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

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JOHN C.,	)	1 CA-JV 10-0158
	)	
Appellant,	)	DEPARTMENT A
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
ARIZONA DEPARTMENT OF ECONOMIC SECURITY, NOAH C.,	)	Ariz. R.P. Juv. Ct. 103(G); ARCAP 28)
	)	
Appellees.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. JD18385

The Honorable Aimee L. Anderson, Judge

AFFIRMED

Robert D. Rosanelli — Phoenix
Attorney for Appellant

Thomas C. Horne, Attorney General — Mesa
By Eric Devany, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

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W I N T H R O P, Judge

¶1 John C. ("Appellant") appeals from the juvenile court's order terminating his parent-child relationship with

Noah C. ("the child") pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(1) (Supp. 2010), which permits severance based on abandonment.[1] Appellant argues that the court erred in terminating his parental rights on the abandonment ground, but he does not contest that he has failed to participate in reunification services or that termination of his parental rights was in the child's best interest. *See* A.R.S. § 8-533(B) (requiring the court to "consider the best interests of the child"). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY[2]

¶2 On July 31, 2009, Mother's Department of Developmental Disabilities ("DDD") service provider[3] entered Mother's home, which she shares with Appellant, to clean it and found two bags of marijuana, human feces, urine, and vomit on the floor, and soda and food spilled around the home. Appellant was in a detoxification facility and had been hospitalized that morning

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[1] The court also terminated the parental rights of the child's mother ("Mother"). Mother is not a party to this appeal.

[2] We view the facts in the light most favorable to affirming the juvenile court. *In re Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994). To the extent conflicts exist in the evidence, it was for the juvenile court to resolve them. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 12, 53 P.3d 203, 207 (App. 2002).

[3] Mother has cerebral palsy and is confined to a wheelchair, and her extremities are contracted so that her movement is limited.

for an overdose of methamphetamine. Mother, who was in labor, was taken to the hospital where she gave birth to the child the following day.[4] On September 4, 2009, the child was discharged from the hospital and released into the custody of the Arizona Department of Economic Security ("ADES").

¶3 Both parents have admitted past drug addictions, and Appellant has allegedly continued to use drugs since the time the child was taken into the custody of ADES.[5] Appellant also has a history of mental health issues and has attempted suicide on multiple occasions.[6] Appellant's case aide, Rosalyn Steffen, testified that mood swings and behavior problems were an ongoing problem with Appellant.[7] Additionally, Steffen testified that Appellant made several death threats to the child's care takers

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[4] The child was born prematurely at thirty-three weeks gestation.

[5] Appellant reportedly abused methamphetamines and marijuana in the home and has told Mother he wants to sell drugs from the home.

[6] In the past four years, Appellant has had several emergency psychiatric evaluations. His diagnosis includes bi-polar disorder, intermittent explosive disorder, and schizophrenia. Appellant has testified that he has consciously decided to no longer take medication to help with these disorders.

[7] She also testified that, at visits with the child, Appellant would severely agitate the child.

and ADES staff.[8] Further, Appellant has control issues with Mother and there have been domestic violence reports.[9]

¶4 On October 13, 2009, ADES referred Appellant to TASC[10] for random urinalysis testing. On November 9, 2009, ADES referred Appellant to TERROS Families F.I.R.S.T. ("TERROS"), and Parent Aide services for counseling.

¶5 On February 16, 2010, Appellant's caseworker, Higby, reported ADES had not had contact with Appellant since December 7, 2009, despite leaving phone messages and writing letters to him. On February 23, 2010, she reported that Appellant had not participated in any offered services, and she requested the case plan be changed from reunification to "Severance with Adoption by a Relative."

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[8] Appellant stated that he was going to get a mohawk with "four lightning bolts" representing the people he wanted to kill, including the grandmother and aunt who are caring for the child. Appellant also told Steffen that he wanted to "nine volt" his caseworker, Joelle Higby, and that he would call Steffen's cell phone anonymously and that would mean he was bringing weapons to the office.

[9] Higby reported that when Mother met with the supervisor of the investigative unit, she asked "for some protection to get some help because she was afraid of [Appellant] and what she would do." Higby also testified that several incident reports were received by DDD regarding different levels of violence, including an incident in which Mother called the police because Appellant became violent and threw a phone at Mother, leaving a cut on her finger.

[10] TASC is an acronym for "Treatment Assessment Screening Center, Inc."

¶6 On March 12, 2010, ADES filed a motion to terminate the parent-child relationship, alleging in part that Appellant had not seen the child since October 9, 2009.[11] In that motion, ADES alleged two grounds for termination: First, ADES alleged that the child had been in an out-of-home placement for a cumulative total of six months or longer,[12] and Appellant had substantially neglected or willfully refused to remedy the circumstances that caused the child to be in an out-of-home placement, including but not limited to the refusal to participate in reunification services offered by ADES. Second, ADES alleged that Appellant had abandoned the child, and failed to maintain a normal parental relationship with him without just cause, by failing to provide reasonable support, maintain regular contact, and/or provide normal supervision.

¶7 On March 29, 2010, the court conducted an initial hearing on the motion to terminate. At that hearing, Appellant was advised that he "must participate in reunification services if they are offered to [him]." He was also informed that "[s]ubstantially neglecting or willfully refusing to remedy the

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[11] Following the filing of that motion, Appellant again briefly participated in visitation between March 26 and May 28, 2010.

[12] On June 25, 2010, ADES filed an amended motion alleging that the child had now been in an out-of-home placement for over nine months. *See* A.R.S. § 8-533(B)(8)(a).

circumstances that cause your child to be in an out-of-home placement, including neglecting or refusing to participate in reunification services, will be grounds for the [c]ourt to terminate your parental rights." Appellant signed a notice acknowledging that information. Nonetheless, he continued to refuse to participate in any reunification services.

¶8 On June 29, 2010, the juvenile court held the termination hearing. On July 19, 2010, the court issued its signed order, finding that ADES had proven abandonment by clear and convincing evidence, and that severance of Appellant's parental rights was in the child's best interests.

¶9 Appellant filed a timely notice of appeal. We have appellate jurisdiction pursuant to A.R.S. § 8-235(A) (2007) and Rule 103(A) of the Arizona Rules of Procedure for the Juvenile Court.

ANALYSIS

I. Severance Pursuant to A.R.S. § 8-533(B)(1)

¶10 Appellant argues that the record contains insufficient evidence to support the trial court's finding that he abandoned the child. We disagree.

¶11 The right to custody of one's children is fundamental, but it is not absolute. *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)).

¶12 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," *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987), this court will not reweigh the evidence but will look only to determine if there is evidence to sustain the court's ruling. *Maricopa County Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996). "We will not disturb the juvenile court's disposition absent an abuse of discretion or unless the court's findings of fact were clearly erroneous, i.e., there is no reasonable evidence to support them." *Id*.; *accord Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, 982 P.2d 1290, 1291 (App. 1998). We presume that the juvenile court made every finding necessary to support the judgment, *see Pima County Severance Action No. S-1607 and H-533*, 147 Ariz. 237, 238, 709 P.2d 871, 872 (1985), and defer to the court's resolution of conflicting inferences and claims if supported by reasonable evidence. *See Pima County Adoption of B-6355*, 118 Ariz. 111, 115, 575 P.2d 310, 314

(1978); *O'Hern v. Bowling*, 109 Ariz. 90, 92-93, 505 P.2d 550, 552-53 (1973).

¶13 Generally, before seeking to terminate a parent-child relationship, ADES must make "reasonable" efforts to preserve the family as a necessary constitutional element to overcome the "fundamental liberty interest of the natural parents in the care, custody and management of their child." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 191-92, ¶ 32, 971 P.2d 1046, 1052-53 (App. 1999) (quoting *Santosky v. Kramer*, 455 U.S. 745, 753 (1982)). This means that ADES must make a reasonable effort to rehabilitate the parent by offering parent services designed to improve the parent's ability to care for the child. *Id*. at 192, ¶¶ 33-34, 971 P.2d at 1053. However, ADES is not required to provide every conceivable service, *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994), or to provide futile services, *Pima County Severance Action No. S-2397*, 161 Ariz. 574, 577, 780 P.2d 407, 410 (App. 1989), and a parent's compliance under A.R.S. § 8-533 requires more than sporadic, aborted attempts at remediation. *Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994). Moreover, ADES is not required to force unwanted reunification services on a non-receptive parent before seeking severance of parental rights on the ground

of abandonment. *See Toni W. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 61, 66, ¶ 15, 993 P.2d 462, 467 (App. 1999).

¶14 Under A.R.S. § 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 not measured by subjective intent but by a parent's conduct. *Michael J.*, 196 Ariz. at 249, ¶ 18, 995 P.2d at 685. Thus, 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." *Id*. at 249-50, ¶ 18, 995 P.2d at 685-86. The obligation rests on the unwed father – who has no immediate or obvious legal tie to a child – to act immediately "to establish the legal or emotional bonds linking parent and child." *Pima County Juv. Severance Action No. S-114487*, 179 Ariz. 86, 96, 876 P.2d 1121, 1131 (1994). In that case, our Supreme Court considered the actions or inaction of an unwed father in the context of a petition to sever based upon abandonment. The

father took little or no action to protect his parental rights until the petition to sever was filed. The court held that a father prevented by circumstance from using traditional bonding methods "must act persistently to establish the relationship however possible and must vigorously assert his legal rights to the extent necessary." *Id*. at 97, 876 P.2d at 1132. If informal efforts to establish a relationship fail, "he must rapidly turn to legal recourse so that the child may obtain a final placement as quickly as possible." *Id*. at 98, 876 P.2d at 1133. Thus, the burden is not on ADES to prevent termination of the parental relationship, but on the father to take advantage of the visitation opportunities and services offered, and "assert his legal rights at the first and every opportunity." *Michael J.*, 196 Ariz. at 251, ¶ 25, 995 P.2d at 687.

¶15 In its signed order terminating Appellant's parental rights to the child, the juvenile court made the following findings regarding abandonment:

> Mother and Father have abandoned the child, and failed to maintain a normal parental relationship with the child, without just cause by failing to provide reasonable support, maintaining regular contact with the child, and/or providing normal supervision. A.R.S. § 8-531(1), -533(B)(1). . . . Father ha[s] been offered numerous reunification services by the Department throughout the dependency. The services offered include: parent aide services and visitation. The Father did not participate in any of the services offered by the Department. . . . The child is placed with the maternal grandmother. . . . Both Mother and Father were also offered supervised visitation through

> parent aide services. The parents failed to participate in the parent aide services and therefore did not have contact with the child. The parents were offered the appropriate reunification services, which included visitation and parent aide, and failed to comply with the services, thereby depriving the child of a normal parent child relationship without just cause.

¶16 We conclude that reasonable evidence in the record supports the juvenile court's finding that Appellant abandoned the child. Although Appellant is correct that the child was removed from him before they were afforded an opportunity to have a normal relationship and their relationship was by necessity strained because he was only allowed to have supervised visits for a number of hours each week, Appellant was given numerous opportunities to develop a relationship with the child.

¶17 For example, Appellant was allowed visitation with the child once a week. He, however, failed to take advantage of the majority of those visits. Appellant allegedly did not visit the child between October 9, 2009, and March 12, 2010, when the motion to terminate was filed, and in the nine months between the time the child was taken into foster care and the June 2010 termination hearing, Appellant only visited the child fourteen times. Each visit was two hours long. Thus, Appellant had only twenty-eight hours of time with the child between the child's birth and termination of the parent-child relationship

approximately ten months later. Higby testified that Appellant never requested that he be allowed to make up missed visitations. Further, when she called Appellant on March 18 and asked if he would like to engage in visitation with his son, he informed her that he would not.

¶18 Appellant also failed to provide any financial support or gifts for the child. Although Appellant notes he brought items to the visits, he never actually provided the items to the foster care placement for the child's use.

¶19 Additionally, Appellant refused to participate in reunification services. ADES created an initial case plan for family reunification, offered services, and consistently advised Appellant of these offered services. In furtherance of the plan, Appellant's case aide, Steffen, provided Appellant with both her office and cell phone number. Appellant was offered urinalysis testing twice a month, but he did not inquire about or participate in testing.[13] Appellant was also referred to TERROS on November 9, 2009. He was scheduled for an intake on December 11, 2009, which he did not attend. He canceled the first TERROS appointment because it was "too hot" outside. Appellant declined to reschedule the intake. Appellant was also referred twice by TERROS to a substance abuse assessment but

[13] Higby testified that when she called Appellant to let him know she had referred him to TASC, Appellant responded, "I give up. I quit. Stop calling me."

failed to participate. Ultimately, Appellant refused to participate in any services offered by or through TERROS.

¶20 Appellant was also referred to Parent Aide services on November 9, 2009. An intake was scheduled for December 3, and then rescheduled for December 7, 2009, after Appellant cancelled. Appellant stated he would be at the rescheduled intake; however, he did not attend. He failed to return any subsequent phone calls from Parent Aide. Although Appellant did eventually complete the Parent Aide intake on May 13, 2010, he never met with Parent Aide or completed any services offered by Parent Aide.

¶21 Appellant was made aware that his failure to participate in the offered services could be grounds for terminating his parental rights. Appellant, however, refused to participate in the offered services.[14] Because Appellant never participated in the services offered to him and he never asked for any additional help in participating in the services, he essentially foreclosed any chance at reunification.[15]

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[14] At the June 29, 2010 hearing, Appellant testified, "I'm not guilty of the crime, I'm not going to do the time." Steffen, the case aide, further testified at the hearing, that Appellant informed her that he refused to participate in services because "CPS was considered the Taliban."

[15] Higby testified that, on January 28, 2010, she called regarding services and was told not to call the home anymore.

¶22 Although Appellant also argues that ADES failed to make significant efforts to tailor services to his specific needs, ADES offered and made numerous accommodations for Appellant. For example, ADES provided Appellant with a bus pass and, when Appellant lost the bus pass and wanted services closer to his home, ADES referred him to services closer to his home. Additionally, ADES held the Parent Aide intake at a McDonald's near Appellant's home. ADES also changed Appellant's visitation to the public library, so that he would not have to travel as far to visit the child. Further, ADES provided identification for Appellant when he advised them he did not have a driver's license and thus could not submit to drug testing. Appellant, however, still failed to submit to any drug tests or complete any services. Although Appellant's parental rights were not severed on the basis of drug abuse and mental health issues, these issues clearly contributed to his abandonment of the child, and as noted, Appellant's failure to participate in reunification services effectively precluded any chance of reunification.

¶23 Based on the aforementioned evidence, we conclude that reasonable evidence supports the juvenile court's finding that Appellant failed to establish and maintain a normal parental relationship with the child, without just cause, by failing to provide reasonable support, maintaining regular contact, or

providing normal supervision, and therefore he abandoned the child. *See* A.R.S. § 8-531(1). Accordingly, the court did not err in terminating Appellant's parental rights pursuant to A.R.S. § 8-533(B)(1).

CONCLUSION

¶24 The juvenile court's severance order is affirmed.

_____/S/_____
LAWRENCE F. WINTHROP, Judge

CONCURRING:

_____/S/_____
PHILIP HALL, Presiding Judge

_____/S/_____
JON W. THOMPSON, Judge