

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

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

| | | |
|-----------------------|---|----------------------------|
| BRANDON B., |) | |
| |) | 2 CA-JV 2010-0062 |
| Appellant, |) | DEPARTMENT A |
| |) | |
| v. |) | <u>MEMORANDUM DECISION</u> |
| |) | Not for Publication |
| ARIZONA DEPARTMENT OF |) | Rule 28, Rules of Civil |
| ECONOMIC SECURITY and |) | Appellate Procedure |
| LETICIA B., |) | |
| |) | |
| Appellees. |) | |
| |) | |

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 190351

Honorable Sarah R. Simmons, Judge

AFFIRMED

Joan Spurney Caplan

Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Claudia Acosta Collings

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

ESPINOSA, Judge.

¶1 Appellant Brandon B., the putative father of Leticia B., born August 2006, challenges the juvenile court’s order terminating his parental rights to Leticia based on abandonment, pursuant to A.R.S. § 8-533(B)(1), and based on his failure to file a notice of

paternity or paternity action in accordance with A.R.S. § 8-106.01, pursuant to § 8-533(B)(6). For the reasons stated below, we affirm.

¶2 Brandon and Leticia's mother, Sarah, were teenagers when Sarah became pregnant with Leticia. After the baby was born, Sarah continued to live with her parents. In December 2008, Sarah moved out of her parents' home and took Leticia with her. In March 2009, Child Protective Services (CPS) and Tucson Police conducted a welfare check after CPS received reports that Sarah was abusing marijuana and alcohol and had been abusing and neglecting Leticia. The home where Sarah was residing was filthy and there was drug paraphernalia within Leticia's reach. Based on that welfare check, the Arizona Department of Economic Security (ADES) took custody of Leticia and filed a dependency petition. Leticia initially was placed in foster care but soon was placed with her maternal grandparents. ADES did not know and was unable to determine Brandon's whereabouts at that time. Consequently, he was served with the dependency petition by publication and Leticia subsequently was adjudicated dependent as to Brandon.

¶3 In February 2010, the court held a permanency hearing and changed the case plan goal of reunification to severance and adoption. In March, ADES filed a motion to terminate Sarah's and Brandon's rights to Leticia. About a week earlier, Brandon had spoken with the CPS case manager after his mother had contacted her, and ADES was able to serve Brandon personally with the motion to terminate his parental rights. The court held a contested severance hearing on May 18. At that hearing, Sarah relinquished her

parental rights and the court subsequently terminated her rights pursuant to that relinquishment.

¶4 The juvenile court granted ADES's motion to terminate Brandon's parental rights in its May 27, 2010 minute entry order. Reviewing the history of this case, the court found Brandon was not named as the father on Leticia's birth certificate and had not registered as Leticia's father with the Arizona Department of Health Services on its putative father registry. The court then summarized the relevant evidence presented at the severance hearing, acknowledging Brandon's own testimony and his explanations for having had such limited contact with Leticia and having failed to provide her with reasonable support. The court found sufficient evidence established both grounds ADES had asserted in its motion and entered findings of fact and conclusions of law related to those grounds.

¶5 Brandon contends on appeal that the evidence was not clear and convincing that he had abandoned Leticia, focusing on the following definition of abandonment in A.R.S. § 8-201(1), which the juvenile court quoted in its minute entry order:

“Abandonment” means the failure of the parent to provide reasonable support and to maintain regular contact with the child, including 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.

Brandon asserts the juvenile court did not specify the basis for its conclusion that he had failed to maintain “a normal parental relationship with Leticia, without just cause.” Brandon contends CPS “made only marginally adequate efforts to locate him,” and, conceding the court had correctly found he had not had contact with Leticia for about nine and a half months, he asserts that “would not have been the case but for [ADES’s] failure to make any adequate search for him, for the purpose of service.” And, he insists, the minimal amount of contact he had with Leticia should also be excused because he contends Sarah’s family first told him not to come to the home and then tried to hide his whereabouts from ADES.

¶6 On appeal, we view the evidence in the light most favorable to sustaining the juvenile court’s ruling, *Lashonda M. v. Ariz. Dep’t of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 928 (App. 2005), and accept the court’s findings of fact as long as there is reasonable evidence to support them, *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶ 4, 210 P.3d 1263, 1264-65 (App. 2009). Thus, we will affirm the court’s order ““unless we [can] say as a matter of law that no one could reasonably find the evidence [supporting statutory grounds for termination] to be clear and convincing.”” *Denise R.*, 221 Ariz. 92, ¶ 10, 210 P.3d at 1266, quoting *Murillo v. Hernandez*, 79 Ariz. 1, 9, 281 P.2d 786, 791 (1955) (second alteration in *Denise R.*). ““What constitutes reasonable support, regular contact, and normal supervision varies from case to case””; whether a parent has abandoned his child is a question of fact that must be decided by the juvenile court as the trier of fact. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682,

686 (2000), quoting *In re Pima County Juv. Sev. Action No. S-114487*, 179 Ariz. 86, 96, 876 P.2d 1121, 1131 (1994).

¶7 In challenging the juvenile court’s ruling, Brandon fails to recognize that, as the unwed father of Leticia, it was his responsibility to establish the parent-child relationship “quickly” and “persistently.” *Pima County No. S-114487*, 179 Ariz. at 96-97, 876 P.2d at 1131-32; see also *Michael J.*, 196 Ariz. 250, ¶ 21, 995 P.2d at 682. It was neither ADES’s burden nor that of the maternal family to seek out Brandon and establish and secure his relationship with Leticia. As the court noted, Brandon had not attended Leticia’s birth; nor had he requested that his name be placed on her birth certificate. He also failed to register as Leticia’s putative father pursuant to A.R.S. § 8-106.01. Thus, Brandon could have been far more active in establishing and maintaining contact with Leticia, even assuming Sarah’s father had told him he no longer was welcome at the family’s house.

¶8 As was its prerogative, the juvenile court rejected Brandon’s explanations and excuses for having failed to establish a relationship with Leticia. And Brandon testified that, at most, he provided a thousand dollars for Leticia’s support in four years, conceding that was not an adequate amount to support a child and that it had been a year since he had sent anything for her support. Additionally, as ADES argued at the severance hearing, even based on Brandon’s own estimates, he had seen four-year-old Leticia only fourteen times in her life. There was ample evidence to support the court’s finding that Brandon took no legal action to establish his rights, provided little support for

Leticia, made only minimal efforts to see her since she was born, and failed to maintain any, let alone regular, contact with her without just cause for over six months.

¶9 As the trier of fact, the juvenile court was “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, 100 P.3d 943, 945 (App. 2004). We do not reweigh the evidence. *See Lashonda M.*, 210 Ariz. 77, ¶ 13, 107 P.3d at 927. The juvenile court’s order is thorough, clear, and amply supported by the applicable law and the record. The court cited the evidence upon which it based its factual findings and, contrary to Brandon’s assertion, those findings were sufficient to establish the grounds for terminating his parental rights under the applicable law. The court’s findings are supported by the portions of the record the court cites and other portions of the record as well. No purpose would be served by rehashing the court’s order in its entirety here. Rather, because there is reasonable evidence in the record supporting the court’s factual findings and its legal conclusions are correct, we adopt its ruling. *See Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 207-08 (App. 2002). Based on the record before us, the court did not err or abuse its discretion in terminating Brandon’s parental rights on the ground of abandonment.

¶10 Brandon also contends the juvenile court incorrectly applied § 8-533(B)(6) as a ground for terminating his parental rights. We need not address this argument, however, having rejected his challenge to the juvenile court’s termination of his parental rights on the ground of abandonment. *See Jesus M.*, 203 Ariz. 278, ¶ 3, 53 P.3d at 205 (“If

clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.”).

¶11 For the reasons stated herein, the juvenile court’s order is affirmed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

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

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge