

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



DIVISION ONE
FILED: 10/09/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

TAURUS M.,) 1 CA-JV 12-0080
)
Appellant,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Ariz.R.P.Juv.Ct.
ARIZONA DEPARTMENT OF ECONOMIC) 103(G); ARCAP 28)
SECURITY, TAURUS M., DARYL-CRAIG)
M.,)
)
Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD20123

The Honorable Aimee L. Anderson, Judge

AFFIRMED

Robert D. Rosanelli
Attorney for Appellant

Phoenix

Thomas C. Horne, Attorney General
By Michael F. Valenzuela, Assistant Attorney General
Attorneys for Appellees

Phoenix

H O W E, Judge

¶1 Taurus M. ("Father") appeals from the termination of his parental rights to T.M. and D.M. ("the children") based on abandonment and out-of-home placement for six months or longer of children under age three. Finding no error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 The children came to the attention of the Arizona Department of Economic Services ("ADES") in March 2011, when his girlfriend, the mother ("Mother") came to the hospital with bruises and contusions on her face to deliver D.M. Because Mother told hospital personnel that Father had hit her, the social worker contacted ADES. In its investigation, ADES learned that Father has a history of domestic violence, including the suffocation of two infants in his care.

¶3 ADES attempted to take temporary custody of the children, but Father absconded with T.M. He was arrested but immediately posted bond. He was later charged with and convicted of custodial interference. ADES then filed a dependency petition against both parents and obtained a court order for custody of the children.¹ ADES offered Father reunification services, including a psychological consultation with follow-up recommendations, a psychological evaluation, parent-aide services, domestic violence counseling, and paternity testing. Father refused these services because he did not trust ADES and told ADES that he would obtain his own reunification services.

¹ Mother is not a party in this case.

¶4 Although Father appeared at an initial hearing to deny the dependency allegations, he failed to appear at subsequent proceedings, and the juvenile court found that the children were dependant as to him. Father did not appear at any other proceeding until September 2011, when he contested ADES's severance petition that alleged abandonment under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(1) (West 2012).² Later that month, ADES amended its petition to allege the additional ground that the children were under three-years-old and had been in out-of-home placement for six months or longer pursuant to court order. See A.R.S. § 8-533(B)(8)(b).

¶5 At the March 2012 contested severance hearing, the case manager testified that the children had been placed with Mother, who was participating in reunification services. Father, in contrast, had been uncooperative and refused ADES's attempts to provide him with reunification services, and he did not complete the services on his own. Although ADES and Father presented conflicting testimony about his contact with and financial support of the children, he admitted that he ceased any support after going to prison in November 2011 for custodial interference.

² Absent material revisions to this decision, we cite the current version of applicable statutes.

¶6 The juvenile court terminated Father's parental rights, finding by clear and convincing evidence the statutory grounds of abandonment under A.R.S. § 8-533(B)(1), and out-of-home placement of six months or longer under A.R.S. § 8-533(B)(8)(b). It also found by a preponderance of the evidence that severance was in the best interests of the children.³

¶7 Father timely appealed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), -2101(B), and 8-235(A).

DISCUSSION

¶8 Father argues that the juvenile court erroneously terminated his parental rights to the children based on out-of-home placement under A.R.S. § 8-533(B)(8)(b) because ADES failed to make diligent efforts to provide reunification services.⁴ We view the evidence and all reasonable inferences therefrom in the light most favorable to upholding the juvenile court's order. See *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2, 181 P.3d 1126, 1128 (App. 2008). We accept the juvenile

³ Father has not challenged the juvenile court's finding that termination was in the children's best interests. We therefore accept this finding.

⁴ Because our resolution of this issue makes it unnecessary to determine whether termination of Father's parental rights was warranted on other grounds, we will not address Father's claim that insufficient evidence supports termination based on abandonment. See *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 251, ¶ 27, 995 P.2d 682, 687 (2000).

court's factual findings if supported by reasonable evidence, and we affirm a severance order unless it is clearly erroneous. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002). We do not reweigh the evidence because the juvenile court, as the trier of fact, "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4, 100 P.3d 943, 945 (App. 2004).

¶19 Before the juvenile court may terminate parental rights, it must find by clear and convincing evidence one or more statutory ground for termination, and by a preponderance of the evidence that termination is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, 280, ¶ 1, 110 P.3d 1013, 1014 (2005). Under A.R.S. § 8-533(B)(8)(b), the juvenile court may terminate parental rights based upon clear and convincing evidence that a child under age three

has been in out-of-home placement for a cumulative total period of six months or longer pursuant to court order 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, including *refusal to participate in reunification services offered by the department.*

(Emphasis added.) The evidence was uncontroverted that both children were under three-years-old and had been in out-of-home

placement pursuant to court order for almost a year at the time of severance.

¶10 The evidence also demonstrated that Father failed to remedy the circumstances that caused the out-of-home placement because he "refused to participate in the reunification services" ADES offered. See *id.* Father concedes that ADES offered him a psychological consultation with follow-up recommendations, a psychological evaluation, parent-aide services, domestic violence counseling, and paternity testing. He testified that he refused these services because he did not trust ADES and that he would obtain them on his own. Despite having been released on bond from April to November 2011, Father did not obtain his own reunification services. Although Father testified that he started domestic violence counseling, he provided no documentation to support his claim, and admitted that he did not complete it. Sufficient evidence thus supports the termination of Father's parental rights pursuant to A.R.S. § 8-533(B)(8)(b).

¶11 Father argues that the juvenile court erred in finding grounds for severance because ADES failed to meet its constitutional and statutory duty to provide appropriate reunification services before his incarceration and any services afterward. He contends that once he was released from prison, ADES had a duty to offer him services designed to improve his

parenting skills. He has waived these arguments by failing to raise them at trial and by failing to identify the services that he believed ADES should have offered. *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 235, ¶¶ 14, 15, nn.6 & 8, 256 P.3d 628, 632 nn.6 & 8 (App. 2011) (noting that failure to raise an issue until the opening brief and failure to develop an argument in an opening brief each constitutes waiver).

¶12 Moreover, Father ignores that he refused ADES's offer of reunification services, remained uncooperative from the beginning of the dependency and severance process, and testified that he did not seek services at his prison in Douglas because they were unavailable. Under such circumstances, any additional effort to provide reunification services would likely have been futile. See *In re Maricopa Cnty. Juv. Action No. JS-5209 & No. JS-4963*, 143 Ariz. 178, 189, 692 P.2d 1027, 1038 (App. 1984), "We do not believe that the department's duty to attempt to preserve the family goes so far as to require it to undertake efforts which are futile."

¶13 Substantial evidence thus supports the juvenile court's ruling that termination was warranted based on the out-of-home placement under A.R.S. § 8-533(B)(8)(b).

CONCLUSION

¶14 For these reasons, we affirm.

_____/s/_____
RANDALL M. HOWE, Judge

CONCURRING:

_____/s/_____
MAURICE PORTLEY, Presiding Judge

_____/s/_____
PATRICIA A. OROZCO, Judge