

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 01/27/2011
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

KRISTE D.,) No. 1 CA-JV 10-0113
)
Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
)
MELANIE D., DAKOTA P.,) (Not for Publication -
) 103(G) Ariz.R.P. Juv. Ct.;
Appellees.) Rule 28 ARCAP
)
)

Appeal from the Superior Court in Navajo County

Cause No. S0900JD20090091

The Honorable Michala M. Ruechel, Judge

AFFIRMED

Kriste D. Show Low
In *Propria Persona* Appellant

Riggs, Ellsworth & Porter, P.L.C. Show Low
By Michael R. Ellsworth
Attorney for Appellees

G E M M I L L, Judge

¶1 Kriste D. appeals from the juvenile court's order,
denying her petition to terminate the parent-child relationship

between Melanie D. and Dakota P. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In January 2006, Melanie gave birth to Dakota. At the time, Melanie was married to John, Dakota's father. In September 2007, Melanie and John were evicted from their house and they sent Dakota to live with Melanie's mother, Kriste, and Kriste's husband, Richard. According to Kriste, Melanie "did not do anything" for Dakota between September 2007 and December 2007.

¶3 In December 2007, Melanie and John moved into Kriste's house. Once Melanie moved into Kriste's house, she had regular contact with Dakota and helped Kriste pay for Dakota's diapers and day care. In March 2008, Kriste told Melanie and John that they could no longer live in her house. According to Kriste, Melanie and John were "fighting in front of [Dakota]," causing her to become upset. After Melanie and John moved, Kriste was granted temporary guardianship of Dakota. Melanie consented to the guardianship because she was in the process of divorcing John and she believed it would help her gain custody of Dakota. Despite no longer living with Dakota, Melanie remained in contact with Dakota on a daily basis and was "very supportive." According to Kriste, Melanie was "doing great" when it came to

helping care for Dakota. Melanie was babysitting Dakota while Kriste was at work and she was buying Dakota diapers and juice.

¶14 In December 2008, Kriste was appointed Dakota's permanent guardian. Melanie also consented to the permanent guardianship, believing again that it would ultimately help her gain custody of Dakota. Melanie's contact with Dakota continued until August 18, 2009, when Melanie moved in with her boyfriend. According to Kriste, Melanie has not had "meaningful" contact with Dakota since then. We note, however, that on September 30, 2009, Melanie attended Dakota's dance class for fifteen minutes.

¶15 On October 21, 2009, Kriste petitioned the juvenile court to sever Melanie's and John's parental rights to Dakota, alleging each had abandoned Dakota. Since then, Melanie has had minimal contact with Dakota, seeing her only a couple of times at Dakota's school. Melanie contested the petition and, on April 9, 2010, the court held a hearing.¹

¶16 During the hearing, Melanie admitted that she had seen Dakota only a few times since August 2009, and that she had not spoken on the phone with Dakota in six months. According to Melanie, she has not been in contact with Dakota because she is not "welcome" in Kriste's house. She also explained that she has not spoken with Dakota on the phone because Kriste changed

¹ The court did not consider Kriste's petition to sever John's parental rights because John was not served with notice of the hearing until April 8, 2010, one day before the hearing.

her home telephone number and does not answer her cell phone. Melanie testified that child support has been taken out of her paychecks since November 2009, and that she gave Dakota Christmas and birthday presents.

¶17 On April 15, 2010, the court denied Kriste's petition to sever Melanie's parental rights. In denying the petition, the court stated its findings on the record. The court's findings included, among other things, that Melanie had seen Dakota approximately three times since July 2009, that Melanie "has not made significant efforts to check on Dakota or to communicate with her since July [2009]," and that Melanie has been "paying child support for the support of Dakota and did send over Christmas and birthday presents."

¶18 The court, however, also found that the petition to sever was filed "a mere" three months after Melanie's contact with Dakota began to diminish. The court stated that Melanie's "contact and support of Dakota has been more than de minimis since July [2009], and, given the strong and consistent relationship before that date, the Court finds that the grandparents have not provided sufficient evidence to justify terminating the mother's parental rights at this time." The court also stated that "given the circumstances and the length of time, there's not a sufficient showing of abandonment and that this is in the best interest of Dakota."

¶9 Kriste filed a timely notice of appeal and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-235(A) (2007) and 12-2101(B) (2003).

ANALYSIS

¶10 Kriste contends that the court erred in denying her petition to terminate Melanie's parental rights because there was sufficient evidence that Melanie had abandoned Dakota. She asserts that she has "made the case for abandonment" because Melanie has had only brief contact with Dakota over the last thirteen months. She also disputes Melanie's claims that she hindered Melanie from contacting Dakota.

¶11 Abandonment is a question of fact to be resolved by the juvenile court. *Pima County Juvenile Severance Action No. S-114487*, 179 Ariz. 86, 96, 876 P.2d 1121, 1131 (1994). Because the juvenile court is "in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings," this court will not disturb the juvenile court's disposition absent an abuse of discretion. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004) (quoting *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987)). In addition, we will not "reweigh the evidence but will look only to determine if there is evidence to sustain

the court's ruling." *Mary Lou C.*, 207 Ariz. at 47, ¶ 8, 83 P.3d at 47 (citation omitted).

¶12 The right to custody of one's children is fundamental. See *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248, ¶¶ 11-12, 995 P.2d 682, 684 (2000). "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." *Id.* at 249, ¶ 12, 995 P.2d at 685 (citing A.R.S. § 8-533(B) (2007)).

¶13 Under § 8-533(B)(1), the juvenile court may terminate parental rights upon finding a parent has abandoned the child.

"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.

A.R.S. § 8-531(1) (2007). Abandonment is measured by a parent's conduct. *Michael J.*, 196 Ariz. at 249, ¶ 18, 995 P.2d at 685.

Thus, the issue is "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, 995 P.2d at 685-86.

¶14 Based upon the record and the court's findings, we conclude that the court acted within its considerable discretion in denying the petition to terminate Melanie's parental rights. The record reveals that from December 2007 to August 2009, Melanie had consistent and regular contact with Dakota and provided her with necessities such as day care, diapers and juice. As a result, the court found that before July 2009, Melanie had a strong and consistent relationship with Dakota. Moreover, from the time the petition was filed in October 2009 to the date of the severance hearing in April 2010, Melanie was paying child support and also gave Dakota Christmas and birthday presents. While Melanie's relationship with Dakota diminished significantly after July 2009, the petition to sever was filed approximately three months later. The juvenile court found that given this short length of time, there was not a sufficient showing of abandonment. The court also found the evidence was not sufficient "at this time" to establish abandonment. The court left open the possibility that it could change its mind in the future if Melanie did not take advantage of her parenting time and opportunities. Based on the evidence in the record, the juvenile court permissibly found that Kriste had not carried her burden of proving abandonment and best interests.

¶15 The juvenile court was in the best position to observe and evaluate the credibility and testimony of the parties, perceive and consider the quality of the relationships, and reach conclusions based on the facts and the applicable statutory language. Based on our review of the record and in consideration of the applicable standard of appellate review, we conclude that the trial court did not abuse its discretion in declining to terminate Melanie's parental rights.

CONCLUSION

¶16 The court's order denying severance is affirmed.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
PATRICIA K. NORRIS, Presiding Judge

_____/s/_____
PATRICIA A. OROZCO, Judge