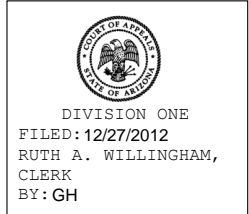


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ANTHONY J.,) 1 CA-JV 12-0136
)
Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz.R.P. Juv.
SECURITY, ANTHONY R.,) Ct.; Rule 28 ARCAP)
)
Appellees.)
)
)
)

Appeal from the Superior Court in Yavapai County

Cause No. P1300JD200900053

The Honorable David L. Mackey, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Eric Devany, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

Law Office of Florence M. Bruemmer, P.C. Anthem
By Florence M. Bruemmer
Attorneys for Appellant

G O U L D, Judge

¶1 Anthony J. ("Father") appeals from the juvenile court's order denying his requests for visitation with his son, A.R. For the following reasons, we affirm.

Facts and Procedural Background

¶2 Father was indicted for a number of drug-related charges, first degree murder, and child abuse in April 2009. All of these offenses were allegedly committed in Father's home in the presence of his children. Father later pled guilty to two counts of possession of narcotic drugs for sale and one count of possession of dangerous drugs for sale, and has been incarcerated since at least November 2009. In November 2009, the Arizona Department of Economic Security ("ADES") filed a dependency petition alleging that Father had neglected his four children because he was incarcerated and that he was unable to parent due to his incarceration and pending criminal charges. The children were removed and placed with extended family or in foster care, including A.R., who was placed in foster care.

¶3 At a hearing on September 21, 2010, Father requested visitation with A.R. The court ordered that visits between A.R. and Father could occur, but "only upon recommendation of the therapist." A.R. had previously committed criminal acts, received school suspension, had been placed in juvenile detention for a couple of days, and had been placed on probation for a year.

¶4 At a hearing on January 18, 2011, the Guardian Ad Litem stated that "[S]on's [A.R.'s] behavior has not improved since the beginning of the case," and objected to further visits until his behavior improved. A representative from the West Yavapai Guidance Center reported that A.R. had been engaging in criminal activity, that he had had a fight at school, and that because of his "lack of progress" and "criminal behaviors," he had had to be moved to a new placement in order to give him a "second chance." The court affirmed its order that A.R. not have visitation with Father except upon the recommendation of A.R.'s therapist.

¶5 A report dated April 13, 2011 documents that as of that date, A.R.'s therapist was recommending against visitation between Father and A.R.

¶6 On July 26, 2011, Father again requested visitation with A.R., but the court denied his request, explaining that "the one thing that stands out with me from the review of this file is [Father's] involvement with criminal activity in front of the children in the home"

¶7 Father again requested visitation on September 20, 2011, but the court declined to modify its visitation order after it was reported that the therapist was still recommending against visits between Father and A.R. at the prison.

¶8 In December 2011, A.R.'s therapist opined that a therapeutic telephonic visit with Father would be appropriate,

and the court granted ADES's motion to allow this type of visitation.

¶9 However, after the telephonic visits, A.R. acted "belligerent[ly]" towards his foster parents, and had knocked over a desk in his room in late January 2012, according to an April 4, 2012 report. As a result of this behavior, A.R. was removed from foster parents and placed in Canyon State Academy. The report also explained that while A.R. enjoyed the telephonic visits with Father, "the Department continues to have concerns that [A.R.] is not emotionally able to handle that contact" because "both his foster parents and his therapist have noticed that [A.R.'s] behavior regresses after family visits and phone calls with his father."

¶10 In March 2012, because A.R.'s behavior had "regressed significantly since he started having phone calls with [Father]," ADES requested that the court reconsider allowing visitation with Father. ADES explained that A.R. was "currently at risk of disrupting from his placement and being sent to Sycamore Canyon or Adobe Mountain by probation." ADES recommended against visitation until A.R.'s behavior "stabilized."

¶11 On April 10, the juvenile court ordered that there be no contact between A.R. and Father, explaining that it was affirming the delinquency court's no-contact order. Apparently, based on A.R.'s bad behavior, the delinquency court

had ordered that A.R. have no contact with Father, although the basis for the delinquency court's order does not appear in the record.

¶12 On May 8, 2012, Father requested that the court reconsider its no-contact order with A.R. The court denied this motion and affirmed that it was following the order issued in A.R.'s delinquency case.

¶13 Father timely appeals. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 8-235 (West 2012).

Discussion

¶14 When evaluating visitation, we are guided by the principle that a parent's visitation rights may be properly restricted only when visitation endangers the child. *Michael M. v. Ariz. Dep't of Econ. Sec.*, 202 Ariz. 198, 201, ¶ 11, 42 P.3d 1163, 1166 (App. 2002). Because the trial judge is the best position to evaluate visitation, we view the facts "in the light most favorable to sustaining the juvenile court's findings" and will affirm if there is any evidence to support the trial court's decision. *Maricopa County Juv. Action No. JD-5312*, 178 Ariz. 372, 375-76, 873 P.2d 710, 713-14 (App. 1994).

¶15 Father contends that the court erred by relying on what he calls "speculation" by A.R.'s therapist and ADES that visitation would cause A.R. harm. Father points to a psychological evaluation of A.R. by Dr. Wagner on April 4, 2012

that tentatively recommended phone visitation with Father be allowed "only as long as fully supervised/monitored by a trained [mental health] professional[,]” with the qualifying instruction that “[i]f inappropriate, then cease further contact.”

¶16 However, by the time this recommendation issued, ADES had already requested that visitation be stopped based on the apparent negative influence the telephone visits had had on A.R. The fact that the court had previously suggested that it would follow the therapist’s recommendation in no way compelled the court to ignore the evidence that A.R.’s visits with Father appeared to have a negative influence on A.R.’s behavior. It was within the court’s discretion to weigh the evidence of A.R.’s bad behavior after previous visits against the recommendation of A.R.’s new therapist.

¶17 As summarized above, the therapist and foster family reported that A.R. regressed after visits with Father, and the terms of A.R.’s probation prohibited A.R. from having any contact with Father. Because this evidence supports the conclusion that it would be contrary to A.R.’s best interests to have contact with Father, we are obligated to affirm the trial court’s order prohibiting visitation.¹

¹ On December 17, 2012, we received a supplement to the record that indicated that on December 4, 2012, the juvenile court had decided to allow telephonic visitation between Anthony J. and A.R. if the delinquency court was willing to modify the

Conclusion

¶18 For the foregoing reasons, we affirm.

/s/

ANDREW W. GOULD, Judge

CONCURRING:

/s/

MICHAEL J. BROWN, Presiding Judge

/s/

DONN KESSLER, Judge

terms of A.R.'s probation. Based on this supplement, we held a telephonic hearing with the parties to determine whether this appeal was moot. Because Father is appealing from both the juvenile court's order and its reliance on the no-contact order in the delinquency matter, and the no-contact order has not been lifted, this appeal is not moot. We note that our decision is without prejudice to any subsequent modifications of visitation that may be made by the juvenile court.