IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

DONALD W.,
Appellant,

v.

ADONNIS S., MARIE S., C.W., J.W., AND J.-W.,
Appellees.

No. 2 CA-JV 2020-0052
Filed December 3, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pinal County
No. S1100SV201900041
The Honorable Barbara A. Hazel, Judge Pro Tempore

AFFIRMED

COUNSEL

Czop Law Firm PLLC, Higley
By Steven Czop
Counsel for Appellant

Stuart & Blackwell PLLC, Chandler
By Cory A. Stuart
Counsel for Appellees Adonnis S. and Marie S.

MEMORANDUM DECISION

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

B R E A R C L I F F E, Judge:

¶1 Appellant Donald W. challenges the juvenile court's order of May 4, 2020, terminating his parental rights to his children, C.W., J.W., and J.-W., on grounds of abandonment and neglect and abuse. *See* A.R.S. § 8-533(B)(1), (B)(2). On appeal, Donald argues the court lacked subject matter jurisdiction and erred in terminating his parental rights on the grounds of abandonment and neglect. We affirm.

¶2 We view the evidence in the light most favorable to upholding the juvenile court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2 (App. 2008). The children were removed from Donald and their mother in Virginia in 2013 after one of them sustained "severe scald burns to [her] genital area from [a] hot water bath by a relative." In 2014, the Virginia court placed them in the custody of their paternal great-grandmother, Helen H. By 2015 the Virginia court relieved the state of providing services and the girls continued in Helen's care. In the summer of 2017 Helen had a stroke and her doctor informed her she could not continue to care for the children. She began to look for a new placement for the children and, through relatives, found Adonnis and Marie, who were willing to care for them. In April 2018, the Virginia court granted Adonnis and Marie legal and physical custody of the children, noting in its order that the "custodial parents agree to provide biological mother and biological father with updates on [the] children." The court also authorized Adonnis and Marie to "relocate with the children to Arizona."

¶3 In May 2019, Adonnis and Marie filed a petition for termination of Donald's parental rights on the grounds of abandonment, neglect or abuse, and a previous termination for the same cause.[1] *See* A.R.S. § 8-533 (B)(1),(2),(10). The juvenile court conferenced with the Virginia court pursuant to A.R.S. § 25-1010, and determined jurisdiction was

[1]The petition also sought termination of the mother's parental rights, but she is not a party to this appeal.

appropriate in Arizona. After a contested termination hearing, the court determined Adonnis and Marie had proved the grounds of abandonment and neglect or abuse and had established that termination was in the children's best interests. Donald appeals from the court's ruling.

¶4 Donald first argues the juvenile court lacked jurisdiction to hear his severance case because there was no "significant connection to Arizona" and "no substantial evidence in Arizona about the Children." "The question of whether the juvenile court had jurisdiction is a legal question, which we review de novo." *David S. v. Audilio S.*, 201 Ariz. 134, ¶ 4 (App. 2001); *see also J.D.S. v. Franks*, 182 Ariz. 81, 89 (1995). "A trial court's decision to defer jurisdiction to another court when both courts properly had jurisdiction is reviewed for an abuse of discretion." *J.D.S.*, 182 Ariz. at 89.

¶5 Under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), a state court that makes a child custody determination "has exclusive, continuing jurisdiction over the determination." A.R.S. § 25-1032(A). A court "may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum." A.R.S. § 25-1037(A).

¶6 For a court of another state to modify a child custody determination, the above determination must have been made and a state's court must qualify for jurisdiction under A.R.S. § 25-1031. A.R.S. § 25-1033(1). Section 25-1031 requires, inter alia, that the original state cede jurisdiction and that "the child and at least one parent or a person acting as a parent, have a significant connection with th[e new] state other than mere physical presence" and "[s]ubstantial evidence is available in this state concerning the child's care, protection, training and personal relationships." § 25-1031(A)(2).

¶7 In this case, a Virginia court had issued a custody order granting the petitioners custody of the children and allowing them to move with the children to Arizona. Thus, Virginia had continuing exclusive jurisdiction under § 25-1032(A). As noted above, the juvenile court and the Virginia court held a conference pursuant to § 25-1010, after which the Virginia court determined the Arizona court was "a more appropriate forum" under § 25-1037(A), and ceded jurisdiction.

¶8 Donald argues, however, that no one in the case has a "significant connection" with Arizona as required by § 25-1031(A)(2)(a). He contends "[p]eople often move to Arizona and then after a year or two decide to relocate." Courts are to consider several factors in determining if a child has a significant connection with Arizona. This includes "the nature and quality of the child's contacts with the state, the nature and quality of the . . . contestant's contacts with the state, and . . . the nature and quality of the evidence concerning the child's present or future care, protection, training, and personal relationships." *In re Ramirez v. Barnet*, 241 Ariz. 145, ¶ 27 (App. 2016).

¶9 In this case, two of the petitioners' adult children live in Arizona and are in regular contact with the children. The petitioners' grandchildren are close enough in age to the children to be like cousins to them. Petitioners own a house in Arizona, and Adonnis is employed here by an employer he has worked for since 1999. By the time of the hearing, they had been in Arizona for nearly two years. The children also attend school and church in Arizona. On this record, we cannot say the juvenile court erred in determining the children and petitioners had significant connections to Arizona.

¶10 Donald also maintains the juvenile and Virginia courts erred in finding "that Arizona is a convenient forum for the case." To make this determination the court is to consider multiple factors including:

1. Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child.

2. The length of time the child has resided outside this state.

3. The distance between the court in this state and the court in the state that would assume jurisdiction.

4. The relative financial circumstances of the parties.

5. Any agreement of the parties as to which state should assume jurisdiction.

6. The nature and location of the evidence required to resolve the pending litigation, including testimony of the child.

7. The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.

8. The familiarity of the court of each state with the facts and issues in the pending litigation.

A.R.S. § 25-1037(B).

¶11 The juvenile and Virginia courts weighed these factors and determined the children had been in Arizona since May 2018. The courts also considered that, for various legal reasons, an adoption proceeding on the present facts might not be possible in Virginia. The courts also noted the Arizona court could proceed on the matter much more quickly. Furthermore, evidence about the children's condition would largely be new since the last Virginia proceeding, making either court equally able to consider it, and the Arizona court more likely to be able to gather current evidence. The courts also considered the factors on which Donald relies, which weighed against transferring to Arizona, including the fact that the parents would not be able to appear in person and the Virginia court's previous familiarity with the proceeding, particularly the children's guardian ad litem in Virginia. On this record, considering the statutory factors above, we cannot say the courts erred in determining that Arizona was the more convenient forum.

¶12 Having determined jurisdiction in Arizona was proper, we turn to Donald's further argument that the juvenile court abused its discretion in finding the petitioners had established he abandoned the children. Before it may terminate a parent's rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41 (2005). We will affirm an order terminating parental rights unless we must say as a matter of law that no reasonable person could find those essential elements proved by the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10 (App. 2009).

¶13 Abandonment is:

> [T]he 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).

¶14 Abandonment is measured objectively by examining the parent's conduct, not the parent's subjective intent. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 18 (2000). Additionally, in determining whether the abandonment 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. v. Tina B.*, 226 Ariz. 33, ¶ 18 (App. 2010) (first alteration in *Kenneth B.*) (quoting § 8-531(1)). When "circumstances prevent [a parent] from exercising traditional methods of bonding with his child, he must act persistently to establish the relationship however possible and must vigorously assert his legal rights to the extent necessary." *Michael J.*, 196 Ariz. 246, ¶ 22 (quoting *In re Pima Cty. Juv. Severance Action No. S-114487*, 179 Ariz. 86, 97 (1994)).

¶15 Donald argues "[t]he unique facts of this case shifted the burden to [Adonnis and Marie] to keep in contact with [him]." He maintains the Virginia court's order that Adonnis and Marie "agree[d] to provide . . . biological father with updates on [the] children," "amounted to a restriction of [his] contact with the Children and cannot constitute abandonment." He contends he had "frequent contact with the Children" when they were in Helen's custody and that his imprisonment in 2017 and 2018 "restricted his ability to have contact" with them thereafter. He also asserts he provided Adonnis and Marie with contact information, albeit through one of the children, but they did not provide information on the children as the Virginia court had directed.

¶16 First, Donald did not argue below that Adonnis and Marie's agreement to update the parents constituted a restriction on his ability to see the children. Any such argument is therefore waived. *See Kimu P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 39, n.3 (App. 2008). To the extent we read his argument as one that Adonnis and Marie restricted his access to the children, as he argued below, evidence at the hearing showed that they had not known how to contact him after his release from imprisonment. His argument to the contrary, based on his own testimony, amounts to a request to reweigh the evidence, which we will not do. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002).

¶17 Furthermore, Donald's assertion that he did not abandon the children because he had frequent contact with them while they lived with Helen is contradicted by testimony that Helen had reported that she had the children "five years and they had seen him . . . as many times." Likewise, the children's guardian ad litem from Virginia reported in 2017 that the parents "had virtually no contact with the girls for years." Again, Donald's argument is a request for this court to reweigh the evidence presented, but such is not our role. *See id*.

¶18 We further reject Donald's claim that his imprisonment restricted his contact with the children, and undermines a finding of abandonment. Imprisonment alone neither justifies nor precludes severance based on abandonment, rather an incarcerated parent "must act persistently to establish the relationship however possible and must vigorously assert his legal rights to the extent necessary." *Michael J.*, 196 Ariz. 246, ¶ 22 (quoting *Action No. S-114487*, 179 Ariz. at 97). On this record, we cannot say the juvenile court abused its discretion in determining that Donald had not acted persistently or sought to assert his legal rights vigorously. *See id.* In view of our conclusion that the abandonment ground was properly established, we need not address Donald's additional claims that the ground of neglect was not proved by clear and convincing evidence. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 14 (App. 2004).

¶19 For these reasons, we affirm the juvenile court's order terminating Donald's parental rights.