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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: 12/21/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JAMES B.,) No. 1 CA-JV 10-0166
)
Appellant.) DEPARTMENT E
v.)
) **MEMORANDUM DECISION**
ARIZONA DEPARTMENT OF ECONOMIC)
SECURITY, IZAYIAH B.,) (Not for Publication -
) Ariz. R.P. Juv. Ct. 103(G);
Appellees.) ARCAP 28)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD 17685

The Honorable Jo Lynn Gentry-Lewis, Judge

AFFIRMED

Robert D. Rosanelli Phoenix
Attorney for Appellant

Terry Goddard, Arizona Attorney General Phoenix
By David M. Osterfeld, Assistant Attorney General
Attorneys for Appellee

H A L L, Judge

¶1 James B. (Father) appeals the juvenile court's order severing his parental rights to Izayiah B. For the reasons that follow, we affirm.

FACTUAL¹ AND PROCEDURAL BACKGROUND

¶12 Father and Claudia D.² (Mother) are the biological parents of Izayah, born on September 25, 2009. Mother tested positive for amphetamines at Izayah's birth and Izayah was placed in foster care. Although Izayah was exposed to methamphetamines and marijuana while in utero, he tested negative for illegal substances at birth. In October 2009, the Arizona Department of Economic Security (ADES) filed a dependency petition, alleging that Father was "unable to parent due to failure to protect [Izayah] . . . [and] due to an unfit home. Father continue[d] to live with Mother who [was] addicted to methamphetamines which place[d] [Izayah] in danger. Father refuse[d] to leave Mother and also refuse[d] to be tested for use of illegal substances."

¶13 Father failed to appear at mediation and the subsequent pretrial conference. The court proceeded by default and found Izayah dependant as to Father and committed Izayah to the care, custody and control of ADES.

¹ We review the evidence and draw all reasonable inferences in the light most favorable to upholding the juvenile court's factual findings. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 13, 53 P.3d 203, 207 (App. 2002).

² Mother and Father never married. Mother's rights to Izayah have been severed, but she is not a party to this appeal. Mother's rights to Janae'ya C. and Carl'ie C. have also been severed, but they are not a party to this appeal. It is unclear whether Mother's rights to her biological child, Ayuna T., have additionally been severed.

¶14 In February 2010, ADES moved for termination of the parent-child relationship between Father and Izayah. At the April 2010 severance by motion hearing, the court read Father a Form III notice, which states in part, "[i]f you fail to attend the initial termination hearing, the pretrial conference, the status conference, or the termination adjudication hearing without good cause, the Court may determine that you have waived your legal rights and admitted the allegations in the motion or petition for termination."

¶15 Father failed to appear for the following pretrial conference, but notified his counsel that he was "on his way to the hospital with chest pain." The court rescheduled the pretrial conference, at which Father also failed to appear. The court proceeded with the severance hearing in Father's absence. Amy Miller, a Child Protective Services ongoing case manager, testified that Father had been offered substance abuse assessment, random urinalysis testing, parent aide services, a psychological consultation, and a psychological evaluation. Miller stated that although he participated "minimally" in the parent aide services, he failed to comply with or participate in every other service offered. Miller further testified that she believed Father "substantially neglected and/or willfully refused to remedy the circumstances which have brought . . . Izayah into the care" of ADES. Finally, Miller stated that

Izayah's prospective adoptive home was meeting "all of his physical, social, educational, and emotional needs."

¶16 The court terminated Father's rights to Izayah after finding that Izayah

who is under the age of three, has been in his out[-] of[-]home placement for a cumulative total period of six months or longer and [Father] has substantially neglected or willfully refused to remedy the circumstances that cause[d] [Izayah] to be in his out[-]of[-]home placement, including, but not limited to, the refusal to participate in reunification services offered by [ADES].

[Father] was offered a psychological evaluation, substance abuse treatment with follow-up services, UA and hair follicle testing and a parent aide and [Father] refused to fully engage in those services.

The Court finds that the Department has proved by a preponderance of the evidence that termination of the parental rights would be in the best interests of [Izayah]. [Izayah] is currently in a prospective adoptive placement where his sisters currently reside. Adoption will allow the child to be adopted with his sisters in a home that will be able to provide him the permanence and security of a stable home.

¶17 The court's signed minute entry states that Izayah

who is under three years of age, has been in an out-of-home placement for a cumulative total period of six months or longer, pursuant to court order. [Father] has been unable to remedy the circumstances which cause the child to be in an out-of-home placement. There is substantial likelihood that [Father] will not be capable of exercising proper and effective parental care and control in the near future.

¶18 Father filed a motion to vacate the severance, which the court denied. Father timely appealed. We have jurisdiction under Arizona Revised Statutes (A.R.S.) sections 8-235 (2007)

and 12-120.21 (2003) and Arizona Rule of Procedure for the Juvenile Court 103(b).

DISCUSSION

¶9 The juvenile court may terminate the parent-child relationship only upon finding that clear and convincing evidence demonstrates at least one statutory ground for severance and that a preponderance of the evidence shows severance is in the child's best interest. A.R.S. § 8-533(B) (Supp. 2009); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). We will affirm the judgment unless the juvenile court abused its discretion by making "factual findings [that] are clearly erroneous[;] that is, unless there is no reasonable evidence to support them." *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998) (citations omitted). "[T]he juvenile court will be deemed to have made every finding necessary to support the judgment." *Maricopa County Juv. Action No. JS-8287*, 171 Ariz. 104, 111, 828 P.2d 1245, 1252 (App. 1991) (citations omitted).

¶10 Father presents the sole issue on appeal of whether the trial court committed reversible error by failing to make statutorily required findings under A.R.S. §§ 8-533(B)(8)(b) and -538(A) (2007) within its order terminating Father's rights to Izayah.

¶11 Section 8-538(A) states that “[e]very order of the court terminating the parent-child relationship . . . shall be in writing and shall recite the findings on which the order is based, including findings pertaining to placement of the child and the court’s jurisdiction. The order is conclusive and binding on all persons from the date of entry.” In this case, the court terminated Father’s rights under § 8-533(B)(8)(b), which states, in relevant part, that “[t]he child who is under three years of age has been in an out-of-home placement for a cumulative total period of six 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, including refusal to participate in reunification services offered by” ADES. Although the court’s written order terminating the parent-child relationship declared that Izayiah was under the age of three, had been in an out-of-home placement for six months or longer, and Father had been “unable to remedy the circumstances which caused the child to be in an out-of-home placement,” Father maintains that the court’s failure to include the words “substantially neglected or willfully refused” as well the court’s failure to include language about Father’s refusal to participate in reunification services, requires this court to remand the case due to fundamental error. We disagree.

¶12 Although A.R.S. § 8-538(A) requires the court to "recite the findings," in writing, on which the termination order is based, it does not require that the court make every such finding in writing. In this case, the court made written findings as to why it terminated Father's rights to Izayah. However, the court made additional, detailed findings at the oral pronouncement of the termination, which included specific findings that Father "substantially neglected or willfully refused to remedy the circumstances that cause[d] [Izayah] to be in his out[-]of[-]home placement, including, but not limited to, the refusal to participate in reunification services offered by" ADES. The court also listed the specific reunification services in which Father failed to engage.

¶13 Even if we were to interpret A.R.S. § 8-538(A) as requiring the court's termination order to specifically recite each of the statutory requirements in writing, it would serve no purpose to remand for further findings here because the court has already orally "recite[d] the findings on which the order is based." A.R.S. § 8-538(A). Thus, the court made all the necessary findings on the record, albeit not in its final written order. Moreover, unlike *Reid v. Reid*, 222 Ariz. 204, 213 P.3d 353 (App. 2009), in which we vacated the child custody order and remanded so the family court could make specific findings on child custody pursuant to A.R.S. § 25-403(A) and (B)

(Supp. 2009), our appellate review has not been hampered by the lack of statutory compliance with A.R.S. § 8-538(A). Instead, this case falls within the general rule articulated in *Trantor v. Fredrikson*, 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994), which held that "absent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal." See also *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, 452, ¶ 21, 153 P.3 1074, 1081 (App. 2007) (citation omitted) ("[A] party may not 'sit back and not call the trial court's attention to the lack of specific finding on a critical issue, and then urge on appeal that mere lack of a finding on that critical issue as grounds for reversal.'").

CONCLUSION

¶14 For the foregoing reasons, we affirm the juvenile court's order severing Father's parental rights to Izayah.

_ /s/ _____
PHILIP HALL, Presiding Judge

CONCURRING:

_ /s/ _____
SHELDON H. WEISBERG, Judge

_ /s/ _____
PETER B. SWANN, Judge