IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

ERIC W.,
Appellant,

v.

ABIGAIL H. AND D.P.,
Appellees.

No. 2 CA-JV 2020-0026
Filed July 20, 2020

Appeal from the Superior Court in Graham County
No. SV201900012
The Honorable Travis W. Ragland, Judge

AFFIRMED

COUNSEL

E.M. Hale Law, Lakeside
By Elizabeth M. Hale
Counsel for Appellant

Channen Day P.C., Safford
By Channen Day
Counsel for Appellee Abigail H.

MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Chief Judge Vásquez and Judge Espinosa concurred.

S T A R I N G, Presiding Judge:

¶1 In this private severance proceeding, Eric W. appeals from the juvenile court's February 2020 ruling terminating his parental rights to his daughter, D.P., born in September 2018, based on the ground of abandonment. *See* A.R.S. § 8-533(B)(1). Eric challenges the sufficiency of the evidence to support the court's finding that he abandoned D.P. and maintains that termination of his parental rights is not in her best interests. For the following reasons, we affirm.

¶2 A juvenile court may terminate a parent's rights only if it finds by clear and convincing evidence that a statutory ground for severance exists, and finds by a preponderance of the evidence that severance is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41 (2005). "[W]e will affirm a termination order that is supported by reasonable evidence." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18 (App. 2009). In other words, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable factfinder could have found the evidence satisfied the applicable burden of proof. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10 (App. 2009). And, on appeal, we view the facts in the light most favorable to affirming the juvenile court's ruling. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, ¶ 2 (2016).

¶3 Abigail and Eric began dating in 2016, when they were high-school students in Colorado. In August 2017, Abigail moved to Arizona to attend college, and learned she was pregnant in January 2018. Shortly thereafter, she ended her relationship with Eric without giving him her address and refused to respond to his repeated attempts to contact her, blocking him on social media and her telephone. Eric was not present for D.P.'s birth in Arizona, nor has he ever seen D.P. in person. In March 2019, Abigail married L.H., whom she had been dating since October 2018.[1]

[1]Although the transcript of the hearing indicates Abigail and L.H. got married in March 2018, it appears it was March 2019.

¶4 In May 2019, when D.P. was eight months old, Abigail filed a petition to terminate Eric's parental rights, alleging he had abandoned D.P. without just cause and severance was in D.P.'s best interests. After a two-day contested severance hearing, the juvenile court granted Abigail's petition. Stating that this case "is not the normal severance case," the court noted that Abigail had made a "concerted effort" to prevent Eric from having a relationship with D.P., and that D.P. had "been deprived of a relationship with [Eric] in no small part due to [Abigail's] actions." The court nonetheless concluded Eric had failed to act "persistently" or "vigorously" to assert his parental rights to D.P. or to establish or maintain a normal parental relationship with her, "all without good cause." Specifically, the court found that Eric had not filed any pleadings to assert his parental rights, noting his failure to place his name in the putative father registry; had not provided reasonable support for D.P.; had not sent any cards, gifts,[2] or letters; and, had not had any contact with D.P. for more than six months, and, in fact, had never visited her. The court also concluded that termination of Eric's parental rights was in D.P.'s best interests because L.H. plans to adopt her. This appeal followed.

¶5 Pursuant to § 8-533(B)(1), termination of parental rights is warranted if "the parent has abandoned the child." Section 8-531(1), A.R.S., defines abandonment 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.

¶6 "[A]bandonment is measured not by a parent's subjective intent, but by the parent's conduct." *Michael J. v. Ariz. Dep't of Econ. Sec.*,

[2]On the second day of the hearing, Eric testified he "believe[d]" that a week after the first day of the hearing, in October 2019, he had sent D.P. "a birthday package, or a Halloween package" that contained clothing and a letter, and possibly "a card and some stuff like that."

196 Ariz. 246, ¶ 18 (2000). "The burden to act as a parent rests with the parent, who should assert his legal rights at the first and every opportunity." *Id*. ¶ 25. "The concept of abandonment and terms such as 'reasonable support' or 'normal parental relationship' are somewhat imprecise and elastic. Therefore, questions of abandonment . . . are questions of fact for resolution by the [juvenile] court." *In re Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 4 (1990).

¶7 On appeal, Eric argues there was insufficient evidence to support the juvenile court's ruling based on abandonment, asserting the court ruled based on a "formulaic application of the statute." *See* §§ 8-531(1), 8-533(B)(1). Eric acknowledges the court's findings that he had provided no financial support for D.P., had no contact with her, and had not filed any pleadings to assert his parental rights, facts which he does not dispute and the record supports. He nonetheless argues the court erred by finding he had abandoned D.P., citing *Calvin B. v. Brittany B.*, 232 Ariz. 292 (App. 2013), to argue his failure to establish a parental relationship with D.P. was due to Abigail's conduct, which he maintains constituted just cause under § 8-531(1). Based on the record, we are not persuaded the court erred by finding that Abigail's conduct, although clearly troublesome, did not constitute just cause for Eric's failure to assert his parental rights to D.P.

¶8 In *Calvin B.*, this court stated, "[A] parent who has persistently and substantially restricted the other parent's interaction with their child may not prove abandonment based on evidence that the other has had only limited involvement with the child." 232 Ariz. 292, ¶ 1. But in that case, we determined the juvenile court had "disregard[ed]" evidence that the father repeatedly sought enforcement of his visitation rights and "successfully petitioned the court to hold [the mother] in contempt for not allowing him the visitation granted by prior order." *Id*. ¶¶ 28-29. We concluded that, in contrast to the father in *Michael J.*, "Calvin [had] 'vigorously assert[ed] his legal rights' to see his son." *Id*. ¶ 29 (second alteration in *Calvin B.*) (quoting *Michael J.*, 196 Ariz. 246, ¶ 22).

¶9 Eric failed to make such a showing here. In fact, he testified or acknowledged during his testimony that although he had known how to contact Abigail's parents in Colorado to ask for her address in Arizona, he did not do so.[3] Likewise, although his relationship with Abigail had ended

[3]When asked if he had attempted to see D.P. upon receipt in June 2019 of the petition to terminate his parental rights, which contained Abigail's current address, Eric testified he had not.

before D.P. was born and Abigail had stopped communicating with him, he attempted to reach her only by text message or through social media, knowing he would not receive a response. Further, he did not provide any financial support for D.P.; nor attempt to see D.P. even when he knew she and Abigail were in Colorado visiting her family in November 2018. And, although Eric acknowledged he had known before D.P. was born that he would need to take legal action to assert his parental rights, he did not attempt to put his name on the putative father registry or vigorously pursue any other legal action to assert those rights. When asked if it was too harsh to say he had not "lifted a finger" to establish his parental rights to D.P., Eric responded, "I guess not."

¶10 Eric also acknowledged he had spent a total of approximately five hours attempting to establish contact with D.P. since her birth, which included three hours sending messages to Abigail and two hours visiting the legal services and child support offices in Colorado, which were unable to help him. Notably, Eric also testified that he should have sought further legal advice, should have gone to Abigail's parents' home when he knew she was in Colorado with D.P., and generally should have "tried harder" and "shouldn't have been so nice" in trying to assert his parental rights. In addition, L.H. testified that although Eric had communicated with him on social media, he had never asked him where he, Abigail, and D.P. were living, nor had he offered financial support for D.P. or asked how she was doing.

¶11 Eric, however, points to conflicts in the testimony on a variety of topics, including, for example, his failure to come to the hospital when D.P. was born based on his belief the police would be called if he did so. Several of Eric's arguments on these points amount to a request that we reweigh the evidence, which we will not do. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002). Instead, we defer to the juvenile court, which is "in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4 (App. 2004). Moreover, this is especially true in the case of abandonment, which necessarily involves facts best resolved by the juvenile court. *See Maricopa Cty. No. JS-500274*, 167 Ariz. at 4.

¶12 Reviewing the record for reasonable evidence supporting the juvenile court's finding of abandonment, such evidence exists here. *See Jordan C.*, 223 Ariz. 86, ¶ 18. Despite Eric's expressed intention to assert his legal rights to parent D.P., and despite Abigail's efforts to prevent him from

doing so, a factor the court expressly considered, the court correctly found that Eric did not sustain his burden to assert his legal rights as a parent. *See Michael J.*, 196 Ariz. 246, ¶¶ 18, 25. Accordingly, the court did not err in finding the ground of abandonment established.

¶13 Eric also asserts the juvenile court erred in finding termination was in D.P.'s best interests, arguing that "permanently depriv[ing] D.P. of the love and care of her real father and his family" based on Abigail's "bad acts" is not in D.P.'s best interests. "[T]ermination is in the child's best interests if either: (1) the child will benefit from severance; or (2) the child will be harmed if severance is denied." *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, ¶ 13 (2018). "[A] juvenile court may conclude that a proposed adoption benefits the child and supports a finding that severance is in the child's best interests." *Demetrius L.*, 239 Ariz. 1, ¶ 1. Yet, the court cannot "assume that a child will benefit from a termination simply because he has been abandoned." *Maricopa Cty. No. JS-500274*, 167 Ariz. at 5-6. Instead, the court must assess the relevant facts on a case-by-case basis. *Demetrius L.*, 239 Ariz. 1, ¶ 13.

¶14 To the extent Eric relies on Abigail's conduct as part of his best-interests argument, he seems to misunderstand the best-interests inquiry—the focus of which is on the child, not the parents. *See Alma S.*, 245 Ariz. 146, ¶ 16. In any event, reasonable evidence supports the juvenile court's best-interests finding that D.P. would benefit if she were adopted by L.H. He has been involved as a father figure in D.P.'s life almost since birth, provides for her needs, treats her as if she were his child, and wants to adopt her. And, D.P. refers to L.H.'s parents as her "papa [and] yaya." Moreover, Eric himself acknowledged that L.H. is a "father" to D.P. and that permitting him to adopt her would be in her best interests.

¶15 Accordingly, we affirm the juvenile court's order terminating Eric's parental rights to D.P.