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APR 22 2013
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

AUSTIN S.,	)	2 CA-JV 2012-0126
	)	DEPARTMENT A
Appellant,	)	
	)	MEMORANDUM DECISION
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
ANDREAS L. and JACOB S.,	)	Appellate Procedure
	)	
Appellees.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. S195449

Honorable Geoffrey Ferlan, Judge Pro Tempore

AFFIRMED

Nuccio & Shirly, P.C.
By Salvatore Nuccio
Tucson
Attorneys for Appellant

Sanders & Sanders, P.C.
By Ken Sanders
Tucson
Attorneys for Appellee Jacob S.

M I L L E R, Judge.

¶1 Appellant Austin S. challenges the juvenile court's order of November 2012 terminating his parental rights to his son, Jacob S., on the ground of abandonment. *See* A.R.S. § 8-533(B)(1). On appeal, Austin argues the court abused its discretion because he "is current on his child support and has been so since 2009."

¶2 Austin and Claudia, Jacob's mother, were divorced approximately a year and a half after Jacob's birth in January 2003. Austin was granted supervised visitation with Jacob and was ordered to pay child support. Claudia married Andreas L. in 2005, and, after April 2005, Austin's contact with Jacob was limited to sending him a Christmas gift in 2005 and a postcard in the summer of 2010.[1] He made very few child support payments until 2009, when Claudia and Andreas contacted Austin's commanding officer in the United States Army, after which child support payments were garnished from Austin's pay. At that time, Austin offered to relinquish his parental rights if he could "be relieved of child support obligations."

¶3 In August 2010, Andreas petitioned for termination of Austin's parental rights. After a contested severance hearing, the juvenile court determined Austin had abandoned Jacob and severance was in Jacob's best interests, and it ordered Austin's parental rights terminated.

¶4 On appeal, Austin argues "[t]he definition of abandonment includes two components. First, that the parent has not supported the child and second, that they have not maintained regular contact with the child." He contends the juvenile court therefore could not have found he had abandoned Jacob because there was evidence that he had provided financial support for the child.

[1]Austin testified he also attempted to send Jacob a gift in 2007, but it was returned to him.

¶5 To terminate Austin's parental rights, the court was required to find Andreas had proven abandonment by clear and convincing evidence and established by a preponderance of the evidence that termination was in Jacob's best interests.[2] *See Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 1, 41, 110 P.3d 1013, 1014, 1022 (2005). We view the facts in the light most favorable to sustaining the court's ruling, and we will not disturb that ruling unless the court has abused its discretion. *Kenneth B. v. Tina B.*, 226 Ariz. 33, ¶ 12, 243 P.3d 636, 639 (App. 2010). "[W]e review de novo any issues of law, including the interpretation of a statute." *Id.*

¶6 Termination of parental rights may be warranted by a finding "[t]hat the parent has abandoned the child." § 8–533(B)(1). Section 8-531(1), A.R.S., provides:

> "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.

¶7 In determining whether this standard has been met, "a court should consider each of the stated factors—whether a parent has provided 'reasonable support,' 'maintain[ed] regular contact with the child' and provided 'normal supervision.'" *Kenneth B.*, 226 Ariz. 33, ¶ 18, 243 P.3d at 640 (alteration in *Kenneth B.*). In reaching this conclusion, the *Kenneth B.* court rejected an argument similar to the one made here—that a court may only terminate a parent's rights if it finds the parent failed in relation to

[2]Austin does not argue the juvenile court abused its discretion in determining that severance of his parental rights was in Jacob's best interests. *See* Ariz. R. P. Juv. Ct. 106(A); Ariz. R. Civ. App. P. 13(a)(6). We therefore address only the court's abandonment finding.

each of the statutory factors. Instead, the court concluded, a juvenile court should consider each of the factors and such consideration "will depend on the circumstances of the particular case." *Id.* ¶ 19.

¶8 In this case, the juvenile court made detailed findings of fact as to Austin's record of providing support and supervision to Jacob, as well as his contact and communication with Jacob. In light of the court's thorough findings and sustainable conclusions of law with respect to the statutory ground for severance and Jacob's best interests, we believe little would be gained by our repeating the court's ruling in greater detail. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 207-08 (App. 2002); *cf. State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Because reasonable evidence in the record supports the court's findings and the court has correctly applied the law to those findings, we affirm the order terminating Austin's parental rights to Jacob.

/s/ Michael Miller
MICHAEL MILLER, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge