

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



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FILED: 02/18/2010
PHILIP G. URRY, CLERK
BY: GH

CURTIS B.,) 1 CA-JV 09-0154
)
Appellant,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz. R.P. Juv. Ct.;
SECURITY, DANIEL B., CASEY B.,) Rule 28, ARCAP)
CALEB B.,)
)
Appellees.)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD15757

The Honorable Crane McClennen, Judge

AFFIRMED

Denise L. Carroll
Attorney for Appellant

Scottsdale

Terry Goddard, Attorney General
by David M. Osterfeld, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

Phoenix

P O R T L E Y, Judge

¶1 Curtis B. ("Father") appeals the termination of his parental rights to his three sons (collectively "the children"). For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 Child Protective Services ("CPS") was called to the shelter, where Rebecca S. ("Mother") and her children were staying, because of the children's extreme behavior at the shelter. Mother entered into a voluntary foster care agreement on February 13, 2007, and placed the children with CPS. CPS changed the arrangement to "out-of-home placement" after Mother was excluded from the shelter for giving Father the shelter's location.

¶3 A dependency petition was filed on May 15, 2007. The juvenile court found the children dependent in July 2007, and ordered family reunification as the case plan. Although Father had been offered a psychological evaluation, a substance abuse assessment, urinalysis testing, and anger management counseling, he did not complete, prior to the dependency finding, any drug tests, start substance abuse treatment, or avail himself of any other services. Additionally, he missed scheduled visits with

¹ We view the facts in the light most favorable to upholding the juvenile court's determination. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2, 181 P.3d 1126, 1128 (App. 2008).

his children and refused to give Arizona Department of Economic Security ("ADES") his address.

¶4 Father did not have any contact with his children until he saw them at the December 2007 TERROS Christmas party. At a subsequent hearing, the juvenile court informed Father that he needed to participate in the offered services.

¶5 Because Father had not participated in any of the reunification services, ADES moved to sever his parental rights at the June 4, 2008 permanency planning hearing.² The court ordered Father to provide a urinalysis sample, and he refused. The court subsequently approved the change of the case plan on October 14, 2008.

¶6 ADES filed its severance motion four months later and alleged that Father's rights should be terminated because of a history of chronic abuse of dangerous drugs/controlled substances and/or alcohol, and because the children had been in an out-of-home placement for over fifteen months. See Ariz. Rev. Stat. ("A.R.S.") section 8-533(B)(3), (B)(8)(a), (B)(8)(c) (Supp. 2008). After Father was jailed for one year beginning November 19, 2008, for violating probation, ADES was permitted to amend its motion to include an abandonment allegation. See A.R.S. § 8-533(B)(1).

² The juvenile court also changed the case plan for Mother, and subsequently terminated her parental rights. She did not appeal.

¶7 At trial, the children's CPS case manager testified that Father had not participated in any reunification services before he was jailed, except that he had seen two of the boys five times and one six times, since May 2007. She also testified that the children had reported seeing their Father use crack, and characterized his substance abuse as "significant." She did note that Father, while incarcerated, participated in parenting classes, a twelve-step program, and sent correspondence to the case manager.

¶8 The court found that Father had abandoned his children, that he was unable to parent because of a history of chronic abuse of dangerous drugs, and that the children were in out-of-home placement for more than fifteen months. The court also found that termination was in the children's best interests. Father appealed, and we have jurisdiction pursuant to A.R.S. §§ 8-235 (2007), 12-120.21(A)(1) and -2101(B) (2003).

DISCUSSION

¶9 Before terminating parental rights, a juvenile court must find by clear and convincing evidence the existence of one statutory basis for termination. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). The court must also find that the termination is in the best interests of the child by a preponderance of the evidence. *Id.* We will affirm the severance order unless it is clearly erroneous, *Jesus M. v.*

Ariz. Dep't of Econ. Sec., 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002), and "the juvenile court will be deemed to have made every finding necessary to support the judgment." *Maricopa County Juvenile Action No. JS-8287*, 171 Ariz. 104, 111, 828 P.2d 1245, 1252 (App. 1991) (quoting *Pima County Severance Action No. S-1607*, 147 Ariz. 237, 239, 709 P.2d 871, 873 (1985)).

¶10 Father argues the court erred because the State did not prove by clear and convincing evidence any of the statutory grounds for termination.³ Specifically, he argues the State did not provide evidence regarding the circumstances that warranted out-of-home placement that he needed to remedy for reunification. Further, he argues the State did not prove that he abandoned his children because he visited them at least five times before being incarcerated, and he tried to contact the case manager while incarcerated. Lastly, he contends there was no evidence that he had substance abuse problems.

¶11 A parent's right to his child can be terminated if the child has been in court-ordered out-of-home placement for at least nine months, A.R.S. § 8-533(B)(8)(a), or for at least fifteen months, A.R.S. § 8-533(B)(8)(c). The court also has to find that ADES "made a diligent effort to provide appropriate reunification services," and that the parent is unable to remedy

³ Father does not challenge the court's determination that termination is in the children's best interest.

the circumstances that resulted in placement, under § 8-533(B)(8)(a), or the parent will be incapable of proper parental care in the near future, under § 8-533(B)(8)(c).

¶12 Father argues that there was no testimony about the circumstances that led to the children being placed in the out-of-home placement. Because he does not challenge the juvenile court's findings that the children were in an out-of-home placement for more than fifteen months or that ADES made diligent efforts to provide appropriate reunification services, we presume Father is arguing that the court did not find he was unable to remedy the circumstances by clear and convincing evidence. We disagree.

¶13 The juvenile court heard the testimony of the case manager about the underlying facts that resulted in CPS changing the voluntary placement to out-of-home placement, as well as all relevant facts leading up to the severance trial. The court also had the dependency petition and court reports which described the circumstances of the out-of-home placement and Father's refusal to participate in services before he was jailed. Consequently, the court had sufficient information to determine by clear and convincing evidence that Father was unable to remedy the circumstances which caused the children to be in out-of-home placement and there was a substantial

likelihood that he could not become an effective parent in the near future.⁴ Thus there was no error.

CONCLUSION

¶14 For the foregoing reasons, we affirm the judgment.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Judge

/s/

MARGARET H. DOWNIE, Judge

⁴ We need not address the other reasons to support the termination of Father's parental rights. See *Kent K.*, 210 Ariz. at 284, ¶ 22, 110 P.3d at 1018 (holding that we only need to find one statutory basis to affirm the juvenile court's termination of parental rights).