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UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MARK C., *Appellant*,

v.

ARIZONA DEPARTMENT OF ECONOMIC SECURITY, D.S., *Appellees*.

No. 1 CA-JV 13-0158
FILED 12-10-2013

Appeal from the Superior Court in Maricopa County
No. JD20674
The Honorable Joan M. Sinclair, Judge Pro Tempore

AFFIRMED

COUNSEL

Robert D. Rosanelli, Attorney at Law, Phoenix
By Robert D. Rosanelli

Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Michael Valenzuela

Counsel for Defendant/Appellee

MEMORANDUM DECISION

Presiding Judge Maurice Portley delivered the decision of the Court, in which Judge John C. Gemmill and Judge Kent E. Cattani joined.

P O R T L E Y, Judge:

¶1 Mark C. (“Father”) appeals the order terminating his parental rights to his son, D.S. (“child”). Father argues that because the Arizona Department of Economic Security (“ADES”) failed to provide him with sufficient reunification services, the termination should be reversed. Because the services were sufficient, we affirm the termination of his parental rights.

FACTS AND PROCEDURAL HISTORY

¶2 Father and Rebecca H. are the biological parents of the child, born in August 2011.¹ The child tested positive for marijuana on the day he was born. He was placed in the care of his maternal grandmother and ADES filed a dependency petition.

¶3 The child was found to be dependent, and the juvenile court ordered a concurrent case plan of family reunification and severance and adoption. Father was provided with various services from August 2011 through May 2012, but he only participated sporadically. He stopped participating altogether when he was jailed in May 2012, pending trial on criminal charges of arson and criminal damage.

¶4 The juvenile court subsequently changed the case plan to severance and adoption, and ADES filed a petition to terminate Father’s parental rights in November 2012. The petition alleged that Father was unable to discharge his parental responsibilities due to his history of drug use and there were reasonable grounds to believe that the drug use would continue for a prolonged indeterminate period under Arizona Revised Statutes (“A.R.S.”) section 8-533(B)(3) (West 2013). Father was present and represented by counsel at the severance hearing. The juvenile court

¹ Rebecca H.’s parental rights were not adjudicated at the proceeding below and therefore, she is not a party to this appeal.

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subsequently issued its minute entry containing findings of fact and conclusions of law and terminated Father's parental rights to the child.

DISCUSSION

¶5 Father argues that the juvenile court erred by terminating his parental rights because ADES failed to provide him with reunification services after he was jailed on criminal charges. Father failed to raise this issue before or during the severance trial and his lawyer only asserted that he should be given services upon his release from jail. Because Father did not raise the issue of ADES' failure to provide reunification services while he was jailed, we find the argument waived. *Kimu P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 39, 44, ¶ 19 n.3, 178 P.3d 511, 516 n.3 (App. 2008).

¶6 Even if we examine the issue, however, we find no error. On appeal, we will uphold the juvenile court's ruling unless its findings are clearly erroneous. *Raymond F. v. Ariz. Dep't. of Econ. Sec.*, 224 Ariz. 373, 376, ¶ 13, 231 P.3d 377, 380 (App. 2010). We view the facts in the light most favorable to affirming its decision. *Id.* We will reverse only "if there is no reasonable evidence to support [the court's] findings." *Id.*

¶7 Section 8-533(B)(3) states that parental rights will be terminated if "the parent is unable to discharge parental responsibilities because of . . . a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period," and if it is in the best interests of the child. A.R.S. § 8-533(B)(3). Although § 8-533(B)(3) does not statutorily require that ADES offer reunification services, we have previously held that because there is a "fundamental liberty interest of natural parents," ADES must demonstrate by clear and convincing evidence that it made a reasonable effort to reunify the family or that the efforts would be futile. *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶¶ 32-33, 971 P.2d 1046, 1053 (App. 1999) (quoting *Santosky v. Kramer*, 455 U.S. 745, 753, (1982)); see *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 49, ¶ 15, 83 P.3d 43, 49 (App. 2004).

¶8 Father claims that ADES had an obligation to provide reunification services even after he was confined pending criminal charges. Before he was jailed, Father was offered visitation, parent aide services, a psychological evaluation, drug treatment, and drug testing as part of reunification services. During his psychological evaluation, he admitted that he began abusing marijuana and methamphetamine at age eleven. He further admitted that he had abused drugs throughout his life,

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except when he was in jail or prison. Although Father claimed that he did not have a problem with alcohol, he admitted to an incident with alcohol as a minor and to a January 2011 conviction for driving under the influence. The psychologist who evaluated Father reported that Father “is a client with longstanding abuse and addiction issues with regard to [methamphetamine], alcohol, and numerous other substances. He is at a very high risk to relapse at this time. He evidently becomes extremely emotionally disturbed when using [methamphetamine].” The psychologist, who was aware of the range of services that Father had been offered, also opined that Father’s substance abuse issues were likely to continue for a prolonged indeterminate period.

¶9 In addition to psychological services, Father was scheduled to begin a drug treatment program in September 2011. He, however, failed to attend any group therapy sessions for the first two months of the program and as a result, he was discharged for non-performance. In February 2012, Father resumed treatment, but he attended group therapy sporadically and, at times, exhibited inappropriate behavior. Because Father was jailed in May 2012 and in light of his attitude toward therapy, he was formally discharged from the drug treatment program in June 2012.

¶10 Father does not contest the sufficiency of the services provided by ADES before he was jailed and he acknowledges that he did not comply with the services that had been offered. Furthermore, he does not detail the services that ADES could have attempted to provide from the time he was jailed in May 2012 until the severance hearing in May 2013. There is nothing in the record to suggest that Father attempted to take advantage of any services while in jail, and we find that the record supports the juvenile court’s implicit finding that ADES offered reasonable reunification services to Father between the date dependency was established and the date of the severance trial. *See Mary Ellen C.*, 193 Ariz. at 192, ¶ 37, 971 P.2d at 1053 (noting that the responsibility of ADES is to provide the time and opportunity for a parent to participate in services, but not to provide every conceivable service).

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CONCLUSION

¶11 For the foregoing reasons, we affirm the juvenile court's termination of Father's parental rights to the child.



Ruth A. Willingham - Clerk of the Court
FILED : mjt