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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

WESLEY C.,) 1 CA-JV 12-0031
)
Appellant,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G), Ariz. R.P. Juv. Ct.;
SECURITY, APRIL C., KAYLA C.,) Rule 28, ARCAP)
CAMERON C.,)
)
Appellees.)
)
)

Appeal from the Superior Court in Yavapai County

Cause No. P1300JD201000058

The Honorable David L. Mackey, Judge

AFFIRMED

Law Office of Florence M. Bruemmer, P.C. Anthem
by Florence M. Bruemmer
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P O R T L E Y, Judge

¶1 Wesley C. ("Father") asks us to reverse the order terminating his parental rights to his three children. He argues that he did not voluntarily waive his rights to a termination hearing, and that insufficient evidence existed to demonstrate that the termination of his parental rights was in the best interests of his children. Because we disagree with his arguments, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 The Arizona Department of Economic Security ("ADES") removed Father's three biological children from his care and filed a dependency action after the oldest, April, reported physical and emotional abuse to a teacher. All three children were found to be dependent.

¶3 Father was offered services to effectuate the case plan of family reunification. Despite his participation, there was no evidence that he was learning how to change his behavior to improve his parenting skills so that he could parent his children safely and effectively. As a result, ADES complied with the court's order at the permanency planning hearing by filing a motion to terminate Father's parental rights in September 2011.

¶4 Father denied the severance allegations, but at a status conference entered a plea of no contest. The court

accepted his plea after finding that it was voluntary, and subsequently held an evidentiary hearing that resulted in findings of fact and conclusions of law that terminated his parental rights on January 4, 2012.¹

DISCUSSION²

¶15 Father argues that he did not voluntarily waive his right to a trial. He contends he was induced into giving up his rights by the beliefs that the case would "proceed to a post-adoption mediation" and that ADES would investigate possible placements with family members for his children.³

¶16 Although a parent has the right to a trial before his or her parental rights are severed, a parent can waive the right. Ariz. R.P. Juv. Ct. 66(D). The waiver process is found in Arizona Rule of Procedure for the Juvenile Court 66(D), and applies if a parent either admits the allegations or enters a no contest plea. Rule 66(D)(1) requires the court to discuss the plea with the parent; it provides that the juvenile court must

¹ The children's mother also had her parental rights terminated but she is not a party to this appeal.

² "We will review a juvenile court's termination order in the light most favorable to sustaining the court's decision" *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

³ Father's opening brief states that he "may have waived his constitutional right . . ." and that "if Father was induced into giving up his constitutional right to a trial . . . based upon the orders entered by the trial court, then Father's waiver of his right to a trial was not voluntary" (Emphasis added.) We treat his argument as an affirmative assertion that his waiver was involuntary.

"[d]etermine whether the party understands the rights being waived" and "whether the admission or plea of no contest is knowingly, intelligently and voluntarily made." See *Webb v. State ex rel. Ariz. Bd. of Med. Exam'rs*, 202 Ariz. 555, 558, ¶ 10, 48 P.3d 505, 508 (App. 2002) (citations omitted) ("A valid waiver of constitutional rights must be voluntary, knowing, and intelligent.").

¶7 Here, before entering a no contest plea, Father asked the court to mediate a communication contact with his oldest daughter's foster mother so that he could get some information about his daughter after the adoption. He also asked the court to order ADES to investigate placing the children with his relatives. He then pled no contest.

¶8 After Father entered his plea, the juvenile court explained to him that the post-adoption contact mediation would be ordered, but that the adoptive parent would determine what contact, if any, Father would have with the children. Father told the court that he understood. The court emphasized the point, and reiterated that it wanted to be sure that Father was not entering the plea based on the assumption that the mediation would result in continued contact with his children. The court then stated:

I want to make sure that you understand that there is nothing concrete that can be given to you today to provide that you're going to

have contact with your children in the future and, in addition, it is not appropriate for the [ADES], this Court, or anyone involved in this case to offer you bargains or exchanges for the termination of your parental rights. That is something that has to stand on its own. So you understand those things that I've just told you?

Father responded affirmatively.

¶9 The court also told Father that although ADES would investigate Father's relatives as a possible placement for the children, such a placement was not guaranteed. After repeating that there would be no guarantees, the court asked Father if he understood, and he answered, "Yes, sir." Father's rights were then explained to him, including the right to court-appointed counsel and the right to a hearing. The court asked whether he understood his rights, and Father said that he did. Finally, the court asked, "Do you wish to give [your rights] up and stay with the no contest plea at this time?" Father responded, "Yes, sir." The court subsequently found that Father had knowingly, intelligently, and voluntarily waived his rights to a hearing.

¶10 After reviewing the record, we find no indication or evidence that the court, or anyone else, made any promise to induce Father into entering a no contest plea. Moreover, the juvenile court correctly concluded that Father had voluntarily, knowingly, and intelligently waived his right to a hearing. Accordingly, we find no error.

¶11 Father also argues that there was insufficient evidence for the court to conclude that severance was in the children's best interests. He contends that his participation in reunification services, the fact that the three children were not together, and ADES's failure to present expert evidence about the best interests of the children demonstrate the court's error. We disagree.

¶12 Once a statutory ground to terminate a parent's rights is established, the court must find by a preponderance of the evidence that severance is in a child's best interests. Ariz. Rev. Stat. ("A.R.S.") section 8-533(B) (West 2012); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). A child's best interests may be proven in one of two ways: (1) if the child is in an adoptive placement or, if not, if the child is adoptable and the current placement is meeting the child's needs, *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 379, ¶ 30, 231 P.3d 377, 383 (App. 2010) (citations omitted); or (2) ADES may submit evidence showing that a child would benefit from termination or be harmed by a continuing relationship with the parent, *id.* (citation omitted). The focus must be on the best interests of the child, and not on those of the parent. *Kent K.*, 210 Ariz. at 287, ¶ 37, 110 P.3d at 1021.

¶13 "The 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). Here, the court found that the oldest child was in an adoptive placement, and wanted to be adopted. Her adoptive mother was also interested in adopting the other two children, who were in a therapeutic placement. Moreover, the court found by a preponderance of the evidence that termination would benefit the children because they would not have to fear for their safety. As a result, the court did not err by concluding that severance was in the children's best interests. See *Jesus M.*, 203 Ariz. at 282, ¶ 13, 53 P.3d at 207 (citation omitted) (child's best interests is a factual determination).

CONCLUSION

¶14 Based on the foregoing, we affirm the order terminating Father's parental rights to his three children.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

PHILIP HALL, Judge

/s/

DIANE M. JOHNSEN, Judge