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



DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ANTHONY S.,) 1 CA-JV 10-0019
)
Appellant,) DEPARTMENT A
)
v.) MEMORANDUM DECISION
)
ARIZONA DEPARTMENT OF ECONOMIC)
SECURITY, ANTHONY S., RENE S.,) (Not for Publication -
) Ariz. R.P. Juv. Ct. 103(G);
Appellees.) ARCAP 28)
)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD11098

The Honorable Jo Lynn Gentry-Lewis, Judge

AFFIRMED

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B A R K E R, Judge

¶1 Anthony S. ("Father") appeals the juvenile court's determination that termination of his parental rights was in his children's best interest. For the following reasons, we affirm.

Facts and Procedural History¹

¶2 Father is the biological father of Anthony, born March 4, 2002, and Rene, born June 10, 2003. On September 4, 2008, Child Protective Services ("CPS") received a report that Father had been jailed a day earlier on an outstanding warrant for failure to pay child support with regard to minor children from another relationship.² Father left the children in the care of their paternal aunt without legal documentation. A friend that had lived in Father's home for about a week and a half reported maggots in the kitchen, hammers, nails, and dirty clothes all over the floor at Father's home. Both children had bug bites from gnats in the home, and they appeared malnourished and thin. The children's teeth were green and when the friend attempted to brush their teeth, the children cried because it was painful. Father put a lock on the refrigerator because the children "get into everything," and he referred to them as

¹ On appeal, we view the facts in the light most favorable to upholding the juvenile court's findings. *Maricopa County Juv. Action No. JD-5312*, 178 Ariz. 372, 376, 873 P.2d 710, 714 (App. 1994).

² Father was in jail for approximately one month. He was again incarcerated in November 2009 for about one month on charges of unpaid child support.

"animals." Following medical evaluations of the children, Anthony had a urinary tract infection and Rene had a tumor/cyst at the back of her neck and an abscess in her tongue. Rene had a habit of banging her head and had symptoms of autism. Father had noticed these symptoms two years earlier but had failed to obtain help for Rene.

¶13 The Arizona Department of Economic Security ("ADES") filed a dependency petition regarding the children on September 15, 2008. The petition alleged that the children's mother had abandoned them to the care of Father in 2003. The petition further alleged that Father was unable to parent due to incarceration, medical neglect, and neglect.³ On May 19, 2009, the juvenile court found the children dependent as to Father. When the case manager visited Father's home in July 2009 the backyard was not appropriate for children. There was a broken-down vehicle, a saw lying out, mechanical parts, tools, and chemicals across the yard. At the severance hearing Father testified that these concerns had not been remedied. Father used a mattress as a door between his home and the attached duplex apartment, and he agreed that the duplex was "unsafe for children."

³ The petition also named "John Doe" as an alleged father, but Father's paternity was later established and "John Doe" was dismissed as a party.

¶14 On September 3, 2009, ADES filed a motion to terminate the parental rights of Father to the children. The motion for termination alleged that Father was unable to discharge his parental responsibilities due to mental illness and a history of chronic substance abuse of dangerous drugs, controlled substances and/or alcohol under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(3) (Supp. 2009). The motion further alleged that termination was in the children's best interests because it would provide them with stability and permanency.

¶15 On January 6 and 7, 2010, the juvenile court held a contested severance hearing. At the severance hearing Father admitted to a forty-year drug history, but stated that he had only been an addict for twenty years. He referred to his addiction as a "disease." Father admitted that he had used methamphetamines as recently as December 2, 2009, and that he smoked methamphetamines once a week for approximately four to five years prior to that date. Father agreed that parenting while using methamphetamines was not good, but admitted he had been doing it for the children's entire lives. He never sought any type of substance abuse treatment prior to September of 2008. In November 2009, Father entered inpatient treatment at Native American Connections to work on his substance addiction. At the severance hearing, Father had been clean approximately one month.

¶16 Father testified that he made about \$400 a month, which was not enough to obtain water at his residence. Father testified that he had problems with depression and estimated that he had been depressed for four years, but had never sought treatment and did not indicate to his case manager that he needed additional services.

¶17 The court found ADES had proven the mental illness or chronic substance abuse ground and that termination of Father's parental rights was in the children's best interests. The court further found the children were adoptable, that Anthony had a prospective adoptive placement, and that a prospective adoptive home had been identified for Rene. The court stated termination was in the children's best interests because "[a]doption will allow the child to have a permanent, safe and loving home that is able to meet all of their educational, medical, social and developmental needs rather than linger in CPS custody waiting for their father to overcome his forty year addiction." On January 15, 2010, the court terminated Father's parental rights pursuant to A.R.S. § 8-533(B)(3).⁴

¶18 Father filed a timely notice of appeal. We have jurisdiction pursuant to A.R.S. §§ 8-235(A) (2007), 12-120.21(A)(1) (2003), and 12-2101(B) (2003).

⁴ Mother's rights were terminated at the same hearing.

Discussion

¶9 Under A.R.S. § 8-533, a juvenile court may terminate parental rights upon finding one of the enumerated grounds is satisfied and that termination is in the best interests of the child. *Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 575, 869 P.2d 1224, 1228 (App. 1994). We review for an abuse of discretion and will reverse a severance order only if no reasonable evidence supports it. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002); see *Pima County Juv. Action No. S-2460*, 162 Ariz. 156, 158-59, 781 P.2d 634, 636-37 (App. 1989). We accept the juvenile court's findings of fact in support of severance unless they are clearly erroneous. *Pima County Severance Action No. S-1607*, 147 Ariz. 237, 238, 709 P.2d 871, 872 (1985). To avoid termination, the parent must make more than a trivial or de minimus effort at remediation. *Juv. Action No. JS-501568*, 177 Ariz. at 576 n.1, 869 P.2d at 1229 n.1.

¶10 To terminate a parent's rights pursuant to § 8-533(B)(3), the juvenile court must find by clear and convincing evidence "[t]hat the parent is unable to discharge parental responsibilities because of mental illness, mental deficiency or 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." Father does not challenge the sufficiency of the evidence proving he suffered from mental illness or chronic drug abuse that would probably continue for a prolonged, indeterminate period.⁵ Instead, Father argues that termination of his parental rights was not in the children's best interests. See *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990) (holding "although the best interests of the child alone may not be sufficient to grant termination, they may be sufficient to deny termination"). Father emphasizes that the children have a relationship with him and that they enjoy his visits. Additionally, he argues that Rene is not in an adoptive placement and that she would become a "legal orphan" if an adoptive family cannot be found for her. Father also asserts that the substance abuse treatment "seems to be working for him," and that he is "taking appropriate steps to ensure that his recovery continues."

¶11 In considering the children's best interests, the court must determine how the children would benefit from the severance or be harmed by the continuation of their relationship with the parent. *Id.*; see also *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19, 83 P.3d 43, 50 (App. 2004)

⁵ The record provides substantial evidence supporting this finding, including Father's admission to a forty-year drug history, his twenty years of addiction, and his untreated depression.

(holding the State need only show that the children will benefit from the severance). This can be demonstrated by proving the existence of an adoption plan, by showing the children are adoptable, or by demonstrating that the children's existing placement is meeting their needs. *Mary Lou C.*, 207 Ariz. at 50, ¶ 19, 83 P.3d at 50.

¶12 Here, the record amply supports the juvenile court's finding that termination was in the children's best interests. The case manager testified that both children were adoptable. Although Anthony had a relationship with Father and knew who Father was, the case manager testified that the children were "definitely in need of permanency" as they had "been in care since September of 2008." Additionally, Father would miss two to three consecutive visits with the children and then attend one. Both children reacted negatively to the uncertainty of whether they would see Father at the visits. At his last visit with the children before the hearing he showed up high on drugs. At the severance hearing Father had only been sober for approximately one month, and his case manager testified that giving Father time to maintain sobriety for six to nine months would keep the children out of a permanent home. Anthony's foster mother was willing to adopt him and ensure he had regular contact with Rene. Both children were doing well, they were both up to date with their immunizations and had extensive

dental work done. Anthony was excelling in school; Rene was toilet trained and her speech had improved. Given this record, we conclude that reasonable evidence exists to support the court's determination that termination was in the children's best interests.

Conclusion

¶13 We do not consider lightly our role when affirming the permanent separation of children from their natural parent. See *Maricopa County Juv. Action No. JS-6520*, 157 Ariz. 238, 241, 756 P.2d 335, 338 (App. 1988). However, the destructive toll inflicted on children by those who abuse drugs is also not considered lightly. See *Juv. Action No. JS-501568*, 177 Ariz. at 580, 869 P.2d at 1233. Thus, our deference to the rights of parents can be superseded by the State's substantial interests in protecting children. *Id.* Parenting is not just procreation; it involves responsibility, hard work, and the ability to meet the needs of those children. *Id.* Those who are unwilling or unable to fulfill those obligations risk the permanent termination of their parental rights. *Id.*

¶14 For the foregoing reasons, we affirm the juvenile court's termination of Father's parental rights and its finding that termination was in the children's best interests.

/s/

DANIEL A. BARKER, Judge

CONCURRING:

/s/

PATRICIA A. OROZCO, Presiding Judge

/s/

LAWRENCE F. WINTHROP, Judge