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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 11-12-2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STEVIE R.,) 1 CA-JV 10-0107
)
Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G), Ariz. R.P. Juv. Ct.;
SECURITY, STEVIE D.,) Rule 28 ARCAP)
)
Appellees.)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD16460

The Honorable Roger E. Brodman, Judge

AFFIRMED

Robert D. Rosanelli, Attorney at Law Phoenix
by Robert D. Rosanelli
Attorney for Appellant

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

P O R T L E Y, Judge

¶1 Stevie R. ("Father") appeals the termination of his
parental rights. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶12 Father and Mother are the unmarried parents of a child. Mother voluntarily placed the one month old with Child Protective Services ("CPS") in November 2007 because they did not have housing. After the temporary agreement expired, the parents were still homeless, and the child was subsequently found to be dependent.

¶13 After the permanency hearing, the Arizona Department of Economic Security ("ADES") filed a motion to terminate parental rights in May 2009. As to Father, the petition alleged that he was unable to discharge his parental responsibilities because of a history of chronic drug and/or alcohol abuse; that he substantially neglected or willfully refused to remedy the circumstances that caused the child to be in an out-of-home placement for over nine months; that Father was unable to remedy the circumstances that caused the child to be in an out-of-home placement for over fifteen months; and that there was a substantial likelihood the Father would not be able to exercise care and control in the future.

¶14 The matter proceeded to trial, and the juvenile court terminated Father's parental rights because ADES proved the allegations by clear and convincing evidence and termination was

in the best interests of the child.¹ Father appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-235 (2007), 12-120.21(A)(1), and -2101(B) (2003).

DISCUSSION

¶5 Father asserts that the juvenile court's findings are contrary to the evidence and erroneous. We view the facts in a light most favorable to upholding the juvenile court's order. See *Ariz. Dep't of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, ___, ¶ 7, 225 P.3d 604, 606 (App. 2010). Termination of parental rights is appropriate when ADES proves by clear and convincing evidence that there is a statutory basis for the termination. *Id.* ADES also must prove by a preponderance of the evidence that termination is in the child's best interest. *Id.* We will affirm the termination if any one of the statutory grounds is proven. See *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002).

¶6 Father argues that there is no evidence that his past drug use prevented him from discharging his parental responsibilities. Additionally, he contends that because he is not currently using drugs and has completed substance abuse treatment while in prison, his past drug abuse would not prevent

¹ The juvenile court also terminated mother's parental rights. She is not a party to this appeal.

him from discharging his parental responsibilities. We disagree.

¶17 Termination on the grounds of chronic substance abuse requires proof that Father is unable to discharge parental responsibilities, "because of . . . a history of chronic abuse of dangerous drugs, controlled substances or alcohol" and that there are "reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." A.R.S. § 8-533 (B)(3) (Supp. 2009). Moreover, we have recently held that "drug abuse need not be constant to be considered chronic." *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, ___, ¶ 16, 231 P.3d 377, 381 (App. 2010).

¶18 Although Father contends his drug use is in his past, he said the same thing to TERROS in 2005. During a substance abuse screening, he admitted that he started using marijuana at age 14 and "used a lot." He was subsequently diagnosed as having cannabis abuse. Then, in spite of an earlier prison sentence, he was arrested in February 2008 and pled guilty to possession of marijuana.

¶19 Before he was sentenced to prison in January 2009,² ADES referred him to Treatment Assessment Screening Centers ("TASC") for drug screening. He participated in the testing but

² Father was arrested in January 2009 for possession of burglary tools.

in October 2008 tested positive for marijuana twice, and marijuana and cocaine once; positive for marijuana in November 2008; and negative in December 2008, but two of his samples, like earlier samples, were diluted. The parent aide who supervised a Christmas visit with the child reported that she believed Father was "high" and had bloodshot eyes.

¶10 Although Father denied using cocaine and only admitted to using marijuana once, the TERROS therapist reported that he was minimizing his drug use. Moreover, TERROS performed a swab test in December 2008, and Father was positive for both marijuana and cocaine.³

¶11 During the termination proceedings, the juvenile court found Father's testimony regarding his drug use "evasive" and that Father had not taken advantage of services to demonstrate his sobriety. The court also found sufficient evidence that Father's condition would continue for a prolonged indeterminate period. Because Father's history of drug abuse has persisted, the juvenile court did not abuse its discretion in making its A.R.S. § 8-533(B)(3) finding.

¶12 Father also argues that reunification services were interrupted because the case manager failed to provide services

³ The record does not contain the results of the swab test; however, there is reference to the swab test in the TERROS report and in testimony from the CPS caseworker stating the results.

to him in prison after January 2009. He does not, however, dispute the efforts ADES made prior to his incarceration or his failure to fully participate. See *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶ 37, 971 P.2d 1046, 1053 (App. 1999) (holding CPS need not provide every conceivable service but must provide a parent time and opportunity to participate in programs designed to improve the parent's ability to care for the child).

¶13 Direct reunification services were not provided after Father was incarcerated, some five months before the case plan changed to termination. He submitted several certificates showing his participation in Alcoholics Anonymous, Spiritual Recovery, and Fundamentals of Parenting classes while he was in prison. Father, however, failed to convince the juvenile court that the five-month interruption would have resulted in a different outcome given the totality of the evidence. Moreover, the court found that Father had not demonstrated sobriety. Consequently, because the juvenile court is in the best position to judge witness credibility and resolve testimonial conflict, we find no error. See *Pima Cnty. Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987).

CONCLUSION

¶14 For the forgoing reasons, we affirm the juvenile court's termination of Father's parental rights to his child.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

MARGARET H. DOWNIE, Judge

/s/

PATRICIA A. OROZCO, Judge