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



DIVISION ONE
FILED: 10/30/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

CRAIG A. ,) No. 1 CA-JV 12-0061
)
Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) 103(G) Ariz. R.P. Juv. Ct.;
ARIZONA DEPARTMENT OF ECONOMIC) Rule 28 ARCAP)
SECURITY, CI LON A., CEA A.,)
EGYPT A.,)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD14963

The Honorable Jo Lynn Gentry-Lewis, Judge

AFFIRMED

David W. Bell Mesa
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General
By Amanda Holguin, Assistant Attorney General Mesa
Attorneys for Appellee ADES

S W A N N, Judge

¶1 On March 22, 2012, the juvenile court terminated the parent-child relationship of Craig A. ("Father") with his three children Ci Lon, Cea, and Egypt A. (the "Children"), after

finding that the Children had been in out-of-home placement for a period of more than nine months, that Father had abandoned the Children and that termination was in their best interests. Father contends on appeal that the juvenile court erred in finding that the state made diligent efforts to provide Father with appropriate reunification services and abused its discretion in finding that he abandoned the Children. We conclude that the evidence supports the juvenile court's findings on both issues. We therefore affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Father and Tier C. ("Mother") are the unwed parents of the Children, who were born in 2004, 2005 and 2006. From 2007 to 2009, Father was incarcerated in California, and upon his release was placed on unsupervised probation for two years. Father had physical custody of the children from November 2009 through March 2010. In March 2010, Father was again incarcerated and charged with several felonies in Arizona. In April 2010, Mother contacted Child Protective Services ("CPS") and reported that she was unable to care for the Children. The Arizona Department of Economic Security took temporary custody of the Children, and Mother was granted visitation rights. Mother stopped visiting the Children after March 2011. Since then, Mother failed to engage in reunification services provided

by the Department, and she failed to provide the Department with proof of stable housing and income.

¶13 On June 30, 2010, the juvenile court found that the Children were dependent as to Father.¹ Father appeared at the dependency hearing and was represented by counsel. The juvenile court approved the Department's case plan of reunification and ordered the Department to provide Father with services upon his release from prison.²

¶14 Since March 2010, Father spent only five months out of prison.³ During Father's incarceration in Arizona, he would send letters and pictures to his attorney to send to the Children. However, since January 2011, Father has been in contact with the Children only once: he visited them in April 2011 and has not seen or spoken to them since. Since that visit, Father has not sent the Children any cards, gifts, letters, or financial

¹ In September 2010, the juvenile court found that the Children were dependent as to Mother. By the same order at issue on this appeal, the court terminated the parental relationship between Mother and the Children. Mother is not a party to this appeal.

² These services included: "parent aide services, psychological consult with recommendation, TERROS assessment with recommendations, rule out urinalysis testing, and communication with his children by way of written correspondence and telephone contact."

³ From March 2010 to October 2010, Father was incarcerated for five months in an Arizona jail for possession of marijuana and possession of a firearm. He was then transferred to a California prison, where he was incarcerated from October 2010 to January 2011. Then Father was incarcerated from May 2011 to January 2012 in a California prison for a parole violation.

support. As of January 2011, the Children have been living with their maternal grandmother, who is willing to adopt them.

¶15 In January 2011, the Department transferred Father's case to a new caseworker. On January 24, 2011, the caseworker sent a letter of introduction to Father at the California prison where Father had been held. The caseworker was unaware that Father had by then been released from the prison, but she believed that he had received the letter because it was never returned.

¶16 On March 1, 2011, Father appeared at a permanency planning hearing. Father contacted the Department to arrange transportation to the permanency hearing. After the hearing, the caseworker sent Father a letter to the address he had given in open court at the hearing, stating that she had been trying to contact him. This letter was also never returned, and she believed that Father had received it. Father never again contacted the Department. Later, at a January 2012 termination hearing, Father admitted that he had provided an address at which he was not residing at the time.

¶17 On August 8, 2011, the Department filed a Motion to Terminate Parent-Child Relationship. The motion alleged that terminating the parent-child relationship was in the best interests of the Children because Father abandoned the Children within the meaning of A.R.S. § 8-533(B)(1), and the Children had

been cared for in an out-of-home placement under the supervision of the juvenile court for a cumulative total period of nine months or longer -- a basis for termination under A.R.S. § 8-533(B)(8)(a). Additionally, the motion asserted that Father had failed to make efforts to reunite with the Children, and since his release from prison on January 19, 2011, he had lived in California without remaining in contact with the Department or the Children. The motion further contended that Father failed to provide reasonable support, maintain regular contact with the Children, or provide normal supervision for them.

¶18 The juvenile court held a severance hearing on March 22, 2012. The court found that Father neglected or willfully refused to remedy the circumstances that caused the Children to be in an out-of-home placement, and that Father has not maintained contact with the Children. Since his May 2011 incarceration, Father has failed to contact the Department and has been unavailable to participate in services offered by the Department.

¶19 Father timely appeals. The first issue he raises is whether the court erred in finding that the state made diligent efforts to provide Father with an appropriate opportunity to reunify with the Children. The second is whether the court erred in finding that Father abandoned the Children.

¶10 We have jurisdiction pursuant to Ariz. R.P. Juv. Ct. 103(A).

STANDARD OF REVIEW

¶11 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, the juvenile court's findings of fact should be accepted unless no reasonable evidence supports them. *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 234, ¶ 13, 256 P.3d 628, 631 (App. 2011). Therefore, the juvenile court's decision about the weight and effect of evidence will not be disturbed unless it is clearly erroneous. *Maricopa Cnty. Juv. Action No. JD-6123*, 191 Ariz. 384, 388, 956 P.2d 511, 515 (App. 1997).

DISCUSSION

I. SUFFICIENT EVIDENCE EXISTED TO SUPPORT THE JUVENILE COURT'S FINDINGS OF STATUTORY GROUNDS FOR SEVERANCE, AND THE JUVENILE COURT DID NOT ERR IN FINDING THAT THE STATE HAD MADE DILIGENT EFFORTS TO PROVIDE APPROPRIATE REUNIFICATION SERVICES.

¶12 To terminate parental rights, a juvenile court must first find by clear and convincing evidence the existence of at least one statutory ground for termination. See A.R.S. § 8-533(B); Ariz. R.P. Juv. Ct. 66(C). Clear and convincing evidence is that which makes the alleged facts highly probable or reasonably certain. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 93, ¶ 2, 210 P.3d 1263, 1264 (App. 2009). We will

not reverse a termination order unless it is clearly erroneous. *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997). The court must also find by a preponderance of the evidence that the termination is in the best interests of the child. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005).⁴

¶13 A.R.S. § 8-533(B)(8) provides that termination of the parent-child relationship is warranted when:

[T]he child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency, . . . the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services and . . . one of the following circumstances exists:

(a) The child has been in an out-of-home placement for a cumulative total period of nine months or longer . . . and the parent has substantially neglected or willfully refused to remedy the circumstances that cause the child to be in an out-of-home placement.

¶14 While the state must demonstrate reasonable efforts at reunification, the Department "is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *In re Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). And the Department is not required to provide services that are futile. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz.

⁴ Father does not separately challenge the court's finding that termination was in the Children's best interests. We therefore do not address the issue.

43, 50, ¶ 18, 83 P.3d 43, 50 (App. 2004). To demonstrate reasonable efforts at reunification, the Department must provide the parent "with the time and opportunity to participate in programs designed to help her become an effective parent." *JS-501904*, 180 Ariz. at 353, 884 P.2d at 239. The court must find that the Department made a diligent effort to provide such services. *Christina G.*, 227 Ariz. at 235, 256 P.3d at 632 (citing A.R.S. § 8-533(B)(8), (D)).

¶15 In this case, the Children have been in an out-of-home placement since April 2010, which is a period of more than nine months. The Children have a stable home and are provided for financially. Moreover, Father concedes that he is currently unable to care for the Children and will not be able to for some time.

¶16 In support of his contention that the Department failed to exercise diligent efforts to provide adequate reunification services, Father points to his attendance at court hearings and his calls to a CPS case manager from February to April 2011. He contends that the Department failed to return his calls and that he could have benefited from services. He now requests additional time to receive services to learn to parent the Children. But between April 2011 and January 2012, Father did not once call the Department to request services or extra time. Father points to his single visit with the Children

in April 2011; however, while it is true that Father made some efforts to reestablish contact with the Children, the evidence nonetheless supports a finding that these efforts were sporadic and ineffective. Moreover, the fact that Father furnished an inaccurate address to CPS undercuts his contention that CPS failed to contact him.

¶17 We acknowledge that during the periods he was incarcerated in California, Father was unavailable to participate in services offered by the Department. But when "circumstances prevent the [parent] 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 Cnty. Juvenile Severance Action No. S-114487*, 179 Ariz. 86, 97, 876 P.2d 1121, 1132 (1994). We conclude that the juvenile court did not err in finding that the Department exerted sufficient efforts to offer reunification services to Father.

II. SUFFICIENT EVIDENCE SUPPORTED THE JUVENILE COURT'S FINDING OF ABANDONMENT.

¶18 Father also contends that the juvenile court abused its discretion when it found that he had abandoned the Children. We disagree. Under A.R.S. § 8-533(B), evidence sufficient to justify the termination of the parent-child relationship shall include abandonment of the child. A.R.S. § 8-533(B)(1).

¶19 A.R.S. § 8-531 defines abandonment as

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.

¶20 "The term 'abandonment' must be somewhat elastic and questions of abandonment and intent are questions of fact for the resolution of the trial court." *Anonymous v. Anonymous*, 25 Ariz. App. 10, 12, 540 P.2d 741, 743 (1976). The appropriate test to determine if a child has been abandoned is "whether there has been conduct on the part of the parent[] which implies a conscious disregard of the obligations owed by a parent to the child, leading to the destruction of the parent-child relationship." *Id.*

¶21 Father contends that he sent letters and drawings to the Children, made numerous attempts to contact the Children, and repeatedly tried to contact the Department in order to inquire about reunification services, but received no response. As we noted in connection with CPS's efforts to provide services, Father failed to provide accurate contact information to CPS, and his other efforts to contact the Children were far from vigorous.

¶22 The juvenile court apparently assumed the truth of Father's contentions that he took these actions before March 2011. But it properly found that since then, Father has not maintained contact with the Department or the Children. Indeed, he did not contact the Children's maternal grandmother, who has physical custody of the Children. We cannot find clear error in the court's finding that Father failed for more than six months to provide reasonable support and to maintain regular contact with the Children.

CONCLUSION

¶23 For the foregoing reasons, we affirm the termination of Father's relationship with the Children.

/s/

PETER B. SWANN, Judge

CONCURRING:

/s/

PHILIP HALL, Presiding Judge

/s/

LAWRENCE F. WINTHROP, Judge