DIVISION ONE
FILED: 01/25/2011
RUTH WILLINGHAM, ACTING CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

AARON G.,	)	No. 1 CA-JV 10-0165
	)	
Appellant,	)	DEPARTMENT C
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC SECURITY, E.B.,	)	Rule 103(G) Ariz. R.P. Juv. Ct.; Rule 28 ARCAP)
	)	
Appellees.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. JD 16539

The Honorable Shellie Smith, Judge *Pro Tempore*
The Honorable Bethany G. Hicks, Judge

AFFIRMED

Robert D. Rosanelli, Attorney at Law — Phoenix
By Robert D. Rosanelli
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General — Phoenix
By Michael F. Valenzuela, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

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B R O W N, Judge

¶1 Aaron G. ("Father") appeals from the juvenile court's order terminating his parental rights to his daughter ("the child").[1] For the following reasons, we affirm.

BACKGROUND

¶2 The child was born in California in November 2002. Father and the child's mother ("Mother") were not married and he was unaware that the child was his daughter.[2] The child lived with Mother in California until they moved to Arizona in 2005.

¶3 Child Protective Services ("CPS") removed the child from Mother's care in March of 2008. The Arizona Department of Economic Security ("ADES") filed a dependency petition, which alleged a different father for the child. The juvenile court found the child dependent and dependency proceedings continued for more than a year. Mother did not inform the assigned case manager of Father's existence or his possible paternal relationship with the child until the State moved to change the case plan to severance and adoption during a permanency planning hearing. Mother then informed the court that she knew that the listed father was not related to the child from prior genetic

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[1] On the court's own motion, it is hereby ordered amending the caption for this appeal as reflected in this decision. The above referenced caption shall be used on all documents filed in this appeal.

[2] Mother has appealed separately from the termination of her parental rights, *Kellie B. v. Ariz. Dep't Econ. Sec.*, 1 CA-JV 10-0151.

testing in 2005, and provided Father's name and contact information, including his cell phone number.

¶4 Soon thereafter, the case manager left a message for Father. Father returned her call and they discussed paternity testing to ascertain whether or not he was the child's father. Father was tested in September 2009, and on December 7, the case manager sent him a letter confirming that he was the father. The letter did not offer reunification services, but instructed Father to contact the juvenile court hearing officer if he wished to participate in a hearing scheduled for December 15, 2009. The letter did not offer any contact information for the child, nor did Father request any.

¶5 But Father was informed of the termination proceedings. On September 14, 2009, ADES filed a motion to terminate the parent-child relationship. ADES moved to amend the dependency petition to add Father as the alleged father of the child on September 24, 2009. Copies of the amended dependency petition and the motion to terminate were sent by ADES and received by Father, as evidenced by a signed receipt returned to ADES on October 14, 2009.

¶6 Father participated in the December hearing telephonically. At that time, the court appointed counsel and scheduled another hearing pursuant to Arizona Revised Statutes ("A.R.S.") section 8-535(E) (2007) (outlining the court's

responsibilities during an "initial hearing"). After learning that he was the child's father, Father discussed the case with the case worker, asking for the child to be placed with him in California. The case worker requested relevant information to begin an Interstate Compact on the Placement of Children,[3] but did not submit it because she received information about a history of CPS intervention with Father from California. A contested severance hearing for Father and Mother was held on February 26, April 7, and April 9, 2010. A few days prior to the second hearing was the first time Father visited the case manager and requested visitation with the child.

¶7 Father testified at the severance hearing that he did not remember having intercourse with Mother or know that he was the father, but he did know that mother had the child. He explained that he was familiar with and had spent some time with Mother and her children through his roommate, Mother's older brother, but that he had not known that the child was his.

¶8 The court stated its ruling on the record as follows:

> The Court finds by clear and convincing evidence that the child, who was born on November 3rd, 2003, resides in Maricopa County and that her father, Aaron [G.], has failed to maintain a normal parental relationship with the child without just cause. The testimony included the fact that the father has made less than minimal efforts to establish or maintain a normal

[3] *See* A.R.S. § 8-548 (2007).

> parental relationship with the child. He has not had contact with the child . . . for an extended period of time, longer than six months. He has not attempted to support the child . . . or correspond through any cards, gifts, or letters in a significant fashion. The . . . father lives out of state. And the State has proven by clear and convincing evidence the grounds of abandonment.

The court also determined that termination was in the child's best interest because the child was in a potential adoptive placement that was meeting her needs and could offer her stability and safety. The court subsequently entered a formal ruling and Father timely appealed.

DISCUSSION

¶9 To justify termination of a parent-child relationship, the juvenile court must find by clear and convincing evidence at least one of the statutory grounds and also determine by a preponderance of the evidence that termination is in the best interest of the child.[4] *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). On review, we will accept the juvenile court's findings of fact concerning abandonment unless no reasonable evidence supports that finding, 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).

[4] On appeal, Father does not challenge the juvenile court's decision that severance was in the child's best interest.

¶10 Father argues that the record lacks sufficient evidence to support the juvenile court's finding that he abandoned his child. We disagree.

¶11 To determine whether sufficient evidence exists in the record to support a finding of abandonment, we look to "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. Abandonment is not measured by a parent's subjective intent but rather by the parent's conduct. *Id.*

> "Abandonment" means 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).

¶12 Here, the child was six years old at the time of the severance hearings. Father testified that he had never sent the child any gifts, cards, or money, and that the child would not know him if she saw him. When asked if they had a parent-child bond of any kind, he claimed a bond "in a genetic sense," and "[a]n emotional bond now, but I don't have it with her; I just

have it with, you know, trying to take care of my child and my obligations." When asked, "Is your concern more that she know you as opposed to necessarily coming to live with you?" he responded, "Well, of course, yeah . . . I mean, wouldn't that be the foremost concern in someone's mind?" Father's testimony confirms that he failed to establish or even seek a normal parent-child relationship and therefore we conclude that substantial evidence exists to support the juvenile court's decision that Father abandoned the child.

¶13 Father also asserts that he has been denied his "constitutionally protected right[]" to a relationship with his daughter. Parents do have a long-recognized fundamental right to the care, custody, and control of their children. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). However, "the mere existence of a biological link does not merit equivalent constitutional protection." *Lehr v. Robertson*, 463 U.S. 248, 261 (1983) (finding no due process violation when unwed father without any significant parental relationship to child did not receive notice of adoption); *see also Caban v. Mohammed*, 441 U.S. 380, 397 (1979) ("Parental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring."). Therefore, only "[w]hen an unwed father demonstrates a full commitment to the responsibilities of parenthood by 'com[ing] forward to

participate in the rearing of his child,' [does] his interest in personal contact with his child acquire[] substantial protection under the Due Process Clause." *Lehr*, 463 U.S. at 261 (quoting *Caban*, 441 U.S. at 392).

¶14 To the extent that Father suggests he did not know he was the child's father or that his actions would have been different had he known, his claim is not well-grounded. As recognized by our supreme court:

> [I]f a man has reasonable grounds to know that he might have fathered a child, he must protect his parental rights by investigating the possibility and acting appropriately on the information he uncovers. No other rule will satisfy the need for prompt and final resolution of the child's status.

In re Maricopa Cnty. Juv. Action No. JS-8490, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994). A putative father cannot simply wait and see, but must "do something, because conduct speaks louder than words or subjective intent." *In re Pima Cnty. Juv. Severance Action No. S-114487 v. Adam*, 179 Ariz. 86, 97, 876 P.2d 1121, 1132 (1994). Lack of knowledge does not excuse the failure to timely assert parental rights. A.R.S. § 8-106.01(F) (2007) ("Lack of knowledge of the pregnancy is not an acceptable reason for failure to file [for putative father status]. The fact that the putative father had sexual intercourse with the mother is deemed to be notice to the putative father of the pregnancy."); *Juv. Action No. JS-8490*,

179 Ariz. at 106 n.6, 876 P.2d at 1141 n.6. In this case, Father failed to take appropriate steps to timely establish whether he had fathered the child.

¶15 Finally, we reject Father's attempt to justify his lack of a parental relationship on "mother's deception." Father suggests that ADES would have provided reunification services and treated him differently had Mother informed ADES earlier that he was the Father. Even so, ADES was not obligated to provide services under these circumstances, in light of Father's failure to make any efforts to establish a relationship with his child. *See Toni W. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 61, 66, ¶ 15, 993 P.2d 462, 467 (App. 1999) (holding that there is a lesser constitutional standard in the absence of a parent-child relationship, therefore not requiring reunification services before severing on abandonment ground). Additionally, even if Mother had identified Father at the outset, the child was four years old at the commencement of the proceedings. Therefore, ample evidence of Father's abandonment would still exist. *In re Maricopa Cnty. Juv. Action No. JS-4130*, 132 Ariz. 486, 489, 647 P.2d 184, 187 (App. 1982) ("A presumption that the parent intended to abandon arises under this statute if the child was left without any provision for support and the parent did not communicate with the child for a period of six months.").

CONCLUSION

¶16 For the foregoing reasons, we affirm the juvenile court's order terminating Father's parental rights to the child.

/s/

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MICHAEL J. BROWN, Judge

CONCURRING:

/s/

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DANIEL A. BARKER, Presiding Judge

/s/

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MARGARET H. DOWNIE, Judge