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



DIVISION ONE
FILED: 09/02/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

PAUL C.,) 1 CA-JV 10-0028
)
Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
)
ARIZONA DEPARTMENT OF ECONOMIC)
SECURITY, ALEXANDER C.,) Not for Publication -
) (Ariz. R.P. Juv. Ct.
Appellees.) 103(G); ARCAP 28)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD 15435

The Honorable Dawn M. Bergin, Judge

AFFIRMED

Terry Goddard, Attorney General Phoenix
by Eric Devany, Assistant Attorney General
Attorneys for Arizona Department of Economic Security

Law Office of Anne M. Williams
by Anne M. Williams Tempe
Attorneys for Appellant

W E I S B E R G, Judge

¶1 Paul C. ("Father") appeals from the superior court's order denying him visitation rights with his son, A. He argues that the Arizona Department of Economic Security ("ADES") failed

to make reasonable efforts to provide him with rehabilitative programs so that he would be allowed visitation. Father also challenges the court's ruling denying his request that A. be placed with Father's mother. For reasons that follow, we affirm the court's order.

BACKGROUND

¶2 A. was born in May 2008 to T.L. ("Mother") and Father. Soon after A's birth, Child Protective Services ("CPS") was called to the hospital to investigate allegations of domestic violence. When a CPS case manager spoke with Father, he denied living with Mother, said they were friends, and refused to provide any contact information. He admitted, however, that he was A's father. A. was taken into temporary physical custody on June 1, 2008, but Father did not formally request visitation until September 2009.

¶3 ADES filed a dependency petition alleging that Mother was unable to parent and that Father had not established his paternity and was unable to parent due to domestic violence against Mother. Father did not appear for a Preliminary Protective Conference, and the court reset the hearing. At an August 1 hearing, Father appeared telephonically but had not been served. The court appointed counsel and a guardian ad litem and ordered paternity testing.

¶4 ADES referred Father for a psychological evaluation on June 17, 2008 and paternity testing on July 10. Father did not appear for either. He did not attend the publication hearing in November 2008, and the court reset the hearing for February 2009. In December, the court found A. dependent as to Mother. ADES still had not located Father and thus gave published notice to him.

¶5 Father attended a hearing on February 18, 2009, at which time Father accepted service and the court found that he was A.'s father. When Father requested visitation, ADES asked that he undergo a psychological evaluation, and Father objected. The court set a contested dependency adjudication for July; Father refused to sign a notice of the hearing.

¶6 After Father's second attorney moved to withdraw, the court appointed new counsel for him. A dependency hearing was set for November 2009. In September, Father's counsel moved for an order requiring CPS to provide visitation to Father and for an order placing A. with his paternal grandmother.¹

¶7 At an evidentiary hearing on visitation, Jenny Bilskie, the CPS case manager, testified that Father had attended a brief psychological consultation with Dr. Loreen Fox-Shipley in April 2009 and a follow-up in September 2009. Bilskie opined that visitation might be harmful to A. because,

¹A. had been returned to Mother's custody by December 2009.

given Father's "complete lack of regard" for requests by ADES, she was concerned that Father would not comply if asked to do something during a visit. She also noted the possibility that Father might abscond with A. When communicating with Father, she found him "threatening, and illogical, and intimidating." Also, he had not participated sufficiently in a mental health evaluation that would have allowed ADES to offer appropriate services and had removed his mailbox to prevent any mail delivery.

¶8 The hearing was continued, at which time the court denied Father's motion for a change in physical custody to his paternal grandmother because A. had been returned to Mother's custody. Dr. Fox-Shipley testified that when she first met Father, she asked for information about his background, history, and family in order to assess whether he could safely visit with A. and "what kind of services [could] be offered to . . . help [him] change behavior." Father did not want to talk about personal issues but instead about how A. had been treated at the hospital, Mother's ability to parent, and placement of A. with his paternal grandmother. Father was "agitated, angry," and had "some difficulty managing his anger and his impulses." His anger escalated despite the presence of his mother and his pastoral counselor. Father "made it very clear that he would not participate in any services or a psychological evaluation if

any information was to be shared with either CPS or the Court." Thus, Dr. Fox-Shipley did not recommend other services. Otherwise, she would have referred him for a comprehensive psychological and psychiatric evaluation. She also could not determine whether a visit would be safe if Father became upset or agitated or whether visits would upset or traumatize A. The interview was quite short because Father did not want to proceed.

¶19 Father testified but refused to give his address or reveal whether he was employed. He said that he had no other children and had never taken parenting classes. When asked how he would respond to suggestions from a parent aide during a visit, Father said "nothing inappropriate would or could ever happen, ever, in my lifetime." He said that he "would want to know exactly what [the aide's] position was and why," would discuss it, and "come to a legitimate conclusion." If he disagreed, he would "probably just either laugh at them or ask to talk to their supervisor." Father stated that parenting classes were unnecessary, but he would attend "within reason" although he had "all the proper skills." When asked if he would go to Magellan for services, Father said, "Absolutely not," and that in "no way" would he comply with services provided by anyone connected to the County. Although he said he would consult an independent psychologist, he would not allow that

person to provide a report to CPS. When asked if he would attend counseling, Father said he would consult his pastoral counselor but was not comfortable with any of the counselors previously recommended by his pastoral counselor.

¶10 Edward Mitchell, the pastoral counselor, testified that he had encouraged Father to seek professional help and that two or three months prior, Father had had a seizure in Mitchell's presence that required hospitalization. The psychologist and a psychiatrist who examined Father in the hospital had diagnosed him with post-traumatic stress syndrome and had recommended therapy and medication. Father did not follow through with seeking therapy. When asked if Father might present any risk to a child, Mitchell said that "[i]t would depend on the circumstances [and if] he was in a neutral spot, and whether the observer was an independent party rather than a CPS party." He further opined that if the paternal grandmother were the monitor, there would be no risk to a child.

¶11 In its ruling on the motion for visitation, the court noted Father's lack of cooperation with CPS and accusations that CPS supervisors had raped children and that CPS had blood on its hands, had accused Father of attempted murder, and had destroyed videotapes of his behavior at the hospital following A.'s birth. The court noted the case manager's belief that Father posed a

safety risk to A. and to CPS representatives if given visitation.

¶12 In addition, the court cited the testimony of the psychologist that Father had refused to provide information or to participate in any service if information would be disclosed to the court or CPS. Thus, the psychologist could not determine whether visits would be safe. The court concluded that Father was "unwilling to even attempt to control" his intimidating and volatile behavior, had declined to participate in services or to seek mental health care, and accordingly presented an unreasonable risk of harm to A.'s physical and emotional well-being. The court denied the motion for visitation.

¶13 Father filed a notice of appeal from that order, although a hearing on the propriety of the dependency continued. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-235 (2007) and 12-2101(B) (2003).

DISCUSSION

¶14 Father now asserts that ADES failed to make reasonable efforts to provide programs that would have allowed him visitation with A. He argues that his fundamental liberty interest in care and custody of his child remained intact but that ADES never offered services because it concluded that Father would not participate.

¶15 This court has held that an order in a dependency proceeding terminating a parent's visitation is a final, appealable order because it conclusively defines the parent's visitation rights. *In re Maricopa County Juvenile Action No. JD-5312*, 178 Ariz. 372, 374, 873 P.2d 710, 712 (App. 1994). Furthermore, "the trial court has broad discretion . . . to determine what is best for the child[]." *Id.* at 375, 873 P.2d at 713. We defer to the superior court's assessment of "the weight and effect" to give the evidence unless we find clear error. *Id.* at 375-76, 873 P.2d at 713-14. We regard the facts in a light that favors upholding the court's findings and will affirm "if there is any evidence to support the order." *Id.* at 376, 873 P.2d at 714.

¶16 In asserting that ADES must make reasonable efforts to provide rehabilitative services, Father cites *Mary Ellen C. v. Arizona Dep't of Econ. Sec.*, 193 Ariz. 185, 971 P.2d 1046 (App. 1999). There, ADES sought to terminate a mother's parental rights on grounds of mental illness but failed to offer the recommended intensive psychiatric services. Instead, CPS had delayed a psychological referral for more than a year and had not referred the mother for treatment for three more months. *Id.* at 192, ¶ 35, 971 P.2d at 1053. We recognized that CPS need not provide services that would be futile but emphasized that it must "undertake measures with a reasonable prospect of success."

Id. at ¶ 34. Because CPS had not demonstrated clearly and convincingly that it had made reasonable efforts to provide rehabilitative services, we vacated the severance. *Id.* at 193, ¶ 42, 971 P.2d at 1054.

¶17 This is not a severance case, but A.R.S. § 8-846(A) (Supp. 2009) states that if a child has been removed from the home, ADES shall make "reasonable efforts to provide services to the child and the child's parent." As the superior court found here, ADES made reasonable efforts by referring Father to a psychologist who attempted to gather sufficient information on which to base recommendations for additional services aimed at visitation. The psychologist stated, however, that she had "gained very little information" because Father "was quite agitated, angry, and illogical." He had also "made it clear he had no intention of participating in a psychological evaluation" if a report would be given to CPS and the court. Moreover, Father did not understand the need "to provide enough information . . . so that it [would] be possible to evaluate whether or not he [could] adequately parent." In her follow-up report, the psychologist stated that Father still had not provided "essential background information" needed to assess whether he could safely visit with A.

¶18 From our review of the record, we conclude that reasonable evidence supports the superior court's order. ADES

could not arrange services without gaining an understanding of Father's background and current situation, and Father adamantly refused to provide any useful information. ADES need not provide services if doing so would be futile. Father informed CPS and the psychologist that he would not reveal personal information if it would be disclosed to the court. He testified to the same effect.

¶19 Although Father's notice of appeal referred only to the denial of his motion for visitation, Father's opening brief argues that placing A. in foster care was not in the child's best interests and that the court should have granted his request to place A. with Father's mother. Father did not appeal from the court's ruling that because A. had been returned to Mother, it would deny the request that A. be placed with Father's mother. "[t]he court of appeals acquires no jurisdiction to review matters not contained in the notice of appeal." *Lee v. Lee*, 133 Ariz. 118, 124, 649 P.2d 997, 1003 (App. 1982). Therefore, we decline to express an opinion on the placement of A. with Mother and consequent denial of placement with Father's mother.

CONCLUSION

¶20 We affirm the superior court's order denying Father's request for visitation with A. Because Father did not appeal

from the ruling denying his request that A. be placed with his mother, we do not consider that ruling.

/s/ _____
SHELDON H. WEISBERG, Judge

CONCURRING:

/s/ _____
DONN KESSLER, Presiding Judge

/s/ _____
DANIEL A. BARKER, Judge