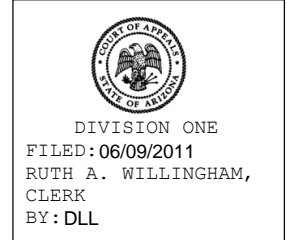


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DAVID C.,) 1 CA-JV 11-0022
)
Appellant,) DEPARTMENT B
)
)
v.) **MEMORANDUM DECISION**
)
)
CHARRID S., VALYN C., AND)
CARLILE C.,) (Not for Publication -
) Ariz. R.P. Juv. Ct. 103(G);
APPELLEES.) ARCAP 28)
)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JS11609

The Honorable Christopher A. Coury, Judge

AFFIRMED

Robert D. Rosanelli, Esq. Phoenix
Attorney for Appellant

Vierling Law Offices Phoenix
by Thomas Vierling
Attorneys for Appellee

B A R K E R, Judge

¶1 Appellant David C. ("Father") appeals the juvenile court's order terminating his parental rights to his two

children, C.S. and V.S. ("the Children"). Finding no error, we affirm.

Facts and Procedural History¹

¶2 Father is the biological father of V.S. and C.S., born May 2005 and August 2007, respectively. Charrid S. ("Mother") is the Children's biological mother. In April 2009, against Father's wishes, Mother moved with the Children to Arizona while Father remained in Kansas. In October 2009, Mother filed a petition for dissolution of her marriage to Father. That action terminated with a consent decree ("Consent Decree") in which Father consented to "waiving his parental and access rights" to the Children and Mother consented to waiving "her rights to any future child support from Father." In conjunction with the dissolution of marriage, Father executed a document entitled "Consent of Natural Father to Termination of Parental Rights" ("Consent to Termination") in which Father again agreed to waive his parental rights to the Children.

¶3 A year later, in September 2010, Mother filed a motion to terminate Father's parental rights to the Children on grounds of abandonment. In November 2010, following an initial severance hearing, the juvenile court ruled that because Father

¹ We view the facts in the light most favorable to upholding the juvenile court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2, 181 P.3d 1126, 1128 (App. 2008).

had waived his parental rights in the Consent Decree and the Consent to Termination, Father had also waived his right to contest the issue of abandonment in the upcoming termination hearing. The court limited Father to presenting evidence on the single issue of the Children's best interest.

¶4 At the termination hearing in January 2011, Mother's testimony established that since Mother and the Children had moved to Arizona twenty-one months earlier, Father had not financially supported the Children and was sporadic in his contact with them. Mother also testified that the Children had been adversely emotionally impacted by Father's broken promises to visit and that the older of the two Children had become increasingly unwilling to talk to Father on the phone.

¶5 In a subsequent minute entry, the court ruled that Father had abandoned the Children pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(1). The court also ruled that termination of Father's parental rights was in the best interest of the Children. Father timely appealed, and we have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution and A.R.S. § 8-235(A) (2007).

Discussion

¶6 Father argues that the court erred in finding that he had abandoned the Children pursuant to A.R.S. § 8-533(B)(1) and that terminating his parental rights would be in the Children's

best interest. On appeal, we do not reweigh the evidence; instead, we examine the record merely to determine whether reasonable evidence supports the grounds for termination. *Jesus M. v. Ariz. Dep't. of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002) ("The juvenile court, as the trier of fact in a termination proceeding, is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings."); *Audra T. v. Ariz. Dep't. of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998) ("We will not disturb the juvenile court's order severing parental rights unless its factual findings are clearly erroneous, that is, unless there is no reasonable evidence to support them.").

1. Abandonment

¶7 To terminate parental rights, the juvenile court must find by clear and convincing evidence the existence of at least one statutory ground for termination as provided in A.R.S. § 8-533(B). *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). Under A.R.S. § 8-533(B)(1), "evidence sufficient to justify the termination of the parent-child relationship" exists when "the 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 [and 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).

¶18 For abandonment to exist, there must be clear and convincing evidence of "intentional conduct on the part of a parent which evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child." *In re Appeal in Pima Cnty. Severance Action No. 1607*, 147 Ariz. 237, 238, 709 P.2d 871, 872 (1985) (quoting *Anonymous v. Anonymous*, 25 Ariz. App. 10, 12, 540 P.2d 741, 743 (1975)). Additionally, "abandonment 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. Here, as we describe below, sufficient evidence of abandonment exists to support the juvenile court's ruling.

¶19 Father consented to waiving his parental rights in two signed documents. The Consent to Termination, dated April 2010, stated, "I David [C.] . . . do hereby relinquish and give up all

my rights to the care, custody, control and visitation of the minor children. . . . I understand that, upon entry of the final order of termination, the relationship of the parent and children and all the legal rights, shall no longer exist between the minor children and me." The Consent Decree, dated May 2010, stated, "Mother is hereby granted sole custody of the parties [sic] minor children" and "Father has agreed to waive his parental and access rights to the minor children."

¶10 Father contends that he signed the Consent Decree and the Consent to Termination under duress and undue influence. This claim, however, is undermined by the language of the documents themselves. The Consent to Termination stated, "This consent is signed by me freely and voluntarily, without any fraud, duress, coercion or undue influence." The Consent Decree stated, "The parties, through their signatures below, believe that no duress or coercion is involved in their approval of the terms herein." Additionally, despite Father's claim of duress, Father made no attempt to challenge the documents in the legal proceeding in which they were executed, despite the court's suggestion that he could do so. Father claimed he had not challenged the documents because he could not afford an attorney. However, it appears that Father was willing and able to represent himself in other legal matters throughout the termination and dissolution proceedings. We see no reason why

he could not have done so in challenging these documents as well.

¶11 In addition to the pertinent documents, Father's conduct confirmed his intent to abandon his parental rights and responsibilities. Mother testified that Father was not involved in day-to-day parenting of the Children after the Children and Mother moved to Arizona a year and a half prior to the hearing. Upon their divorce, Father told Mother that he would not be able to even visit the Children in Arizona. Father's most recent visit prior to the hearing had occurred seven months earlier and had lasted only three hours. During that visit, Mother agreed to Father's request to return to her home on the following day to extend his visit, but Father never returned. On two previous trips to Arizona, Mother had to purchase the plane ticket for Father because he said he could not afford to purchase the ticket himself. In one instance, Father told Mother that he would not come to visit unless Mother signed a certain \$10,000 deed on which Mother's signature was necessary.

¶12 Father's letters to the Children stopped about the same time the visits stopped. Regarding Father's history of phone calls to the Children, Mother testified, "When there's no case - court cases and no problems, it's infrequent, erratic, sometimes not for a month, we won't hear from him." Father testified that he called the children "several times a week"

though he would "rarely get through." The juvenile court was certainly free to accept Mother's version of the facts on this point rather than Father's.

¶13 Consistent with the Consent to Termination, which released Father from his financial obligations to the Children, Father did not provide any financial support to the Children after they moved to Arizona. At one point, Father had asked Mother rhetorically, "Why am I going to pay for my girls when I'm not going to be able to visit or see them?" See *In re Maricopa Cnty. Juv. Action No. JS-3594*, 133 Ariz. 582, 586, 653 P.2d 39, 43 (App. 1982) (holding that failure to pay child support along with failing to communicate is "sufficient to uphold a conclusion that the child has been abandoned"). The statutory definition of abandonment is a conjunctive test: "[T]he failure of a parent to provide reasonable support *and* to maintain regular contact with the child." A.R.S. § 8-531(1) (emphasis added). Father's complete failure to provide any financial assistance certainly supports the juvenile court's decision.

¶14 Accordingly, on this record, sufficient evidence supports the juvenile court's finding that Father abandoned the Children.

2. Best Interests

¶15 In addition to the statutory grounds necessary for termination, the juvenile court must also find by a preponderance of the evidence that termination is in the best interests of the children. *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005); *Michael J.*, 196 Ariz. at 249, ¶ 12, 995 P.2d at 685. To prove that termination is in a child's best interests, the juvenile court must find that the child "would benefit from a severance or be harmed by the continuation of the relationship." *Lawrence R. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 585, 587, ¶¶ 7, 8, 177 P.3d 327, 329 (App. 2008) (quoting *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19, 83 P.3d 43, 50 (App. 2004)).

¶16 As to the facts relevant to this issue, Father conceded that termination would be in the Children's best interests when he signed the Consent to Termination, which stated, "I believe that the termination of my parental rights is in the best interest of the minor children." Furthermore, Mother testified that it affected the Children emotionally when Father would call only sporadically and that it was confusing for them when he broke his promises to visit. Within the seven months preceding the hearing, Father broke several promises to visit the Children, which caused them to be hurt and disappointed. The older of the two Children began refusing to

talk to Father on the phone more and more frequently. Mother also testified that Father never had a bonded relationship with the Children and "never took an active part in raising them." Accordingly, Mother testified that in the event of her death, it was imperative that the Children stay with her family who lived locally, and not return to Father's custody. Finally, Mother testified that an ongoing relationship would harm the Children because, in her words, "there needs to be consistency that I'm not sure that he is able to give them, and up to this point has not provided."

¶17 There was also evidence that Father was using the Children as financial pawns. Mother testified as follows:

But there have been several occasions when he first has planned to come and see the girls and said, forget it, I'm not coming now unless you sign the - for \$10,000 for the house. I'm not coming to see the girls unless you do such and such. So it's just a game. It's been a game.

The juvenile court found that "[t]he children would benefit from being free from [Father's] destabilizing influence."

¶18 Finally, by permitting the Children's rights to be terminated as to Father, they would benefit by being adopted by one who would fulfill that important role in the future. See *Audra T.*, 194 Ariz. at 377, ¶ 5, 982 P.2d at 1291 (stating that a factor to consider in the best interest test is whether a

child is adoptable). The termination order provides that opportunity.

¶19 On this record, sufficient facts support the juvenile court's finding that termination was in the best interests of the Children and thus the court did not err.

Conclusion

¶20 Finding sufficient evidence to support the termination of Father's parental rights, we affirm.

/s/

DANIEL A. BARKER, Judge

CONCURRING:

/s/

PETER B. SWANN, Presiding Judge

/s/

PATRICIA K. NORRIS, Judge