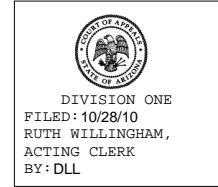


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

CURTIS B.,) No. 1 CA-JV 10-0087
)
Appellant,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz. R.P. Juv. Ct.;
SECURITY, CURTIS B.,) Rule 28 ARCAP)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD17633

The Honorable Roger E. Brodman, Judge

AFFIRMED

Denise L. Carroll
Attorney for Appellant

Scottsdale

Terry Goddard, Attorney General

By Kathleen Skinner, Assistant Attorney General Mesa
Attorneys for Appellee Arizona Department of Economic Security

S W A N N, Judge

¶1 Curtis B. ("Father") appeals from the juvenile court's
order terminating his parental rights. For the following
reasons, we affirm.

FACTS AND PROCEDURAL HISTORY¹

¶12 Father was incarcerated when his son, C.B., was four months old. After his release from prison in August 2008, Father was sent to Washington, where he had outstanding warrants. On December 24, 2008, C.B.'s mother was arrested after she was "observed grabbing [C.B.] by the arm and swinging him into a concrete barrier."² The Arizona Department of Economic Security ("ADES") took temporary custody of C.B. and filed a dependency petition alleging, *inter alia*, that Father was unable to parent due to his failure "to maintain a normal parental relationship with the child, who he has not seen since his release from prison." The juvenile court set a hearing on the petition, and appointed counsel for appellant and a guardian ad litem for C.B.

¶13 Father contested the petition and the court ordered mediation, after which Father agreed to participate in parent aide services, substance abuse assessment/treatment, and substance abuse testing including "6 clean, consecutive rule out

¹ We review 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).

² Because C.B.'s mother is not a party to this appeal, facts relating to her are included only as necessary to establish the issues on appeal.

UAs [urinalysis tests]."³ Visitation was left to ADES's discretion, but ADES agreed that a parent aide would be referred "after 1-2 months of consistent visitation." The case plan was family reunification. The court found C.B. dependent as to Father.

¶4 In April 2009, Father completed the terms of community supervision. Although he had not seen C.B. since his incarceration in 2005, Father indicated that he had no intentions of relinquishing his parental rights to C.B. Father moved to Arizona in May and ADES set up services.

¶5 Father participated in supervised visits with C.B., even though C.B. did not want to participate and "sometimes hid before the visits." He attended at least one supervised visit smelling of alcohol. After the visits, C.B. was "clingy and exhibited very negative behavior." Before visits, C.B. broke out in a "hive-like rash." Before a supervised visit in October, the Court Appointed Special Advocate reported that C.B.

started crying and scratching at his eyes and his cheeks. He could not be consoled. When assured that he would be safe and not to worry, he continued to cry and curled up at foster dad's feet in a fetal position

³ Father appeared telephonically at the initial dependency hearing, but was represented by counsel who attended in person. The court granted Father's request to appear telephonically at the mediation. The notes of the mediation session indicate that Father's counsel attended in person but makes no mention of Father's participation, except that his name is listed on the roster of attendees, signed by counsel "for dad."

saying he did not want to go to see [Father]. After a few minutes, [C.B.] started saying he had a "tummy ache" and had diarrhea and a headache. Attempts were made for over 40 minutes to get [C.B.] to go on the visit. A decision was made that the visit would not occur. Even after the child was told he did not have to go on a visit, regressive behavior was observed -- he started sucking his thumb, which has never been seen before.

The advocate recommended that C.B. be sent to a therapist for "intensive therapy," and that the therapist determine C.B. was "emotionally healthy to handle" the visits before they continued.

¶16 Father lived with C.B.'s maternal grandfather, where he did "various odd jobs" and tried to "save money to get an apartment of his own." He participated in a psychological consultation and a full evaluation was recommended. A substance abuse treatment intake assessment was completed but no services were recommended. Father refused to participate in "rule-out drug screens."

¶17 In October 2009, Father was arrested and jailed for what he described as "aggravated DUI and driving with a suspended license." The caseworker recommended that Father participate in random urinalysis testing "for an extended period of time to monitor his sobriety." Father "missed" his psychological appointment and "a couple [of] visits" with C.B. with "no explanation until after the fact," and failed to take

his urinalysis tests. He was "frequently argumentative with [his] Case Manager."

¶18 In November 2009, C.B. started "having extreme security issues" and refused to communicate for three weeks with anyone except his foster parents. When the parent aide tried to take C.B. for a visit with Father, C.B. began clawing at his face, crawling on his knees to hide behind furniture and trying to bang his head against the wall or on pieces of furniture. After the visit was canceled, C.B. had an upset stomach, a stress-related rash, diarrhea and a dry cough.

¶19 In December 2009, a bonding assessment was scheduled to assess C.B.'s attachment and relationship with his biological parents and the parents' ability to meet the child's needs. Father arrived more than an hour late for the appointment. Because C.B. left before Father arrived, the examiner was unable to observe the interaction between Father and C.B., and instead conducted individual clinical interviews with each of them. During C.B.'s interview, he stated he did not want to see his Father. Father stated he had "no doubts whatsoever that he could successfully raise his son," and spoke of his love for his son and his strong wish to be able to rear him. The examiner had "concerns that [Father] is not in a sufficiently stable position to parent [C.B.]," and concluded that the relationship between C.B. and Father was "minimal given their brief

association," and that the child's "best interest would be met by a plan of [s]everance and [a]doption."

¶10 In January 2010, Father resided in the hospital section of a shelter and reported he was unable to work because of injuries sustained "after being hit in the back of the head by someone throwing a rock, causing him to fall out of the bed of his pick-up truck." In the same report, a court-appointed advocate expressed "concern" about C.B.'s "stress level every time a visit with one of the biological parents is scheduled," and Father's "denial in accepting responsibility for current events." She recommended that the case plan goal be changed to severance and adoption.

¶11 At a January 2010 report and review hearing, the court granted Father's request for a second bonding assessment and psychological evaluation. The court also granted ADES's oral motion to change the case plan to severance and adoption. Father was advised the court could proceed in absentia if he failed to attend future hearings.

¶12 In February 2010, ADES moved to terminate Father's parental rights, alleging that C.B. had been in an out-of-home placement for nine months or longer, and that Father had "substantially neglected or wilfully refused to remedy the circumstances" causing that placement, pursuant to Arizona Revised Statute ("A.R.S.") § 8-533(B)(8)(a). At a subsequent

severance hearing, Father denied the allegations and requested mediation. The court again advised Father that failure to attend future hearings could result in the court proceeding in absentia. The court set the mediation and the pretrial conference on the motion to terminate.

¶13 Father failed to attend the mediation. He also failed to appear at the pretrial conference, but was represented by counsel, who had no explanation for Father's absence. The court granted ADES's motion to proceed in absentia. After considering ADES's evidence and testimony, the court ordered Father's rights terminated.⁴

¶14 Father timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235, 12-120.21(A)(1), and -2101(B).

DISCUSSION

¶15 Father asserts the juvenile court erred when it found that ADES provided reasonable services and made diligent efforts to reunify the family. See A.R.S. § 8-533(B)(8)(a) (allowing parental rights to be terminated when ADES makes a "diligent effort to provide appropriate reunification services," the child has been in an out-of-home placement for nine months or longer, and "the parent has substantially neglected or wilfully refused to remedy the circumstances that cause the child to be in an out-of-home placement.").

⁴ Also, Mother agreed to terminate her parental rights.

¶16 To terminate parental rights, a juvenile court must first find by clear and convincing evidence the existence of at least one statutory ground for termination.⁵ See A.R.S. § 8-533(B), *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. *Denise R.*, 221 Ariz. at 93, ¶ 2, 210 P.3d at 1264. We will not reverse a termination order unless it is clearly erroneous. *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997).

I. THE SERVICES ORDERED WERE NOT LEGALLY INAPPROPRIATE.

¶17 Father first contends that the ADES services were not appropriate because the department "continually added services, and at times duplicated services as well as scheduling these services in such a way that would cause the father to lose his job." He points to the second bonding assessment as evidence that services were scheduled "without any regard to the consequences to" his job. The record, however, demonstrates otherwise. ADES scheduled two bonding assessments -- the second

⁵ The court must also find by a preponderance of the evidence that the termination is in the best interests of the child. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005). Father does not contest the court's best interest finding, so we do not consider that issue. See *Schabel v. Deer Valley Unified Sch. Dist. No. 97*, 186 Ariz. 161, 167, 920 P.2d 41, 47 (App. 1996) ("Issues not clearly raised and argued in a party's appellate brief are waived.").

at Father's request. Father arrived late for the first assessment and C.B. was gone by the time he arrived, so the examiner was unable to observe their interaction. Father arrived early for the second assessment, and when advised to return at the appropriate time, he became "argumentative and said he could not afford to lose his job" and then failed to return. The record indicates that Father was aware of the date and time of the second bonding assessment, but he did not try to reschedule it or contact ADES after he missed it. The record also demonstrates that when ADES added services to the case plan, it did so because they were recommended by its service providers or case manager, or because Father requested them.⁶ See *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶ 37, 971 P.2d 1046, 1053 (App. 1999) ("The State does not . . . make a 'concerted effort to preserve' the parent-child relationship when it neglects to offer the very services that its consulting expert recommends.").

II. THE SERVICES WERE NECESSARY.

¶18 Father also contends that ADES failed to prove that "the services required were even necessary." Specifically he points to the fact that while suspected abuse brought C.B. into

⁶ For example, the psychological evaluation was recommended by the therapist who completed the psychological consultation. The case manager recommended additional urinalysis testing after Father's arrest for DUI. We discuss Father's request for services *infra*.

the care of the department, the case manager testified that there was no information the father had ever abused the child.. But Father presents neither legal argument nor substantive factual analysis in support of this position. The mere mention of an argument in an appellate brief is insufficient -- opening briefs must present significant arguments, supported by authority, setting forth the appellant's position on the issues raised. See ARCAP 13(a)(6); *State v. Moody*, 208 Ariz. 424, 452 n.9, ¶ 101, 94 P.3d 1119, 1147 n.9 (2004). See also *Cullum v. Cullum*, 215 Ariz. 352, 355 n.5, ¶ 14, 160 P.3d 231, 234 n.5 (App. 2007) (holding appellate courts "will not consider argument posited without authority.").

¶19 Although he admits that he "had little contact with the child prior to the child being taken into custody," Father fails to discuss the effect of the court's determination that the child was dependent on the ground that he failed "to maintain a normal parental relationship with the child, who he has not seen since his release from prison." See *Ace Auto. Prods., Inc. v. Van Duyne*, 156 Ariz. 140, 143, 750 P.2d 898, 901 (App. 1987) ("It is not incumbent upon the court to develop an argument for a party."). Most importantly, the record demonstrates that Father never objected below to ADES's requirement that he participate in services. See *Cullum*, 215 Ariz. at 355 n.5, ¶ 14, 160 P.3d at 234 ("As a general rule, a

party cannot argue on appeal legal issues not raised below."). Although Father contested the dependency petition, he participated (at least through counsel) in mediation and agreed to participate in parent aide services, substance abuse assessment/treatment, and substance abuse testing. Because Father failed to preserve any objections to the nature of the services provided, we reject his attempt to raise it for the first time here.

III. THE COURT'S FINDINGS WERE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.

¶120 Finally, Father contends that ADES did not meet its burden of providing clear and convincing evidence that his "partial performance was insufficient to justify continuing the case plan of family reunification." Again, Father provides no legal argument on this issue. Though Father has offered no substantive input, our review of the record reveals that sufficient evidence was presented to support termination. See *Jennifer B.*, 189 Ariz. at 555, 944 P.2d at 70 ("We will affirm a juvenile court's order based on findings of clear and convincing evidence unless no reasonable evidence supports those findings."). ADES's motion to terminate Father's parental rights provided details of the services offered and Father's failure to participate. A Child Protective Services caseworker testified about the services ADES provided and gave specific

detail about the level of Father's participation in those services. The caseworker was cross-examined by Father's counsel. ADES also presented evidence of eight reports written by caseworkers and treatment providers that chronicled the services offered and Father's compliance with the plan for services. This evidence demonstrated that Father:

- Initially failed to submit any UA tests, causing the cessation of services. When services were re-opened, Father submitted to one of four tests in October 2009, all four tests in November 2009, and two of four tests in December 2009. Father stopped testing altogether in January 2010.
- Participated in a June 2009 substance abuse assessment that recommended no services, but failed to participate in a second assessment after he was arrested in October 2009 for DUI.
- Participated in a psychological consultation, but failed to participate in the recommended psychological examination.
- Participated in visits with C.B., but showed up to one visit smelling of alcohol and carrying a pocket knife, and became confrontational with the case aide who addressed these actions.

- Missed two parent aide sessions in October 2009 and three in December 2009. When he participated, it was more so for visits with his child, not because he wanted to engage with the parenting skills session. These services were eventually closed due to Father's lack of contact with the case aide.
- Provided inconsistent information about his substance use history. During the bonding assessment interview, Father claimed that he did not drink at all. He qualified his answer after the examiner mentioned his October 2009 DUI arrest, and stated he had not consumed alcohol since then. Still later he admitted drinking some alcohol after his release from prison -- leaving the examiner to conclude that Father's "defensiveness around the topic of drinking left unanswered questions . . . as to the extent of his drinking if any at this time."

¶21 In his opening brief, Father notes that while he was "not totally compliant," he "had participated in many of the services." We do not reweigh 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. This record amply supports the juvenile court's findings that ADES made a "diligent effort" to provide "appropriate

reunification services" and Father "substantially neglected or wilfully refused to remedy the circumstances" that caused C.B. to be placed out-of-home. See *Mary Ellen C.*, 193 Ariz. at 192, ¶ 37, 971 P.2d at 1053 ("Although CPS need not provide 'every conceivable service,' it must provide a parent with the time and opportunity to participate in programs designed to improve the parent's ability to care for the child.").

CONCLUSION

¶22 For the foregoing reasons, we affirm the termination of appellant's parental rights.

/s/

PETER B. SWANN, Judge

CONCURRING:

/s/

PHILIP HALL, Presiding Judge

/s/

SHELDON H. WEISBERG, Judge