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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: 8/1/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JONATHAN B. ,) 1 CA-JV 13-0039
)
Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz. R.P. Juv.
SECURITY, I.B.,¹) Ct.; Rule 28 ARCAP)
)
Appellees.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD19554

The Honorable A. Craig Blakey, II, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Nicholas Chapman-Hushek, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

Law Office of David M. Osterfeld Buckeye
By David M. Osterfeld
Attorneys for Appellant

O R O Z C O, Judge

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

¶1 Jonathan B. (Father) appeals the juvenile court's order terminating his parent-child relationship with I.B. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Father is the biological father of I.B., born in September 2008. After I.B.'s mother passed away in June 2010, the Arizona Department of Economic Security (ADES) received a report that Father was abusing opiates, left I.B. alone in their apartment on a daily basis, and attempted to drive while under the influence and with I.B. in the car. Although Father had a prescription for opiates, he admitted that he was addicted to them. Father also tested positive for oxymorphone, a prescription medication that had not been prescribed to him.

¶3 ADES took temporary physical custody of I.B. in September 2010 and placed him with a relative.² ADES subsequently filed a dependency petition. In the petition, ADES alleged that Father was neglecting I.B. by abusing prescription drugs and by not seeking treatment for his mental illness caused by grief over the loss of I.B.'s mother. ADES alleged that I.B. was dependent as to Father as a result of these issues.

¶4 At a preliminary protective hearing held in September

² ADES initially placed I.B. with two paternal aunts but subsequently transferred his custody to a maternal aunt. I.B. only lived with his aunts briefly, and at the time of the contested severance hearing, he had been residing with his maternal grandmother for more than two years.

2010, Father was granted unlimited, supervised visits with I.B. Father also agreed to participate in parent aide services, a psychological consultation, substance abuse assessment and treatment, and random urinalysis testing.

¶15 From September 2010 through April 2011, Father participated in the services offered by ADES. He attended a psychological consultation and evaluation and completed grief counseling. Although Father's therapist recommended that Father continue attending counseling, he failed to do so. Father also began attending substance abuse treatment in September 2010; however, he missed meetings and tested positive for benzodiazepines, methamphetamine, oxycodone, methadone, opiates, and THC during the next two months. Despite the missed meetings and the positive drug tests, Father completed intensive outpatient substance abuse treatment in November 2010.

¶16 Beginning in April 2011, Father stopped participating in random urinalysis testing; he told his case manager that he stopped testing because he was taking oxycodone.³ Around this time, Father was also closed out of parent aide services because of non-compliance.

¶17 Although ADES was ordered to provide Father with supervised visits with I.B., Father failed to contact his case

³ Father testified that he had been prescribed oxycodone at that time because he had kidney stones.

aide and did not participate in any visitation with I.B. from July 2011 until January 2012. Father also stopped participating in any of the other services offered by ADES during this period.

¶8 On December 5, 2011, ADES filed a motion to terminate Father's parental rights to I.B. on the grounds of abandonment pursuant to Arizona Revised Statutes (A.R.S.) section 8-533.B.1 (Supp. 2012),⁴ substance abuse pursuant to A.R.S. § 8-533.B.3, and out-of-home placement of I.B. for a total period of nine months or more pursuant to A.R.S. § 8-533.B.8(a).

¶9 After ADES filed its motion to terminate, it agreed to make additional referrals for case aide, substance abuse treatment, random urinalysis testing, individual counseling, and transportation for Father. In January 2012, Father resumed participating in services, including random urinalysis testing and visits with I.B. Father also returned to his substance abuse treatment program; however, during treatment sessions, he denied having a substance abuse problem and did not think he should have to be there.

¶10 In June 2012, Father again stopped participating in services, stating that he instead wanted to focus on securing employment. Father also stopped visiting with I.B. during this time because he thought he was going lose I.B. anyway.

⁴ We cite to the current version of applicable statutes when no revisions material to this decision have occurred.

¶11 A contested severance hearing was held on December 6, 2012. After taking the matter under advisement, the juvenile court found that ADES had proven by clear and convincing evidence the three grounds alleged in its severance motion. The court also determined that severance was in I.B.'s best interest and ordered that Father's parental rights to I.B. be terminated.

¶12 Father timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235.A (2007), 12-120.21.A.1 (2003) and -2101.A.1 (Supp. 2012).

DISCUSSION

¶13 To terminate the parent-child relationship, the juvenile court must find that at least one of the statutory grounds listed in A.R.S. § 8-533.B exists and that termination is in the best interest of the child. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). Because the juvenile court is "in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings," *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987), this court will not reweigh the evidence but will only determine if there is enough evidence to support the court's ruling. *Maricopa County Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996). We will not reverse the juvenile court's severance order unless the

court's factual findings are clearly erroneous. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998).

Statutory Ground

¶14 Father contends the trial court erred in finding that ADES made reasonable and diligent efforts to provide him with appropriate reunification services, which is required for termination under A.R.S. § 8-533.B.8(a) based on out-of-home care for nine months or more. However, the juvenile court is not required to determine if ADES has made reasonable and diligent efforts to reunite a parent and child when terminating parental rights on the grounds of abandonment. *Toni W. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 61, 64, ¶¶ 8-9, 993 P.2d 462, 465 (App. 1999). Because Father does not challenge the juvenile court's finding that termination was appropriate on the basis of abandonment, he has waived this issue, and we affirm the juvenile court's order terminating his parental rights on that ground. *See Schabel v. Deer Valley Unified Sch. Dist. No. 97*, 186 Ariz. 161, 167, 920 P.2d 41, 47 (App. 1996) (issues not raised in an appellate brief are waived).

¶15 Because we affirm the termination of Father's parental rights on the basis of abandonment, we need not address Father's contention that severance was improper on the grounds of nine months of out-of-home care. *See Michael J.*, 196 Ariz. at 251, ¶

27, 995 P.2d at 687 ("Because we affirm the trial court's order granting severance on the basis of abandonment, we need not consider whether the trial court's findings justified severance on the other grounds announced by the court.").

Best Interest

¶16 Father also argues that the juvenile court erred in finding that termination was in I.B.'s best interest. Whether termination of parental rights is in the child's best interest is a factual question for the juvenile court to determine. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 13, 53 P.3d 203, 207 (App. 2002).

¶17 Termination of parental rights requires the juvenile court to find by a preponderance of the evidence that termination is in the best interest of the child. *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005). ADES can establish that termination is in the child's best interest by presenting credible evidence that demonstrates that the child would derive an affirmative benefit from severance or be harmed by the continuation of the relationship. *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 6, 100 P.3d 943, 945 (App. 2004). The best interest requirement can be met if ADES proves that a current adoptive plan exists for the child or even that the child is adoptable. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19, 83 P.3d 43, 50 (App.

2004). Whether the existing placement is meeting the needs of the child is also considered. *Audra T.*, 194 Ariz. at 377, ¶ 5, 982 P.2d at 1291.

¶18 Here, the case manager testified that he believed severance and adoption was in I.B.'s best interest because it would provide I.B. with permanency. He further stated that I.B.'s maternal grandmother was committed to adopting I.B. and was able to meet all of his needs.

¶19 Based on the evidence presented, the juvenile court found that ADES had proven by a preponderance of the evidence that termination of the parent-child relationship was in I.B.'s best interest. Specifically, it found that severance would benefit I.B. because he had been "thriving in a loving, stable environment with his grandmother" for over two years. It further found that I.B. was very attached to his grandmother, who was fulfilling all of his needs and wanted to adopt him. We therefore conclude that sufficient evidence supports the juvenile court's finding that termination of Father's parental rights was in I.B.'s best interest.

CONCLUSION

¶20 For the foregoing reasons, we affirm the juvenile court's order terminating Father's parent-child relationship with I.B.

/S/

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

JOHN C. GEMMILL, Presiding Judge

/S/

PATRICIA K. NORRIS, Judge