DIVISION ONE
FILED: 07-27-2010
PHILIP G. URRY, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JEREMY C.,	)	No. 1 CA-JV 09-0225
	)	
Appellant,	)	DEPARTMENT D
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC SECURITY, KOEL C., LAURA B., KATRINA B.,	)	103(G) Ariz. R.P. Juv. Ct.; Rule 28 ARCAP)
	)	
Appellees.	)	

Appeal from the Superior Court in Maricopa County

Cause No. JD 507171

The Honorable Linda A. Akers, Judge

AFFIRMED

Robert D. Rosanelli, Phoenix
Attorney for Appellant

D O W N I E, Judge

¶1 Jeremy C. appeals from the juvenile court's order terminating his parental rights. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY[1]

¶2 Appellant is the father of K.C., who was born in 2006.[2] Appellant was "around to parent or participate in parenting" for the first seven months of K.C.'s life and then had "some incarceration problems . . . [s]o it was kind of an off and on thing." K.C. has lived with her maternal grandmother ("grandmother") since she was six months old; grandmother cared for her extensively before that time as well. Appellant visited his daughter when he was not incarcerated, but did not provide financial support because all of his money "went to drugs."

¶3 In March 2008, grandmother filed a dependency petition, alleging that appellant resided in a "DOC half-way house" and was unable to effectively and safely parent K.C. because of his drug addiction. She asked the court to place K.C. in the care, custody and control of the Arizona Department of Economic Security ("ADES") and in her physical custody.

¶4 At the preliminary protective hearing, appellant contested the allegations of dependency. The court appointed a guardian *ad litem* ("GAL") for K.C. and counsel for appellant; ADES joined in the petition. The court placed K.C. in

---

[1] We view the facts in the light most favorable to affirming the juvenile court's order. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10, 210 P.3d 1263, 1266 (App. 2009) (citation omitted).

[2] K.C.'s mother is not a party to this appeal. She consented to termination of her parental rights.

grandmother's physical custody. Because the case plan was for family reunification, the court ordered appellant to participate in services, including a psychological examination, substance abuse programming and urinalysis testing ("UA"), and parent aide services. The court allowed appellant to visit with K.C. at ADES's discretion for a minimum of four hours weekly. During a mediation in April 2008, appellant agreed to submit the issue of dependency to the court. The juvenile court subsequently found K.C. dependent as to appellant.

¶5 Appellant failed to fully participate in the case plan. Visitation services were closed because he "missed so many visits." Appellant inconsistently submitted to UA testing and went months without testing at all. He completed two months of intensive outpatient substance abuse programming, but tested positive on every drug test conducted during that time and failed to participate in aftercare services. Appellant completed a psychological evaluation.

¶6 In November 2008, the case plan was changed to severance and adoption. In December, the GAL moved to terminate appellant's parental rights. After a contested severance hearing, the court terminated appellant's parental rights in a signed order filed November 23, 2009. Appellant timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 8-235(A) (2007).

DISCUSSION

¶7 The juvenile court may terminate parental rights only if clear and convincing evidence supports such a decision. *Denise R.,* 221 Ariz. at 93, ¶ 2, 210 P.3d at 1264. Clear and convincing evidence is that which makes the alleged facts highly probable or reasonably certain. *Id.*

¶8 Section 8-533(B)(8) (2007) allows parental rights to be terminated when

> [T]he agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services and that one of the following circumstances exist:
>
> (a) The child has been in an out-of-home placement for a cumulative total period of nine months or longer . . . and the parent has substantially neglected or willfully refused to remedy the circumstances that cause the child to be in an out-of-home placement.
>
> . . . .
>
> (c) The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer . . . [and] the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care

> and control in the near future.

¶9 The juvenile court relied on both of these provisions in severing appellant's rights.[3] It also found grounds for termination pursuant to A.R.S. 8-533(B)(3), which allows severance when a person is unable to discharge parental responsibilities because of "a history of chronic abuse of dangerous drugs, controlled substances . . . and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period."

¶10 Appellant contends: (1) there is insufficient evidence that he substantially neglected, willfully refused, or was unable to remedy the circumstances that required K.C.'s out-of-home placement; and (2) his history of drug abuse did not warrant severance. We disagree.

1. Circumstances Leading to Placement

¶11 Appellant claims his "good-faith effort" to participate in reunification services precludes termination of his parental rights. *See In re Appeal of Maricopa County Juvenile Action No. JS-501568,* 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994) ("[P]arents who make appreciable, good faith efforts to comply with remedial programs . . . will not be

[3] Appellant does not deny that K.C. had been in an out-of-home placement for more than fifteen months at the time of the severance hearing.

found to have substantially neglected to remedy the circumstances that caused the out-of-home placement, even if they cannot completely overcome their difficulties . . . within one year after [placement].”). Appellant points to his completion of outpatient substance abuse treatment, participation in the psychological examination, UA testing, and visitation as proof he participated in services “when not impeded by incarceration.” Appellant also claims he has not abused illegal substances since February 2009, has been employed since his last incarceration, and has an apartment suitable for K.C., thus, demonstrating he has remedied the situation that required her out-of-home placement.

¶12 Appellant was ordered to participate in UA testing beginning in April 2008, but he first tested on February 13, 2009. He consistently tested through March 13, but then tested “here and there,” until he stopped altogether in June. Appellant did not participate in substance abuse aftercare because he had a “falling out” with a program manager. He missed fifty to sixty percent of his scheduled visits with K.C., even though ADES provided taxi service for him. Appellant spent significant time incarcerated on assault, domestic violence, and possession and sale of drug charges before K.C.’s birth, and was incarcerated for a total of twenty-one months between her birth and the severance hearing.

¶13 At the hearing, appellant testified he had lived in "four, five, six places" since March 2008 and had lived since February 2009 with a woman who had an open Child Protective Services case--a fact he acknowledged was a "deterrent to reunifying" with K.C. Appellant also understood that demonstrating sobriety through UA testing was required for reunification but had no "good reason why" he stopped testing in June 2009. Appellant testified he had been continuously employed since March 2009, though he never provided proof because ADES never requested it. In spite of that employment, appellant offered "no real excuse" for failing to provide financial assistance to his daughter.

¶14 Based on the record presented, the juvenile court could reasonably conclude that appellant "substantially neglected or willfully refused" to remedy the circumstances causing K.C.'s out-of-home placement and that there was a substantial likelihood that he would "not be capable of exercising proper and effective parental care and control in the near future."

2. Drug Abuse

¶15 Appellant claims he is no longer drug dependent and that the determination he cannot discharge his parental responsibilities is "unfounded and speculative." We conclude otherwise.

¶16 Appellant admitted using methamphetamine consistently from the early 1990's until the end of November 2008 and marijuana from the late 1980's until July 2008. He testified he had brief periods of sobriety, but always returned to drug use. Appellant claimed he no longer had a "drive to want to use" drugs, but admitted he was not showing that commitment "through UAs, through drug treatment and through all the requirements of [his] case plan." Instead, he said he had a "personal plan" to remain drug-free.

¶17 An evaluating psychologist characterized appellant as "a person who is impulsive, acts out and whose drug use has lead [sic] to severe impairment." Although the psychological report indicated appellant was "motivated for treatment and wants to make changes," the psychologist opined that appellant's "drug use, domestic violence . . . time spent in jail . . . anger and aggression" would interfere with his ability to parent. The psychologist concluded appellant was not "ready to parent his child."

¶18 We do not re-weigh the evidence on appeal. Rather, we consider whether the court "had before it evidence upon which an unprejudiced mind might reasonably have reached the same conclusion." *Denise R.,* 221 Ariz. at 94, ¶ 6, 210 P.3d at 1265. Although conflicting testimony was presented at the severance hearing, the juvenile court was in the best position to "weigh

the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.,* 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002) (citation omitted). The court did not err in terminating appellant's parental rights pursuant to A.R.S. § 8-533(B)(3).

CONCLUSION

¶19 We affirm the juvenile court's order terminating appellant's parental rights.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
MAURICE PORTLEY, Presiding Judge

/s/
PATRICIA A. OROZCO, Judge