 2010. Father testified to sending only one card to L.M. while he was incarcerated, and claimed he did not send more because he was never provided with a current address for L.M. despite requests. Father also testified to completing a 12-week parenting course while imprisoned, but proof of completion was never submitted to either CPS or Father's attorney.

¶18 The CPS case manager testified that the case plan of severance and adoption was in L.M.'s best interest, his placement was willing to adopt him, and the placement could meet his physical, psychological, emotional, social, and educational needs. However, the case manager also testified that she had concerns about L.M.'s placement as a result of the placement's young age (twenty-years-old) and a recent photo of L.M. holding a gun. The case manager further testified that should the

⁶ Mother had ceased all contact with CPS and stopped participating in any services provided. With Father still incarcerated, L.M. had no other parent to provide appropriate care.

current placement become unavailable, L.M. would be considered an adoptable child.

¶9 The juvenile court found by clear and convincing evidence that: (1) Father had abandoned the child, and (2) Father's sentence was of such a length that the child would be deprived of a normal home for a period of years. The court also found by a preponderance of the evidence that severance was in the best interest of the child, and the child was adoptable. The juvenile court issued its "Findings of Fact, Conclusions of Law, and Order" on February 10, 2010. Father timely appealed on February 22, 2010. We have jurisdiction pursuant to A.R.S. §§ 8-235 (2007), 12-120.21(A)(1) (2003), and 12-2101(A)(B) (2003).

STANDARD OF REVIEW

¶10 As the juvenile court is in the best position to weigh evidence and judge credibility, "we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002).

DISCUSSION

¶11 A parent's right to custody and control of his or her own child is considered to be fundamental, *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248, ¶ 11, 995 P.2d 682, 684 (2000), but

not absolute. *Michael J.*, 196 Ariz. at 248, ¶ 12, 995 P.2d at 684. To justify the severance of a parental relationship, one of the statutory grounds provided in A.R.S. § 8-533(B) must be found by clear and convincing evidence. *Michael J.*, 196 Ariz. at 249, ¶ 12, 995 P.2d at 685. The court must also find by a preponderance of the evidence that severance of the relationship is in the child's best interest. *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005).

¶12 Father argues the evidence does not support the juvenile court's ruling on either of the statutory grounds. He also contends there was insufficient evidence to support the court's finding that severance was in the best interest of the child. Although the juvenile court severed Father's parental rights pursuant to two statutory grounds under A.R.S. § 8-533(B), "[i]f clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds." *Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205.

I. ABANDONMENT

¶13 The parent-child relationship may be terminated when the "parent has abandoned the child," A.R.S. § 8-533(B)(1), with "abandonment" defined as:

[T]he 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) (2007). The court uses an objective standard in examining abandonment, focusing on conduct and not subjective intent. *Michael J.*, 196 Ariz. at 249, ¶ 18, 995 P.2d at 685.

¶14 In an abandonment claim, imprisonment provides neither a per se defense nor justification for termination. *In re Pima County Juvenile Action No. S-624*, 126 Ariz. 488, 490, 616 P.2d 948, 950 (App. 1980). It is "merely one factor to be considered in evaluating the father's ability to perform parental obligations." *Id.* If circumstances are such that conventional methods of bonding are unavailable, a father "must act persistently to establish the relationship however possible and must vigorously assert his legal rights to the extent necessary." *In re Pima County Juvenile Action No. S-114487*, 179 Ariz. 86, 97, 876 P.2d 1121, 1132 (1994); *Michael J.*, 196 Ariz. at 250, ¶ 22, 995 P.2d at 686.

¶15 The juvenile court ruled that Father had abandoned L.M. by failing to maintain regular contact or provide reasonable support:

The father has been incarcerated since July 2008 and has not maintained a normal parent-child relationship with the child since the father's

incarceration. Despite knowledge that the child was placed in CPS care and having been personally served with a notice that included contact information for CPS, the father made no efforts to contact the child or CPS regarding the child, except [sic] for one card sent in October 2009 after the Motion to Terminate was filed by ADES. The father has provided no gifts, cards, letters or support for the child.

¶16 The concepts underlying abandonment and considered in the statute are "somewhat imprecise and elastic." *In the Matter of the Appeal in Maricopa County Juvenile Action No. JS-500274*, 167 Ariz. 1, 4, 804 P.2d 730, 733 (1990)(*Action No. JS-500274*). "Therefore, questions of abandonment and intent are questions of fact for resolution by the trial court." *Id.* On review, we examine the facts in a light most favorable to sustaining the juvenile court's judgment. *Michael J.*, 196 Ariz. at 250, ¶ 20, 995 P.2d at 686 (citing *In re Maricopa County Juvenile Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994)).

¶17 The evidence in the record supports the court's finding that Father abandoned L.M. Following his arrest, the only contact Father had with his son was a Halloween card he sent in October of 2009. This was fifteen months after his incarceration in July of 2008, and one month after the motion for termination was filed in September of 2009. Father argues he requested an address for L.M. on two occasions to "open communications with [his] son, to no avail." However, he also testified that he had been provided with the CPS case manager's

address and phone number, and he could have sent additional letters to CPS through his attorney. Furthermore, there is no evidence that Father ever requested CPS to make arrangements for visitation while in prison.

¶18 Although Father expressed his desire to change his behavior and maintain custody of his son, the court must look to conduct and not subjective intent. *Michael J.*, 196 Ariz. at 249, ¶ 18, 995 P.2d at 685. Using this objective standard, we find there was sufficient evidence to support the juvenile court's conclusion that Father abandoned L.M. during his imprisonment.

¶19 Accordingly, as we find that the court did not err in terminating Father's parental rights under § 8-533(B)(1), we do not address the additional ground for termination under § 8-533(B)(4).

II. BEST INTEREST OF THE CHILD

¶20 Father also contends that the juvenile court erred in finding that severance was in the best interest of the child. "[I]f the constitutional rights at stake are to be adequately protected, a determination of the child's best interest must include a finding as to how the child would benefit from a severance or be harmed by the continuation of the relationship." *Action No. JS-500274*, 167 Ariz. at 5, 804 P.2d at 734. In considering best interests the court may look to a variety of factors, including the child's adoptability or potential

adoptive placement. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 5, 982 P.2d 1290, 1291 (App. 1998). The court may also consider whether the current placement is meeting the child's needs. *Id.*

¶21 At the severance hearing, the case manager testified that L.M. was an adoptable child, an adoptive home had been identified, he had a significant relationship with his current placement, and his placement was meeting his physical, psychological, emotional, social, and educational needs. The case manager also testified that adoption would benefit L.M. by providing him with a safe, stable, and permanent home.

¶22 Father, however, argues that severance is not in the best interest of L.M. as the available adoptive placement is unfit to parent. The case manager expressed concerns regarding the placement's young age (twenty-years-old), and a recent picture depicting L.M. holding a gun.

¶23 In its findings, the court considered all of the above testimony. Although concerned with the picture, the court found that L.M. was adoptable even if the current placement disrupts and L.M. is moved to a new home. Based on the foregoing, we find the evidence is sufficient to support the court's finding that severance is in the best interest of the child by a preponderance of the evidence.

CONCLUSION

¶24 Having found there is sufficient evidence to support the juvenile court's findings, we affirm its order to terminate Father's parental rights to L.M. pursuant to A.R.S. § 8-533(B)(1).

/S/

DONN KESSLER, Judge

CONCURRING:

/S/

DIANE M. JOHNSEN, Presiding Judge

/S/

PATRICIA K. NORRIS, Judge