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

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 06/21/2011
RUTH A. WILLINGHAM,
CLERK
BY: GH

JOSEPH R.,) 1 CA-JV 11-0004
)
Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 103(G) Ariz.R.P.
Lynn H., ANTHONY R.,) Juv. Ct.; Rule 28
) ARCAP)
Appellees.)
)
_____)

Appeal from the Superior Court in Yavapai County

Cause No. P1300SV201000004

The Honorable Robert M. Brutinel, Judge

AFFIRMED

Law Office of Timothy V. Nelson
By Timothy V. Nelson
Attorneys for Appellant Joseph R.

Chandler

Law Office of Patricia O'Connor
By Patricia A. O'Connor
Attorneys for Appellee Lynn H.

Chino Valley

O R O Z C O, Judge

¶1 Joseph R. (Father) appeals the juvenile court's
termination of his parental rights to Anthony R. (Child) based on

abandonment and disputes the court's finding that termination is in Child's best interests.

FACTS AND PROCEDURAL HISTORY

¶2 Child was born in October 1999 to Father and Maggie R. (Mother). Mother reported that Father had "been unemployed for sometime" and while serving in the military, Father sustained an injury, which caused him to start taking pain medications. In December 2009, Father and Mother had a disagreement which became physical. After this argument, Mother and Child left the family's home in Pennsylvania and drove to Arizona to stay with her mother (Grandmother).

¶3 In January 2010, Mother sent Father an email stating that she wanted Grandmother to adopt Child. Father indicated that he did not agree with Grandmother adopting Child. Father was permitted telephone access to Child until March 2010 at which time Grandmother changed her telephone number because of threatening messages left on her answering machine by Father. Father wrote "about five letters" to Child and sent a birthday card, but not until after severance proceedings were initiated.

¶4 In April 2010, Grandmother filed this action. Grandmother alleged that Father neglected and willfully abused Child and was unable to care for Child because of his dependence on prescription medication. At the time of trial, Father had not sent any support for Child. During Father's court ordered social

history interview he stated that he was currently unemployed, but received \$100 per month from the Army Reserves.

¶15 The court held an initial severance hearing in August 2010 and Father appeared telephonically. At this hearing the court told Father he must appear at the trial and advised him that his failure to appear at trial could result in the termination of his parental rights.

¶16 The court sent the parties to mediation in September 2010. During mediation, Father agreed to have contact with Child as recommended by the therapist. Only one telephone call occurred after the mediation, and based on the therapist's recommendation there were no other telephone calls between Father and Child. The court set trial for November 2010. Father did not appear personally or telephonically at the trial and the court decided to go forward with the trial.

¶17 At trial, Grandmother indicated that she had filed a motion to amend the original petition to terminate to include the ground of abandonment. The court granted the motion. Grandmother and Mother testified at trial and the court admitted exhibits which included a home study, a letter from Father, and Mother's consent for Grandmother to adopt Child.

¶18 The court found that Father had abandoned Child and that severance was in Child's best interest. The court ordered the termination of the parental relationship between Father and

Mother with Child and placed Child in the legal custody of Grandmother pending a petition for adoption.¹

¶9 Father timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes (A.R.S.) section 12-120.21.A.1 (2003).

DISCUSSION

¶10 Father argues on appeal that the court erred in terminating Father's parental rights to Child based on abandonment and in finding that termination of Father's parental rights was in the best interest of Child. In a termination proceeding, we accept the juvenile court's ruling unless the findings are clearly erroneous. *Maricopa Cnty. Juv. Action No. JS-4374*, 137 Ariz. 19, 21, 667 P.2d 1345, 1347 (App. 1983). We will uphold these findings on appeal unless they are not supported by the evidence. *Maricopa Cnty. Juv. Action No. A-25525*, 136 Ariz. 528, 533, 667 P.2d 228, 233 (App. 1983). In granting a termination order, the order must be supported by clear and convincing evidence that establishes at least one of the statutory grounds in A.R.S. § 8-533 (Supp. 2010). *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). The court must also find by a preponderance of the evidence that termination is in the best of the child. *Kent*

¹ Mother has not appealed the termination of her parental rights.

K. v. Bobby M., 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005).

Abandonment

¶11 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). “[A]bandonment is measured not by a parent's subjective intent, but by the parent's conduct: the statute asks 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. In this case, Father appeared telephonically for the initial severance hearing and submitted to the jurisdiction of the court. When Father failed to appear for trial, after being warning and acknowledgment of the warning, the court properly struck Father's denial, pursuant to Arizona Rule of Procedure for the Juvenile Court 66.D.2.

¶12 In addition, the evidence presented before the court indicated that Father: had not sent any support for Child, had

anger issues, and "never had a normal parent relationship" with Child. At trial there was also evidence that Father had sent "about five" letters to Child after the severance proceedings were initiated. Father also failed to seek advice on how to obtain visitation with his son and his "attitude and concern about [Child] appear[ed] lax at best." We find the court did not err in finding that Father abandoned Child.

Best Interests of Child

¶13 When a court terminates one's parental rights, the court must find by a preponderance of the evidence that termination is in the child's best interest. See A.R.S. § 8-533.B; *Kent K.*, 210 Ariz. at 284, ¶ 22, 110 P.3d at 1018. "[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." *Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). For example, evidence that there is an adoptive plan in place is sufficient to support a finding that the child would benefit from severance in the case of abandonment, such that severance would be in the child's best interest. *Id.* at 6, 804 P.2d at 735; see also *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, 356, ¶ 18, 972 P.2d 684, 689 (App. 1998).

¶14 At trial, the family court heard evidence that Child had lived with Grandmother since December 2009, and that she was

able to meet Child's social, academic, emotional and financial needs. Grandmother testified that she planned to adopt Child. The court also heard evidence that Grandmother had placed Child in counseling to assist in his development. Thus, we find the court did not err in finding that termination of Father's parental rights was in the best interest of Child.

CONCLUSION

¶15 For the above mentioned reasons, we affirm the court's termination of the parent child relationship between Father and Child.

/S/

PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

DONN KESSLER, Judge

/S/

MICHAEL J. BROWN, Judge