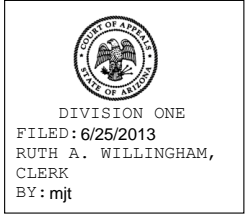


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

WINSTON E.,) No. 1 CA-JV 13-0031
)
Appellant,) DEPARTMENT C
)
) **MEMORANDUM DECISION**
v.) (Not for Publication -
) Rule 28, Arizona Rules of
ARIZONA DEPARTMENT OF ECONOMIC) Civil Appellate Procedure)
SECURITY, D.E.,)
)
Appellees.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD19133

The Honorable Cari A. Harrison, Judge

AFFIRMED

Robert D. Rosanelli
Attorney for Appellant

Phoenix

Thomas C. Horne, Attorney General Phoenix
By Michael F. Valenzuela, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

J O H N S E N, Judge

¶1 Winston E. ("Father") appeals the superior court's order terminating his parental rights as to his daughter.¹ For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In May 2010, Child Protective Services ("CPS") learned that Winston's daughter, who was born in August 2001, had numerous bruises that she said were caused by her mother ("Mother"). CPS took the child into temporary physical custody, and the Arizona Department of Economic Security ("ADES") filed a petition alleging she was dependent as to Mother and Father.²

¶3 The dependency petition alleged that Father did not have an order of custody for the child, was unable to parent due to being incarcerated and neglected the child during his incarceration from 2001 to 2009. In July 2010, the superior court found the child dependent as to Mother and Father and approved a case plan of family reunification. The court ordered CPS to provide Father with parent-aide services and a psychological consultation.

¶4 Consistent with the court's order, CPS provided Father with transportation to a psychological evaluation and with a referral for parent-aide services in September 2010. But Father

¹ The caption has been amended to safeguard the identity of the juvenile pursuant to Administrative Order 2013-0001.

² The superior court also severed Mother's parental rights; she, however, is not a party to this appeal.

refused transportation to the evaluation and never completed an intake assessment with the referral agency. CPS scheduled a second appointment for a psychological evaluation in October 2010, but Father failed to appear for the evaluation. Father was arrested in April 2011 on drug charges.

¶15 Throughout the dependency proceedings and the termination proceedings that followed, CPS lacked consistent contact with Father. Father did not initiate contact with CPS and did not provide CPS with a reliable telephone number. After his arrest in April 2011, CPS attempted to contact Father through parent-locate searches and through county jail databases. CPS discovered in August 2011 that Father was incarcerated, with a latest-possible release date of October 15, 2013. In October 2011, ADES filed a motion to terminate Father's parent-child relationship.

¶16 Because Father was incarcerated at the time of the termination hearing, the court ordered the Department of Corrections to allow him to appear at trial by telephone. Nevertheless, Father did not call in for the hearing, which proceeded in his absence, with the participation of his lawyer and guardian ad litem. *See generally Christi A. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 299, 307, ¶¶ 26-28, 173 P.3d 463, 471 (App. 2007) (parent who does not appear at termination hearing despite notice is entitled to representation at hearing).

¶17 At the hearing, the CPS case manager testified that the child had been in an out-of-home placement for a cumulative total of 15 months. The case manager also testified that Father's incarceration prevented the child from being provided with a normal home and that Father could not provide her with normal supervision or appropriate financial or emotional stability. Additionally, the case manager testified that she did not believe Father had demonstrated his ability to parent, given that Father was convicted of a crime and sentenced to two years in prison while his daughter was placed outside the home.

¶18 The superior court granted ADES's motion to sever based on the grounds of length of sentence and nine months and 15 months time-in-care pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-533(B)(4) and (8)(a) and (c) (West 2013), respectively.³ The court also found severance was in the child's best interests. We have jurisdiction of Father's timely appeal pursuant to A.R.S. § 8-235(A) (West 2013).

DISCUSSION

A. Standard of Review.

¶19 The superior court may terminate a parent-child relationship if ADES proves by clear and convincing evidence at least one of the statutory grounds set out in A.R.S. § 8-533(B).

³ Absent material revision after the relevant date, we cite a statute's current version.

Michael J. v. Ariz. Dep't of Econ. Sec., 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). Additionally, the court must find by a preponderance of the evidence that termination is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005).

¶10 On appeal, this court will accept the superior court's findings of fact unless no reasonable evidence supports them. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002). Moreover, we will affirm a severance order unless it is clearly erroneous. *Id.*

B. ADES's Diligent Efforts to Provide Appropriate Reunification Services.

¶11 On appeal, Father does not dispute the court's finding that ADES proved, pursuant to A.R.S. § 8-533(B)(8)(a), that his daughter had been in an out-of-home placement for at least nine months and that he "substantially neglected or wilfully refused to remedy the circumstances that cause[d]" the child to be placed outside the home. His only argument relevant to the superior court's termination order on time-in-care grounds is that the court erred in finding that ADES made a diligent effort to provide appropriate reunification services pursuant to A.R.S. § 8-533(B)(8).⁴

⁴ Arguments not made on appeal generally are waived. See *Schabel v. Deer Valley Unified Sch. Dist. No. 97*, 186 Ariz. 161, 167, 920 P.2d 41, 47 (App. 1996).

¶12 ADES fulfills its statutory mandate under A.R.S. § 8-533(B)(8) when it provides the parent with the "time and opportunity to participate in programs designed to help [the parent] become an effective parent." *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). Additionally, ADES is obligated to undertake efforts that offer a reasonable probability of success, but is not required to provide measures that are futile. *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 187, ¶ 1, 971 P.2d 1046, 1048 (App. 1999).

¶13 Here, reasonable evidence supports the superior court's finding that ADES made a diligent effort to provide Father with appropriate reunification services. CPS provided Father an opportunity to complete a psychological evaluation, but he refused transportation to the first scheduled evaluation and failed to attend the second. Additionally, CPS provided him with access to parent-aide services, but Father never completed the intake assessment with the referral agency. After missing his second scheduled appointment, Father never contacted CPS again, and the agency's attempts to contact him failed.

¶14 Although Father argues CPS should have provided him reunification services while he was incarcerated, he had effectively rejected the offers the agency made to provide him with reunification services before he was incarcerated. He had

approximately seven months prior to his arrest in April 2011 to complete the services CPS offered him; during that time he failed to attend any of his scheduled appointments and never provided CPS with a reliable way to contact him. CPS was not required to continue to try to provide Father with services when he had declined to participate in the services it had offered. See *JS-501904*, 180 Ariz. at 353, 884 P.2d at 239 (State does not need to "provide every conceivable service or to ensure that a parent participates in each service it offers.").

CONCLUSION

¶15 For the foregoing reasons, we affirm the severance of Father's parental rights as to his daughter.⁵

_____/s/_____
DIANE M. JOHNSEN, Judge

CONCURRING:

_____/s/_____
PETER B. SWANN, Presiding Judge

_____/s/_____
RANDALL M. HOWE, Judge

⁵ Because we affirm the court's order granting severance on the basis of nine months in out-of-home placement, we need not address Father's argument concerning any other grounds for the court's order. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002).