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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 08/07/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

MILAGRO W.,) No. 1 CA-JV 12-0004
)
Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz. R.P. Juv. Ct.;
SECURITY, NAOMI W.,) Rule 28 ARCAP)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD19446

The Honorable Joan M. Sinclair, Judge Pro Tempore

AFFIRMED

Denise Lynn Carroll
Attorney for Appellant

Scottsdale

Thomas C. Horne, Arizona Attorney General Phoenix
By Michael F. Valenzuela, Assistant Attorney General
Attorneys for Appellee ADES

S W A N N, Judge

¶1 Appellant Milagro W. ("Father") appeals from the juvenile court's order terminating his parental rights. For the following reasons, we affirm.

FACTS¹ AND PROCEDURAL HISTORY

¶2 Father is the biological parent of Child, a minor. Child has experienced serious health problems since her birth in May 2010, and her life expectancy may be less than average. Her diagnoses include cerebral palsy, laryngomalacia, pharyngeal dyskinesia, gastroesophageal reflux, hearing loss, vision problems, and microcephaly. She has multiple dysmorphic features, undiagnosed chromosomal disorders, delayed development, and sensory and bonding problems. By late 2011, she had undergone several of many expected surgeries and required mucus-suctioning treatment several times daily, a feeding tube, a pulse oximeter, and physical, speech, and occupational therapy.

¶3 Though initially confined to the hospital after birth because of her health problems, Child was eventually discharged to her parents' care despite hospital staff's concerns that her parents did not understand her health conditions. After the discharge, Child Protective Services ("CPS") received reports that Father and Child's mother ("Mother") had engaged in domestic violence, failed to take Child to several of her doctor appointments, and requested the removal of Child's feeding tube.

¹ We view the evidence in the light most favorable to affirming the juvenile court's order. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

CPS initially responded to these reports by implementing an in-home dependency that allowed Mother to maintain physical custody of Child and allowed Father to visit Child so long as a safety monitor was present. But by November 2010, CPS removed Child to a foster home because Father and Mother were not meeting Child's needs.

¶14 CPS thereafter offered various reunification services to Father, including: biweekly visitation with Child through a parent aide; notice and opportunity to attend many of Child's doctor appointments; substance abuse assessment and treatment services; and a psychological consultation and evaluation. CPS also provided Father free transportation for all of the reunification services.

¶15 Father participated in the reunification services in the year after Child's removal, but his participation was not complete. First, Father missed about half of his parent-aide visits with Child and about half of her doctor appointments, blaming his absences on oversleeping after working night shifts. Second, Father did not follow the recommendations of the psychologist that CPS provided. The psychologist diagnosed Father with mood and personality disorders and recommended that he participate in counseling, parenting and child development classes, a parents' support group, and vocational and educational services. Though CPS offered Father information and

assistance for all of these services, his participation was limited to attending only three counseling sessions. Finally, Father failed to consistently participate in his random drug testing program and tested positive for cocaine in August 2011.

¶16 In addition to not fully participating in the reunification services, Father failed to fully educate himself about Child's medical conditions and needs. He never learned all of Child's diagnoses and, despite his self-acknowledged lack of ability to learn from written materials, limited his attempts to learn about Child's conditions to independent library research rather than discussions with Child's doctors. Father never learned that a suction system must be used when Child aspirates on her own fluids, and never learned how to monitor her oximeter. Child's parent aide reported that when Child had an apnea episode, Father did not appear to know what to do.

¶17 Because of Father's failure to participate in all services and his perceived inability to care for Child, the Arizona Department of Economic Security ("ADES") asked in July 2011 that Child's case plan be changed to severance and adoption. The juvenile court approved the change over Father's objection. Accordingly, in August 2011, ADES filed a motion to terminate Father's parental relationship with Child, alleging

that termination was warranted under A.R.S. § 8-533(B)(3), (B)(8)(a), and (B)(8)(b).²

¶18 At a two-day trial in November and December 2011, ADES presented evidence of the facts set forth above, and both the CPS case manager and Father's psychologist opined that Father was not capable of caring for Child and meeting her needs. The case manager further testified that she was confident an adoptive home could be found for Child, that Child's current foster home was willing to continue to care for Child in the meantime, and that Child's sensory and bonding problems meant that long-term foster care would not provide her with the permanency she requires.

¶19 The juvenile court found that ADES had met its burden to prove that there were statutory grounds for termination and termination was in Child's best interests. Father timely appeals. We have jurisdiction under A.R.S. § 8-235(A).

STANDARD OF REVIEW

¶10 The juvenile court is in the best position to weigh evidence, judge witness credibility, 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). We therefore accept the

² ADES concurrently moved to sever Mother's parental relationship on identical grounds. Mother's parental relationship was severed at an initial hearing in September 2011 and she is not a party to this appeal.

juvenile court's findings of facts unless they are supported by no reasonable evidence, and will affirm the termination order unless it is clearly erroneous. *Id.*

DISCUSSION

¶11 To terminate a parent-child relationship, the juvenile court must find by clear and convincing evidence that at least one of the grounds set forth in A.R.S. § 8-533 exists, and must find by a preponderance of the evidence that termination is in the child's best interests. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000); *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005). Father does not dispute that ADES met its burden to prove the existence of grounds for termination under A.R.S. § 8-533. He argues only that ADES did not meet its burden to prove that termination was in Child's best interests. We therefore review only the best interests issue. See *Schabel v. Deer Valley Unified Sch. Dist. No. 97*, 186 Ariz. 161, 167, 920 P.2d 41, 47 (App. 1996) ("Issues not clearly raised and argued in a party's appellate brief are waived.").

¶12 "[A] determination of the child's best interest must include a finding as to how the child would benefit from a severance or be harmed by the continuation of the relationship." *Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). The inquiry focuses "primarily upon the

interests of the child, as distinct from those of the parent.”
Kent K., 210 Ariz. at 287, ¶ 37, 110 P.3d at 1021.

¶13 Here, the juvenile court found that severance was in Child’s best interests because “[Child] needs stability, permanency and caregivers that can provide around the clock care[,]” “Father has not addressed his own issues so that he could focus on placing [Child’s] needs first[,]” and “[Child] would be at risk if returned to live with Father . . . [because] he is not capable of caring for her extensive needs.” Reasonable evidence supports the finding that Child would be harmed by the continuation of the parental relationship and benefited by severance and adoption. Child has serious health issues that require constant and intensive care, and, because of her sensory and bonding issues, requires permanency. For a year, Father was offered many services that would have allowed him to educate himself about Child’s medical conditions and her care. He failed to fully participate in these services. He missed many of his parent-aide visits with Child and missed many of her doctor appointments. He did not know all of Child’s diagnoses, did not know how to use her suction system and oximeter, and was unable to assist her when she suffered an apnea episode. He did not participate in the parenting classes and support group recommended by the psychologist, and similarly

failed to participate in treatment to address his own psychological disorders and substance abuse.

¶14 Because reasonable evidence supports the juvenile court's findings, we will not set those findings aside. There is no clear error in the juvenile court's order terminating Father's parental relationship with Child.

CONCLUSION

¶15 It is undisputed that statutory grounds existed for the termination of Father's parental relationship with Child, and reasonable evidence supports the juvenile court's findings that severance was in Child's best interests. The juvenile court did not clearly err in terminating Father's parental relationship. We affirm.

/s/

PETER B. SWANN, Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Presiding Judge

/s/

ANDREW W. GOULD, Judge