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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 8/20/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

FLOYD B. ,) 1 CA-JV 13-0073
)
Appellant,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz. R. P. Juv. Ct. ;
SECURITY, F.B., G.B., B.B., A.B.,) Rule 28 ARCAP)
)
Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD20468

The Honorable Aimee L. Anderson, Judge

AFFIRMED

Christina Phillis, Maricopa County Public Advocate Phoenix
By Suzanne W. Sanchez, Deputy Public Advocate
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General Tucson
By Erika Z. Alfred, Assistant Attorney General
Attorney for Appellee

Law Office of Iris Garcia Maes Phoenix
By Iris G. Maes
Guardian Ad Litem for Children

C A T T A N I, Judge

¶1 Floyd B. appeals the juvenile court's order terminating his parental rights to F.B., G.B., B.B., and A.B.¹ For the reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND²

¶2 Floyd is the biological father of F.B., G.B., B.B., and A.B. (born 2003, 2004, 2005, and 2009, respectively). When not incarcerated, Floyd lived with the children and their biological mother, Judy S. ("Mother").³ After the birth of his oldest child, Floyd was in prison for a total of three years (June 2003 to June 2004 and April 2006 to April 2008). Floyd is currently incarcerated and has been since September 2009; his scheduled early release date is in August 2018 and his regular release date is in March 2020.

¶3 In June 2011, the Child Abuse Hotline received a report alleging that Mother was neglecting the children. Upon investigation, the Arizona Department of Economic Security ("ADES") learned that both parents were incarcerated, and that

¹ The caption in this appeal is amended to refer to the children by their initials.

² On appeal from an order terminating parental rights, we view the evidence in the light most favorable to sustaining the court's findings. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2, 181 P.3d 1126, 1128 (App. 2008).

³ Although the court terminated Mother's parental rights, she is not a party to this appeal.

unwilling and inappropriate individuals were caring for the children.

¶14 ADES removed the children from where they were staying and filed a dependency petition alleging that the children were dependent due to abuse or neglect by both parents. The juvenile court found the children to be dependent as to both parents, bringing the children under the supervision and control of ADES.

¶15 Floyd agreed with ADES that in-person visitation with the children was not feasible due to distance. Floyd requested telephonic contact with the children, but ADES refused this request due to logistical issues and based upon a consultation with the children's therapist. Therefore, none of the children had telephonic or in-person visits with Floyd during the dependency action.

¶16 According to ADES, Floyd sent one to four letters/cards per month⁴ and one book with a DVD to the children during the dependency action. Floyd did not provide any child support during his incarceration.

¶17 ADES advised Floyd to utilize services available to him in prison. Floyd completed parenting classes, as well as programs for self help with anger management, cognitive reconstructing, and cognitive thinking.

⁴ Floyd alleges that he sent the children three to four letter/cards per month.

¶18 In June 2012, ADES filed a Motion for Termination of Parent-Child Relationship. In February 2013, the court conducted a one-day severance hearing and terminated Floyd's parental rights due to the length of his sentence after also finding severance to be in the best interests of the children.

¶19 Floyd timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) and 8-235(A).⁵

DISCUSSION

¶10 The juvenile court may terminate a parent-child relationship upon a finding that at least one statutory ground for severance has been established by clear and convincing evidence, and that severance is in the best interests of the child based upon a preponderance of the evidence. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). We review the juvenile court's severance order for an abuse of discretion and accept the court's factual findings unless clearly erroneous. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004).

⁵ Absent material revisions after the relevant date, statutes cited refer to the current version unless otherwise indicated.

¶11 Pursuant to A.R.S. § 8-533(B)(4), the court may terminate parental rights "if the sentence of that parent is of such length that the child will be deprived of a normal home for a period of years." The length of a parent's sentence, by itself, is not dispositive; "[i]nstead, the juvenile court must consider the many facts and circumstances specific to each case." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 281, ¶ 9, 53 P.3d 203, 206 (App. 2002).

¶12 In *Michael J. v. Arizona Department of Economic Security*, 196 Ariz. 246, 251-52, ¶ 29, 995 P.2d 682, 687-88 (2000), the supreme court provided further guidance:

The trial court, in making its decision, should consider all relevant factors, including, but not limited to: (1) the length and strength of any parent-child relationship existing when incarceration begins, (2) the degree to which the parent-child relationship can be continued and nurtured during the incarceration, (3) the age of the child and the relationship between the child's age and the likelihood that incarceration will deprive the child of a normal home, (4) the length of the sentence, (5) the availability of another parent to provide a normal home life, and (6) the effect of the deprivation of a parental presence on the child at issue.

¶13 A court order terminating the parent-child relationship must be in writing and recite the findings upon which the order is based. A.R.S. § 8-538(A). Under Rule 66(F)(2)(a) of the Rules of Procedure for the Juvenile Court,

"the court must specify at least one factual finding sufficient to support each [] conclusion[] of law." *Ruben M. v. Ariz. Dep't of Econ. Sec.*, 230 Ariz. 236, 240, ¶ 22, 282 P.3d 437, 441 (App. 2012). The "findings of fact and conclusions of law should be sufficiently specific to enable the appellate court to provide effective review." *Id.* at 241, ¶ 25, 282 P.3d at 442.

¶14 Floyd does not challenge the superior court's determination that severance would be in the children's best interests. Instead, Floyd argues that (1) the court abused its discretion by not making complete and accurate findings to support its decision to terminate his parental rights to his children and (2) there was insufficient evidence to establish that his sentence is of such a length that the children would be deprived of a normal home for a period of years under A.R.S. § 8-533(B)(4).

¶15 As to *Michael J.* factor one, the court concluded that Floyd does not have a bond with the children due to his incarceration. In support of this conclusion, the court's written findings indicate "Father was previously in prison and unable to parent the oldest 3 children during parts of their lives due to his prior incarcerations. The children have not discussed having a bond or relationship with their Father with CPS case manager." Although Floyd argues that he was the children's primary caregiver when he lived with the children and

Mother prior to his current incarceration, the record reflects that he has only been present for a short period of the children's lives. At the time of Floyd's current incarceration, F.B. was six, G.B. was five, B.B. was three, and A.B. was seven months old. Floyd had only been present for approximately three years of F.B.'s life, two years of G.B.'s life, one year of B.B.'s life, and seven months of A.B.'s life. Additionally, the ADES case manager reported that the children's conversations regarding their father primarily related to letters they received from him, and that those conversations diminished over time. Thus, there is clear and convincing evidence supporting the court's finding that "there has been very little if any parental relationship that has been established" between Floyd and the children due to his incarceration for the majority of the children's lives.

¶16 As to *Michael J.* factor two, the court concluded that Floyd cannot "establish or maintain a parent-child relationship during his long period of incarceration." In support of this conclusion, the court's written findings state, "[a]lthough Father has written approximately 20 letters or cards to the children, there were many months that Father wrote none. Father is housed hours away from the children and therefore in-person visitation is impracticable." Although Floyd argues that he sent approximately 60 letters/cards to the children, the record

reasonably supports the court's finding that Floyd sent fewer letters based upon the ADES case manager's testimony that Floyd sent one to four letters/cards per month. Floyd agreed that the distance between Yuma, where he is incarcerated, and Maricopa County, where the children reside, makes in-person visitation impractical. ADES also ruled out telephonic visitation for logistical reasons and based upon a consultation with the children's therapist. As the ADES case worker testified, Floyd would only be able to nurture "a minimal relationship" throughout the remainder of his incarceration due to lack of frequent contact and participation in the children's day-to-day lives. Therefore, substantial evidence supports the court's findings and conclusion as to this *Michael J.* factor.

¶17 As to the third *Michael J.* factor, the court concluded that Floyd's incarceration would deprive his young children of a normal home. In support of this conclusion, the court noted the children's birthdates and explained, "Father is not able to provide a home for the children while incarcerated due to being in prison for the next five (5) years." Declining to sever the parent-child relationship would leave the children without permanency and stability for another five to seven years because Floyd's prison sentence will end in 2018 (if he is granted early release) or 2020. Floyd's current incarceration, coupled with his prior incarcerations, has essentially rendered him

unavailable to parent or otherwise provide a normal home. The ADES case manager testified that Floyd's incarceration would deprive the children of a normal home because he would only be able to "minimally parent the children." The children would not have access to any parent until Floyd was released from prison. Thus, substantial evidence supports the court's findings and conclusion as to this *Michael J.* factor.

¶18 As to *Michael J.* factor four, the court concluded that Floyd has been sentenced to a long period of incarceration. Floyd does not dispute his criminal record, his current incarceration, or his projected release dates. Instead, he argues that because his children will not have reached the age of majority by his release, this factor does not support severance. We find this argument unpersuasive. As the record reflects, by the time of his release in 2018 or 2020, his children will have lacked stability and permanency for most of their lives. Thus, substantial evidence supports the court's findings and conclusion regarding this *Michael J.* factor.

¶19 As to *Michael J.* factor five, the court concluded that Mother is unable to provide a home for the children due to her parental rights being severed due to abandonment and incarceration. Floyd concedes that there is no other parent available to provide a normal home life for the children during his incarceration. Therefore, substantial evidence supports the

court's findings and conclusion regarding this *Michael J.* factor.

¶120 As to *Michael J.* factor six, the court concluded that due to Floyd's incarceration, "the children will be deprived of a normal home for a period of years." In support of this conclusion, the court's written findings state that "Father is not able to provide a home for the children while incarcerated due to being in prison for the next five (5) years." The court also noted during the severance hearing that "[t]hese children do not have any biological parent who is both willing and able to parent them or even be involved in their lives on a day to day basis or even a sporadic basis." The court found that "it would be detrimental to the children to make them wait until [Floyd] is released" because the children "need permanency and stability that no biological parent has been able to provide." The record supports this finding as the ADES case manager testified that the children need a stable household and a parent who can care for them and be physically there for them. The ADES case manager opined that if Floyd's rights were not terminated, the children would be detrimentally affected by the lack of a "safe, stable environment to live in." Thus, substantial evidence supports the court's findings and conclusion as to this *Michael J.* factor.

¶21 The court made adequate written findings pursuant to A.R.S. § 8-538 and Rule 66(F)(2)(a) as to the *Michael J.* factors to support its conclusions of law. Sufficient evidence supports the court's findings and conclusions. Therefore, the court did not abuse its discretion by severing Floyd's parental rights to his children.

CONCLUSION

¶22 For the foregoing reasons, we affirm.

/S/

KENT E. CATTANI, Judge

CONCURRING:

/S/

PETER B. SWANN, Presiding Judge

/S/

JOHN C. GEMMILL, Judge