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



DIVISION ONE
FILED: 03/15/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

TIMOTHY G. ,) No. 1 CA-JV 11-0122
)
Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz. R.P. Juv.
SECURITY, JAYDEN G. ,) Ct.; Rule 28 ARCAP)
)
Appellees.)
)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD508026

The Honorable Raymond P. Lee, Judge (Retired)

AFFIRMED

Robert D. Rosanelli,
Attorney for Appellant

Phoenix

Thomas C. Horne, Arizona Attorney General
By Laura J. Huff, Assistant Attorney General
Attorneys for Appellee Arizona Department of
Economic Security

Tucson

D O W N I E, Judge

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

FACTS AND PROCEDURAL HISTORY¹

¶2 J.G., born in April 2008, is the biological child of Father and A.J. (collectively, "the parents").² Because J.G. was diagnosed with "failure to thrive" and significant developmental delays, his pediatrician referred the parents to an early intervention program and specialty medical services.³ The parents, however, failed to attend several specialty appointments and mother told the pediatrician J.G. was developmentally normal and "ate everything."

¶3 In June 2009, Child Protective Services ("CPS") received an allegation of neglect and contacted the parents, who agreed to take J.G. to a hospital for assessment. J.G. was immediately hospitalized for ten days. Physicians inserted a nasogastric feeding tube ("NG tube"), which was used several times each day to ensure J.G. received proper nourishment and

¹ We view the evidence in the light most favorable to affirming the juvenile court's decision. See *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 250, ¶ 20, 995 P.2d 682, 686 (2000) (citation omitted).

² A.J. is not a party to this appeal. We reference her only as necessary to develop the issues on appeal.

³ Father and J.G. both have DiGeorge's Syndrome, a chromosomal abnormality with a range of effects, including mild to severe mental retardation, growth retardation, feeding problems, and cardiac, kidney and cleft palate defects. J.G. was also diagnosed with cerebral palsy and autism.

gained weight. The parents received instruction about the NG tube. CPS initially planned to offer "intensive in home services," but changed the plan because the parents were "distracted and not attentive,"⁴ did not actively participate in J.G.'s care in the hospital, and could not independently insert the NG tube. In July 2009, the Arizona Department of Economic Security ("ADES") filed a dependency petition, alleging, *inter alia*, that Father was unable to parent J.G. based on his failure to appropriately address the child's weight issues, inability to use the NG tube, and his own "developmental disabilities," which impaired his "motivation level and consistent follow through" to meet J.G.'s special needs. The juvenile court found J.G. dependent. The initial case plan was for family reunification. Father agreed to participate in parent aide services, training for the NG tube, and a behavioral health intake to determine his need for additional services.

¶14 J.G. continued to express no interest in food and had difficulty chewing. A gastrointestinal feeding tube ("G tube") was inserted, and a feeding journal documented specific times and amounts of food J.G. needed to sustain his life. His

⁴ Hospital staff had difficulty waking the parents to participate in feedings. The parents could not accurately report J.G.'s calorie intake and minimized his developmental delays and failure to gain weight. They also played video games, ate J.G.'s food, and were caught "fooling around" in the child's hospital room.

structured meal times could take up to two hours to complete, and he threw up if fed too fast.

¶15 Parent aides provided repetitive, hands-on, step-by-step instructions to Father about how to feed J.G. orally and through the G tube, and how to clean the G tube to prevent infection. The parents, though, "[c]onsistently" fed J.G. "as little as 1/4 to 1/3 the total ounces" needed to "sustain life," gave him chips ("a definite choking hazard"), and relied on the foster parent to supply formula during supervised visits. Father also failed to take his "responsibility [to feed J.G.] seriously" and missed parenting aide sessions or cut them short. When he was present, Father was not particularly engaged or proactive and often did not participate in the sessions. Parenting aides reported Father would fix food for himself, sit on the couch, and observe or sleep during the sessions. When Father participated in feedings, he required constant prompting, reminders, and guidance. Several times, he attempted to insert a G tube that was unsanitary due to "visible old food particles" and mold.

¶16 Parent aides also instructed Father about J.G.'s developmental stages, including age appropriate play and how to engage him with activities. Although Father was receptive to those suggestions, he lacked "follow through" and always required additional direction.

¶17 In October 2010, ADES changed the case plan to severance and adoption and filed a petition to sever Father's parental rights pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(8)(c). ADES alleged Father did not understand the significance of J.G.'s illness or the "special attention to detail and planning" necessary to meet his needs, could not independently clean and insert the G tube, failed to participate in a behavioral health intake, and was unable to meet J.G.'s basic needs because he had no consistent source of income.

¶18 After a four-day contested hearing, the court terminated Father's parental rights. Father timely appealed. We have jurisdiction pursuant to A.R.S. § 8-235.

DISCUSSION

¶19 "We will not disturb the juvenile court's disposition absent an abuse of discretion or unless the court's findings of fact were clearly erroneous, i.e. there is no reasonable evidence to support them." *Maricopa County Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996) (citations omitted); see also *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004) (because the juvenile court is in the best position to weigh the evidence, judge the credibility of witnesses, and make appropriate factual findings, we do not reweigh evidence, but

consider only whether substantial evidence supports the court's ruling).

¶10 Before severing parental rights, ADES must prove by clear and convincing evidence that at least one statutory ground for severance exists and that it made reasonable efforts to preserve the family or that such efforts would be futile. Ariz. Rev. Stat. § 8-533(B)(8); see also *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 193, ¶ 42, 971 P.2d 1046, 1054 (App. 1999). Reasonable efforts include providing a parent "with the time and opportunity to participate in programs designed to improve the parent's ability to care for the child." *Mary Ellen C.*, 193 Ariz. at 192, ¶ 37, 971 P.2d at 1053 (citation omitted). ADES, though, need not provide "every conceivable service" or undertake futile rehabilitative measures. *Id.* at 187, 192, ¶¶ 1, 37, 971 P.2d at 1048, 1053 (citation omitted).

¶11 Father's only argument on appeal is that ADES failed to provide appropriate reunification services. Specifically, he contends ADES did not "have [him] psychologically evaluated to determine his level of functioning" and therefore could not be "fully informed of his impairment" or "tailor services to meet his needs." He further contends ADES was less than diligent because it failed to properly train its parent aides "to deal"

with his specific disability. The record does not support Father's contentions.

¶12 Father himself hindered the agency's attempt to tailor services to meet his specific needs by failing to participate in a behavioral health intake offered for that purpose.⁵ Additionally, Father's participation in parent aide services was sporadic.

¶13 Although ADES did not tell parent aides Father's exact diagnosis or IQ, an aide testified such information is not usually conveyed. More importantly, two of Father's parenting aides testified they were not hindered in offering services because they conduct their "own assessment" not "based on any kind of diagnosis" and adapt their teaching methods accordingly. Father's aides had experience working with developmentally disabled clients and testified that the teaching methods they used -- repetitive, hands-on, step-by-step instructions -- were the best method to teach someone with DiGeorge Syndrome. Despite those methods, the aides testified Father required "constant reminding . . . prompting, [and] suggestions" and that every session "was essentially like starting over." And although ADES provided more than a year of parent aide services,

⁵ The fact Father scheduled the initial appointment and rescheduled it several times belies any suggestion he required assistance to follow up on the referral for behavioral health services.

