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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

DANE W., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, L.W., *Appellees*.

No. 1 CA-JV 16-0229
FILED 10-25-2016

Appeal from the Superior Court in Maricopa County
No. JD528085
The Honorable Karen L. O'Connor, Judge

AFFIRMED

COUNSEL

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

Arizona Attorney General's Office, Tucson
By Cathleen E. Fuller
Counsel for Appellee DCS

MEMORANDUM DECISION

Judge Donn Kessler delivered the decision of the Court, in which Chief Judge Michael J. Brown and Judge Patricia A. Orozco joined.

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K E S S L E R, Judge:

¶1 Appellant Dane W. (“Father”) appeals the juvenile court’s termination of his parental rights as to his child, L.W. Father asserts the juvenile court incorrectly found grounds of abandonment by not considering his homelessness to be a just cause for failure to maintain a normal parental relationship with L.W. and by finding that severance was in L.W.’s best interest. For the following reasons, we affirm the juvenile court’s ruling.

FACTUAL AND PROCEDURAL HISTORY

¶2 Father and C.H. (“Mother”) are the biological parents of L.W., born February 2014.¹ The Department of Child Safety (“DCS”) took custody of L.W. in September 2014. L.W. was removed from Mother’s home due to neglect. The police found drug paraphernalia within reach of the child and a floor covered in dirty diapers, animal feces, and bugs. DCS placed L.W. with a relative, who remains his current placement.

¶3 Father was homeless from early 2010 until April 2015. After obtaining housing, Father did not contact DCS or attempt to visit the child. Father first contacted DCS regarding L.W. in January 2016. Prior to this, Father stated he believed L.W. was still with Mother; however, the DCS intake case manager spoke with Father at the onset of the dependency. Father had no physical contact with L.W. until March 2016, but he asserted he communicated with Mother via Facebook to check on L.W. Father admitted he had no real reason why he never visited L.W., other than “not [being] in the neighborhood.”

¶4 Father began visits with L.W. in March 2016. Father ended several of his visits early, claiming to be tired from work. E.G., the DCS case manager, expressed concern that Father was cutting visits short and missing other visits. DCS attempted to have Father complete a psychological evaluation and drug testing, but both were cancelled due to several missed appointments.

¶5 E.G. testified L.W. was very bonded with his current placement and the placement hoped to adopt him. The current placement

¹ Mother’s rights were terminated in March 2016. However, Mother has not appealed this judgment and is therefore not a party to this appeal.

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is meeting L.W.'s needs. Even if the placement is unable to adopt L.W., E.G. observed L.W. is otherwise adoptable.

¶6 The juvenile court terminated Father's parental rights, finding he had abandoned the child and termination was in the child's best interests. Father timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-235(A) (2016) and 12-120.21(A)(1) (2016).²

DISCUSSION

I. Standard of Review

¶7 We will review the juvenile court's termination order in the light most favorable to sustaining the court's decision and will affirm it unless, as a matter of law, we must say that no one could reasonably find the evidence supporting statutory grounds for termination to be clear and convincing. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10 (App. 2009) (citations and quotations omitted). We will affirm the juvenile court's severance order absent an abuse of discretion or unless the court's findings of fact were clearly erroneous. *E.R. v. Dep't of Child Safety*, 237 Ariz. 56, 58, ¶ 9 (App. 2015) (citations and quotations omitted). To terminate parental rights, the juvenile court must find, by clear and convincing evidence, at least one of the statutory grounds set out in A.R.S. § 8-533(B) (2016). See A.R.S. § 8-533(B); *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12 (2000). It must also find DCS has shown by a preponderance of the evidence that termination is in the best interests of the child. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005).

II. Abandonment

¶8 Under A.R.S. § 8-533(B)(1), a parent's rights may be terminated for abandonment. "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) (2016). "[A]bandonment is measured not by a parent's subjective intent, but by the parent's conduct: the statute asks whether a parent has provided reasonable support, maintained regular contact, made more than minimal efforts to support and communicate with the child, and maintained a normal parental relationship." *Kenneth B. v. Tina B.*, 226 Ariz. 33, 36, ¶ 15 (App.

² We cite the current version of the applicable statute unless revisions material to this decision have since occurred.

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2010) (citation omitted); *see* A.R.S. § 8-531(1). When “circumstances prevent the . . . father 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.” *In re Pima Cty. Juvenile Severance Action No. S-114487*, 179 Ariz. 86, 97 (1994) (citation omitted).

¶9 Father argues that his homelessness from 2010 through April 2015 is just cause for his failure to maintain a normal parental relationship with L.S. We disagree. First, the evidence reflects that Father did not have any contact with L.W. for two years and did not maintain a normal parental relationship with the child for that period. Additionally, Father did not provide any financial support or cards, gifts, or letters during those two years. The juvenile court was unpersuaded that Father’s homelessness constituted just cause for the total lack of involvement in L.W.’s life.

¶10 We need not decide whether Father’s homelessness is an excuse for his failure to maintain a normal parental relationship. Father did not attempt to visit L.W. or contact DCS after obtaining a residence in April 2015. While Father was no longer homeless, there was no contact between Father and L.W. from April 2015 until January 2016, a period greater than six months.

¶11 Father also argues the juvenile court erred in not considering that he attempted to remedy the presumption of abandonment by having regular contact with L.W. starting in 2016. Father began visits with L.W. in March 2016 and took sixteen hours of parenting classes. While Father made some efforts, the record shows that Father failed to keep regular appointments to meet with L.W., ended meetings early, and refused to take drug tests or psychological examinations. Thus, he failed to rebut the presumption of abandonment. *See In re Maricopa Cty. Juvenile Action No. JS-1363*, 115 Ariz. 600, 601-02 (App. 1977) (holding parent’s conduct after filing of petition to terminate parental relationship may be considered for purpose of determining question of parent’s intent during six-month presumptive abandonment period).

¶12 Based on these grounds, the juvenile court properly found DCS met its burden of proof to terminate Father’s rights under A.R.S. § 8-533(B)(1). Because the juvenile court’s decision is supported by reasonable evidence, we affirm.

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III. Best Interests of the Child

¶13 In addition to finding statutory grounds for termination, the juvenile court must also find it is in the best interests of the child to terminate parental rights. A.R.S. § 8-533(B). To establish that severance of a parent's rights would be in a child's best interests, "the court must find either that the child will benefit from termination of the relationship or that the child would be harmed by continuation of the parental relationship." *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, 356, ¶ 18 (App. 1998) (citation omitted). In making this determination, the juvenile court may consider evidence that the child is adoptable or that an existing placement is meeting the needs of the child. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19 (App. 2004) (citations omitted).

¶14 The juvenile court found Father was absent for the first two years of L.W.'s life. Additionally, the court found that even though Father was aware he needed to demonstrate his sobriety and that he was addressing any mental health concerns, he failed to do so. The juvenile court was not persuaded Father would be compliant with the services needed for reunification.

¶15 L.W. has been in his current placement for two years, the vast majority of his life. The record showed and the juvenile court found the current placement had bonded with L.W., was providing a safe and stable home, and was meeting all of L.W.'s needs. Although the current placement is willing to adopt L.W., the testimony showed and the court found L.W. is adoptable even if this adoption is unable to proceed.

¶16 Based on the foregoing, the juvenile court found it would be in L.W.'s best interests to terminate Father's parental rights. The record supports that finding.

CONCLUSION

¶17 For the foregoing reasons, we affirm the termination of Father's parental rights as to L.W.

