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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

TOREY M., *Appellant,*

v.

DEPARTMENT OF CHILD SAFETY, S.M., *Appellees.*

No. 1 CA-JV 16-0124
FILED 9-20-2016

Appeal from the Superior Court in Yavapai County
No. P1300JD201500053
The Honorable Anna Young, Judge

AFFIRMED

COUNSEL

Law Office of Florence M. Bruemmer, P.C., Anthem
By Florence M. Bruemmer
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Amanda Adams
Counsel for Appellee Department of Child Safety

Robert D. Rosanelli, Phoenix
Counsel for Appellee S.M.

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Chief Judge Michael J. Brown joined.

T H O M P S O N, Judge:

¶1 Appellant Torey M. (Torey) appeals from the juvenile court's order severing his parental rights to his child, S.M. For the following reasons, we affirm the decision of the juvenile court.

FACTUAL AND PROCEDURAL HISTORY

¶2 S.M. was born in Wisconsin in September 2014. Torey and S.M.'s mother, R.M., were both homeless and had histories of unemployment. Torey was a resident of Wisconsin and was a registered sex offender there. Torey, S.M., and R.M. came to Arizona in late 2014 or early 2015 to visit R.M.'s father. Subsequently, Torey was arrested in Arizona for failing to register as a sex offender. After he was released from jail, Torey returned to Wisconsin in April 2015. By May 2015, R.M. had given S.M., who had significant health and developmental problems¹, to a family friend in Arizona to be cared for. The friend did not have a court-approved guardianship of S.M., and in May 2015 the Department of Child Safety (DCS) received a report that Torey and R.M. had neglected him.

¶3 DCS filed a dependency petition in July 2015 and the juvenile court granted the dependency. DCS placed S.M. with a maternal aunt and uncle. The court approved a concurrent caseplan of family reunification and severance and adoption. In December 2015, S.M.'s guardian ad litem filed a severance petition alleging grounds for severance pursuant to Arizona Revised Statutes (A.R.S.) sections 8-533(B)(1) (2014) (abandonment), (B)(2) (neglect of S.M. and neglect of other children) and

¹ S.M. was diagnosed with developmental delays, hydrocephalus, and lung and gastrointestinal issues. At the time of trial he was under the care of a pulmonologist and a GI specialist.

TOREY M. v. DCS et al.
Decision of the Court

(B)(4) (nature of felony conviction).² R.M. signed a consent to termination of her parental rights and left Arizona.³ Torey contested the severance, and pursuant to a stipulation of the parties, the juvenile court conducted a “paper trial” in March 2016. Based on the exhibits and the testimony of DCS case manager K.S., the juvenile court terminated Torey’s parental rights on grounds of neglect and abandonment. The court further found that severance was in S.M.’s best interests. Torey timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235 (2014), 12-120.21(A)(1) (2016), and -2101 (A)(1) (2016).

DISCUSSION

¶4 “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.” *Audra T. v. Ariz. Dep’t of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998) (citations omitted). We view the facts in the light most favorable to sustaining the juvenile court’s ruling. *Lashonda M. v. Ariz. Dep’t of Econ. Sec.*, 210 Ariz. 77, 82, ¶ 13, 107 P.3d 923, 928 (App. 2005). We do not reweigh the evidence, because “[t]he 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.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002) (citation omitted). The juvenile court may terminate a parent-child relationship if the petitioner proves by clear and convincing evidence at least one of the statutory grounds set forth in § 8-533(B). *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). The court must also find by a preponderance of the evidence that severance is in the child’s best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005).

² The guardian ad litem later filed an amended petition withdrawing the ground pertaining to Torey’s felony conviction. DCS was in support of the amended petition and has filed a brief in support of the guardian ad litem in this appeal.

³ The juvenile court terminated R.M.’s parental rights; she is not a party to this appeal.

A. Abandonment

¶5 Abandonment is a ground for severance pursuant to A.R.S. § 8-533 (B)(1). “Abandonment” is defined in A.R.S. § 8-531 (1), which 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.

Torey argues that reasonable evidence does not support the juvenile court’s finding that he abandoned S.M. Sufficient evidence supported the juvenile court’s abandonment finding, however. The record shows that Torey made no effort to communicate with S.M. or to provide normal parental supervision for almost a year prior to the severance trial. He failed to provide financial support for S.M. even though he received S.M.’s Social Security checks.⁴ Nor did Torey send S.M. any gifts, cards, or letters during the dependency or request visitation with him. Further, S.M.’s case manager testified that Torey did not ask about S.M.’s medical diagnosis or ask to be included in any of S.M.’s medical appointments. Although Torey argues that DCS “continually erected legal barriers to [his] parenting and visitation,” this claim is without merit. It is clear that Torey’s merely minimal efforts toward S.M. for a good deal longer than six months’ time constitute S.M.’s abandonment.

¶6 Because sufficient evidence supports the abandonment finding, we need not consider whether the juvenile court properly severed Torey’s parental rights on the ground of neglect of a child. *See Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 251, ¶ 27, 995 P.2d 682, 687 (2000).

⁴ S.M.’s mother informed DCS that Torey spent S.M.’s Social Security money to support another child of his.

TOREY M. v. DCS et al.
Decision of the Court

B. Best Interests

¶7 Torey argues that insufficient evidence supported the juvenile court's finding that severance was in S.M.'s best interests. We disagree. To establish that severance is in a child's best interests, the court must find either that the child will benefit from the severance or that the child would be harmed by the continuation of the relationship. *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, 356, ¶ 18, 972 P.2d 684, 689 (App. 1998). Evidence of an adoptive plan is evidence of a benefit to the child. *Id.*

¶8 Here, the evidence showed that S.M. was placed in the home of his maternal aunt and uncle (who also had custody of S.M.'s half-brother) and the placement was meeting all of S.M.'s needs including his need for specialized care. S.M.'s case manager testified that he was adoptable. Moreover, the evidence showed that Torey had a history of sexually abusing young children. Thus, the trial court did not err by concluding it would be detrimental to S.M. if his parent-child relationship with Torey were allowed to continue. Accordingly, we find no error in the juvenile court's finding that severance was in S.M.'s best interests.

CONCLUSION

¶9 For the foregoing reasons, the juvenile court's severance order is affirmed.



AMY M. WOOD • Clerk of the Court
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