

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



DIVISION ONE
FILED: 08/27/2013
RUTH A. WILLINGHAM,
CLERK
BY: GH

JOSE R.,) No. 1 CA-JV 13-0060
)
Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Rule 103 (G), Ariz. R. P.
SECURITY, R.G., J.G., M.C., G.E.,) Juv. Ct.; ARCAP 28)
)
)
Appellees.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD18328

The Honorable Mina Mendez, Judge *Pro Tempore*

AFFIRMED

Thomas C. Horne, Arizona Attorney General Tucson
By Cathleen E. Fuller, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

David W. Bell, Attorney at Law Mesa
By David W. Bell
Attorney for Appellant

B R O W N, Judge

¶1 Jose R. (Father), the biological father of R.G. (born June 2005), J.G. (born June 2006), and M.C. (born September

2008) (collectively, the children),¹ appeals from the juvenile court's termination of his parental rights. For the following reasons, we affirm.

BACKGROUND²

¶12 In April 2009, Father was stopped and arrested for driving while under the influence (DUI). At the time of the stop, R.G., J.G., and M.C. were in the vehicle. Subsequent to his arrest, Father was incarcerated for the DUI and the children were placed in Magdalene G.'s (Mother) custody.³ Father pled guilty to one count of aggravated DUI and was placed on probation and released from jail on July 10, 2009.

¶13 On August 19, 2009, the Arizona Department of Economic Security (ADES) filed a dependency petition alleging R.G., J.G. and M.C. were dependent as to Father and Mother.⁴ The juvenile court granted the petition. Father participated in services and otherwise complied with the ADES case plan. On December 2,

¹ The motion to terminate Father's parental rights also named a fourth child, G.E. (born June 2010). As explained *infra*, ¶ 12, Father is not G.E.'s biological parent.

² We review the evidence and draw all reasonable inferences in the light most favorable to upholding the juvenile court's factual findings. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 13, 53 P.3d 203, 207 (App. 2002).

³ Although Father and Mother were legally married, at the time of Father's arrest, they no longer resided together.

⁴ Mother's parental rights to the children were also severed, but she is not a party to this appeal.

2010, on ADES' motion, the dependency action was dismissed and the children were returned to Father's custody.

¶14 In May 2011, Father was arrested for aggravated assault. As a result, he was incarcerated and the children lived with Mother. On June 14, 2011, Father participated in a custody hearing in family court and agreed that Mother should have sole legal custody of the children.

¶15 In August 2011, the children were taken into Child Protective Services (CPS) custody after M.C. was seriously injured, allegedly by Mother's boyfriend. ADES subsequently filed another petition alleging the children were dependent as to Father and Mother. Specifically, as to Father, ADES alleged that he "neglect[ed] his children by failing to protect them from Mother's physical abuse and neglect" and that he "neglect[ed] his children due to incarceration." The juvenile court found the children dependent.

¶16 In November 2011, Father was sentenced to a thirty-month term of imprisonment for the aggravated assault crime. The maximum end date for Father's sentence is November 12, 2013.

¶17 In June 2012, ADES moved to terminate Mother and Father's parental rights to the children. ADES alleged: (1) R.G., J.G, and M.C. were cared for in an out-of-home placement pursuant to court order from August 18, 2009 until December 2, 2010 and, within eighteen months after the children were

returned to Father, the children were again removed and placed in out-of-home care, and Father is currently unable to discharge parental responsibilities (A.R.S. § 8-533(B)(11)(d)); (2) Father is incarcerated and his sentence is of such length that the children would be deprived of a normal home for a period of years (A.R.S. § 8-533(B)(4)); and (3) Father failed to protect the children from willful abuse (A.R.S. § 8-533(B)(2)).

¶8 Following a contested severance hearing, the juvenile court terminated Father's parental rights to the children, finding the State had proven the three statutory bases alleged and that termination is in the children's best interests. Father appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 8-235 and Rule 103(A) of the Arizona Rules of Procedure for the Juvenile Court.

DISCUSSION

¶9 To terminate parental rights, the juvenile court must find, by clear and convincing evidence, the existence of at least one of the statutory grounds for termination enumerated in A.R.S. § 8-533(B). *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). The juvenile court must also find, by a preponderance of the evidence, that termination is in the child's best interest. *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005). We will affirm an order terminating parental rights unless the

juvenile court abused its discretion by making "factual findings [that] are clearly erroneous[;] that is, unless there is no reasonable evidence to support them." *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998) (citations omitted).

¶10 Father does not challenge the juvenile court's finding that termination of his parental rights to R.G., J.G., and M.C. was warranted pursuant to A.R.S. § 8-533(B)(11) (providing statutory basis for termination when, within eighteen months of being returned to a parent's custody from court-ordered out-of-home care, a child is again placed in out-of-home care pursuant to court order). Therefore, we do not address the court's other statutory findings as to R.G., J.G., and M.C. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002) (explaining that if evidence supports any one of the statutory grounds on which the juvenile court ordered severance, appellate court does not need to address arguments relating to other grounds).

¶11 The juvenile court's termination order also severed Father's "parental rights" as to G.E. At the severance hearing, however, the court admitted, without objection, the State's exhibit containing the results of Father's paternity test, which established that Father is not G.E.'s biological father. Pursuant to A.R.S. § 8-531(10), a "parent" is defined as "the

natural or adoptive mother or father of a child." Thus, for termination purposes, Father is not G.E.'s "parent" and, in relation to G.E., Father has no parental rights to sever.⁵

¶12 As a result, the only issue properly before us is whether the juvenile court erred by finding termination of Father's parental rights was in the children's best interests. "[A] determination of the child's best interest must include a finding as to how the child would benefit from a severance or be harmed by the continuation of the relationship." *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). Factors that support a finding that a child would benefit from termination of parental rights include evidence of an adoption plan, that the child is "adoptable," or that the existing placement is meeting the child's needs. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 5, 982 P.2d 1290, 1291 (App. 1998).

¶13 The case manager, Andrew Tarango, acknowledged that Father "had a good relationship" with the children, has "often" sent them letters and gifts, and the children have "positive feelings" toward him. Nonetheless, Tarango opined that termination of Father's parental rights is in the children's best interest because Father's criminal conduct has resulted in

⁵ We note, as reflected in the record, that Father considered himself to be G.E.'s father. We also recognize that the juvenile court was inclined to dismiss G.E. from the termination proceedings, but did not do so at Father's request.

the children repeatedly being exposed to abuse and neglect. Tarango also testified that the children are all placed in potential adoptive placements that are meeting their needs and termination of Father's parental rights would allow the children to achieve permanency and stability. Thus, we conclude that reasonable evidence supports the juvenile court's finding that termination of Father's parental rights is in the children's best interests.

CONCLUSION

¶14 For the foregoing reasons, we affirm the juvenile court's order terminating Father's parental rights to the children.

_____/s/_____
MICHAEL J. BROWN, Presiding Judge

CONCURRING:

_____/s/_____
JON W. THOMPSON, Judge

_____/s/_____
MARGARET H. DOWNIE, Judge