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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

KAMERON Z.,
Appellant,

v.

VICTORIA W., M.S., M.S.,
Appellees.

No. 1 CA-JV 16-0075
FILED 8-4-2016

Appeal from the Superior Court in Maricopa County
No. JS 17339
The Honorable Monica S. Garfinkel, Judge *Pro Tempore*

AFFIRMED

COUNSEL

John L. Popilek, PC, Scottsdale
By John L. Popilek
Counsel for Appellant

Carol Coghlan Carter, Mesa
Counsel for Appellees

MEMORANDUM DECISION

Presiding Judge Patricia A. Orozco delivered the decision of the Court, in which Chief Judge Michael J. Brown and Judge Samuel A. Thumma joined.

O R O Z C O, Judge:

¶1 Kameron Z. (Father) appeals from the order terminating his parental rights to M.R.S. and M.M.S. (the Children). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY¹

¶2 In 2006, Julia S. (Mother) told Father she was pregnant and that he may be the father of the Children. Father was incarcerated when the Children were born, and except for a few weeks' release, Father has been incarcerated for the first eight years of the Children's lives. Father has seen the Children together behind a screen once while incarcerated, but he has never had personal contact with them.

¶3 In January 2015, after his release from prison, Father contacted V.W., the Children's maternal aunt and permanent legal guardian. He asked if he could forward some birthday gifts or money to the Children, but V.W. declined. Father did not know that V.W. had legal custody of the Children, but he knew they were living with V.W.

¶4 V.W. filed a petition for termination of parental rights alleging abandonment and substance abuse. The juvenile court held a severance hearing in January 2016. At the hearing, V.W. testified that she has had custody of the Children since they were approximately nine months old and was their legal guardian. The juvenile court took judicial notice of the guardianship. V.W. testified that she did not provide notice to Father of the guardianship because she was not aware of Father's paternity when she filed it in 2009. V.W. further testified that she has never received any letters or postcards from Father, and that the Children do not know he exists.

¹ "We view the facts in the light most favorable to sustaining the juvenile court's decision." *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, 449, ¶ 12 (App. 2007) (citation omitted).

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¶5 Father testified that he is the biological father of the Children. Father acknowledged he never obtained a court order to have contact with the Children and he failed to take any legal actions to assert paternity. However, Father testified that during his incarceration, he wrote letters to the Children, sent them birthday cards and took a five-day parenting class for the Children's benefit.

¶6 Following the hearing, the juvenile court terminated Father's parental rights to the Children due to abandonment. As to the Children's best interests, the juvenile court found that the petitioner had "proven by a preponderance of the evidence that it would be in the minor children's best interest to have their biological parents' rights terminated," reasoning that:

[Father] has a long criminal history and has been in and out of jail and prison for 20 years. The twins do not know that he exists. They have not inquired about a father. . . . The father has never parented the children in any fashion. He expressed an interest in their well-being early on, and made some minimal efforts to communicate with the mother to inquire about them, however the choices he made prevented him from playing any role in their life. He has not taken any legal action to establish his paternity or to seek parenting time. Instead of following through with his stated desire to be a father, he committed a crime that took him away from them since they were babies. Other than brief visits in jail before they could even remember, he has had no contact with them and has done nothing to try to be their father. . . . He cannot provide the stability, security, and care that Petitioner has been providing all these years. His long history of criminal behavior and poor choices support this.

¶7 Father timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes (A.R.S.) sections 8-235.A, 12-120.21.A.1, and -2101.A (West 2016).²

² We cite the current version of applicable statutes when no revisions material to this decision have since occurred.

DISCUSSION

¶8 To terminate parental rights, the juvenile court must (1) find one of the grounds for termination in A.R.S. § 8-533.B by clear and convincing evidence, and (2) find by a preponderance of the evidence that termination is in the child’s best interests.³ *Ariz. Dep’t of Econ. Sec. v. Rocky J.*, 234 Ariz. 437, 440, ¶ 13 (App. 2014) (citations omitted). We do not reweigh the evidence on appeal because the juvenile court is in the best position to “weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings.” *Frank R. v. Mother Goose Adoptions*, 239 Ariz. 184, 202, ¶ 58 (App. 2016) (quoting *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002)). We will not disturb the juvenile court’s order unless its factual findings are clearly erroneous. *Id.* at ¶ 59.

¶9 Father first argues that he could not have abandoned the Children as a matter of law because the Children were subject to permanent guardianship. *See* A.R.S. § 8-871. Under A.R.S. § 8-531.1, abandonment is defined as:

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.

¶10 The Supreme Court of Arizona has held that “[t]he burden to act as a parent rests with the parent, who *should assert his legal rights at the first and every opportunity.*” *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 251, ¶ 25 (2000) (emphasis added). Pursuant to A.R.S. §§ 8-531.1 and 8-872.G, when a parent has failed or makes only minimal efforts to provide reasonable support and maintain regular contact with the child, the parent has abandoned the child, even if the child is subject to a permanent guardianship.

¶11 Here, the Children were under the permanent guardianship of V.W. since 2009. Under A.R.S. § 8-872.G, “[a] court order vesting

³ Father does not contest the best interests finding, we therefore do not address it.

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permanent guardianship with an individual . . . *does not terminate the parent's rights.*" (Emphasis added). Although V.W. had legal guardianship over the Children, by statute and by the order granting the guardianship, the guardianship did not preclude Father from exercising any of his parental rights. *See id.* Father could have taken steps to establish regular contact and a parental relationship with the Children, but he did not do so. Father claimed to have sent the Children birthday cards and several letters, but V.W. testified that she never received letters, postcards, or anything from Father. The juvenile court found that rather than "vigorously assert[ing] his legal rights," Father "sat back expecting to show up as a stranger, years later, and assume his place as [the Children's] unknown father when he got out of prison." Despite the Children's permanent guardianship, Father did not establish paternity, or otherwise exercise parental rights over the Children. And Father never sought to set aside the guardianship, which he could have attempted to do if he could show by clear and convincing evidence that he was "able and willing to properly care for the" the Children. A.R.S. § 8-873.A.1, .C.

¶12 Father also argues that he could not have abandoned the Children when they were no longer in Mother's care and he did not know how to contact them. Father cites *Calvin B. v. Brittany B.*, 232 Ariz. 292, 296, ¶ 20 (App. 2013) to show that circumstances may exist that prevent a parent from exercising "regular contact with the child" as defined by A.R.S. § 8-531.1. However, *Calvin B.* is distinguishable because in that case, the father consistently and "vigorously assert[ed] his legal rights" to see his child. *Calvin B.*, 232 Ariz. at 298, ¶ 29. Moreover, *Calvin B.* is different from this case because the mother in *Calvin B.* inhibited the Father's contact with the child. *Id.*

¶13 Here, the juvenile court found that Father's efforts to contact the Children were "minimal" and "insufficient to create and build a parental relationship." Even though the Children were no longer in Mother's care, Father acknowledged that he knew the Children were living with V.W. and he still failed to have any contact with the Children during incarceration. Furthermore, Father did not assert any parental rights while the Children were in Mother's care from birth in April 2007 to January 2008. Accordingly, on this record and given the arguments presented on appeal, Father has not shown that the juvenile court erred in finding he abandoned the Children.

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CONCLUSION

¶14 For the foregoing reasons, we affirm the juvenile court's order terminating Father's parental rights to the Children.



Ruth A. Willingham · Clerk of the Court
FILED : AA