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See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



DIVISION ONE
FILED: 03/01/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

GEORGE R., HOPE S.,

Appellants,

v.

ARIZONA DEPARTMENT OF ECONOMIC
SECURITY, C.R.,

Appellees.

1 CA-JV 11-0166

DEPARTMENT B

MEMORANDUM DECISION

(Not for Publication -
Ariz.R.P.Juv.Ct.
103(G); ARCAP 28)

Appeal from the Superior Court in Maricopa County

Cause No. JD18537

The Honorable Colleen McNally, Judge

AFFIRMED

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K E S S L E R, Judge

¶1 George R. ("Father") and Hope S. ("Mother") appeal from the juvenile court's order severing their parental rights to their son C.R. ("Son"). For the reasons that follow, we affirm the severance of Mother's and Father's parental rights to Son.

FACTS AND PROCEDURAL HISTORY

¶2 Son was born in August 2009. Son has developmental issues with his speech and muscle control. In October 2009, Child Protective Services ("CPS") received a report from Father's mother. The report alleged that Father and Mother were not providing enough food for Son and that their one-bedroom apartment was unsanitary. The report further alleged that Father shook the seven-week old Son and "smothered" him in his chest when Son began to cry and that he told Son to "shut up" multiple times.

¶3 Only Mother and Son were present when a CPS caseworker arrived to investigate the apartment. The CPS caseworker testified that there was a strong stench emanating from the cat feces and urine present in the apartment. She testified that Son was "very small," "extremely pale," and "very dirty." Mother informed the caseworker that Son had not been to a physician since his birth because they could not afford it, and she did not feel it was necessary. The caseworker testified

that Son slept in a cardboard box, which had a blanket inside that was dirty, smelly, and covered in cat hair.

¶4 At some point, Father arrived at the apartment and immediately became angry. The caseworker contacted the police because she felt unsafe. When police arrived, Father became aggressive with the officers as the caseworker removed Son from the home.

¶5 Five days later, the Arizona Department of Economic Security ("ADES") filed a dependency petition. The juvenile court found Son dependent and approved family reunification as the case plan for Father and Mother. As part of the reunification plan, Father and Mother were asked to participate in parent-aide services, supervised visits, drug testing, and psychological evaluations. Drug-testing services for Father and Mother were terminated when it became evident that they did not have substance-abuse issues.

¶6 Psychologist Dr. Thal evaluated Mother and Father. Dr. Thal opined that Mother suffered from a personality disorder, not otherwise specified, with narcissistic and schizoid traits. He explained that these conditions make it difficult for Mother to empathize and form emotional connections with Son. Dr. Thal recommended that Mother participate in parent-aide services to teach her how to bond with Son. Dr. Thal did not recommend psychiatric services because he believed

that there is no medication that could address Mother's personality disorder.

¶7 Dr. Thal also cautioned against placing Son with Father. Dr. Thal opined that Father was impulsive and easily frustrated. Dr. Thal noted that Father was "chronically unemployed" and that he was homeless or living in substandard living conditions since CPS first became involved with Son. Dr. Thal had "no sense at all" that Father understood his behavioral problems.

¶8 Parent aides conducted supervised visits twice a week for approximately eight months. One of the parent aides testified that he believed Father and Mother were homeless and living in the park where supervised visits with Son were taking place. The parent aide further testified that although Mother and Father never missed a scheduled visitation, they did not always participate in the two-hour supervised visits. Instead, they would speak with some of their friends whom the parent aide believed were living at the park. During one visit, Father left to open a bank account. Father played poker with his friends during one visit and fixed his bike during another.

¶9 The parent aide testified that he warned Father and Mother that they needed to display more physical affection for Son because it was important for them to establish a bond with Son. The parent aide stated that despite his warning, Father

and Mother did not display physical affection for Son and never bonded with Son.

¶10 The parent aide offered to help Mother and Father find employment because they were both either unemployed or working only part time, but they did not follow up with him. The parent aide also arranged for the Son's developmental therapist to meet with Father and Mother to provide advice on how to help Son improve his speech and muscle-control issues. Father did not participate in all of the developmental-therapy sessions and did not display physical affection for Son. On a few occasions, Father read books during the therapy sessions.

¶11 In February 2011, ADES filed a motion to terminate Mother's and Father's parental rights. The juvenile court held a contested severance hearing on ADES's motion to terminate in July and August 2011. At the hearing, Dr. Thal opined that Father would not be capable of minimally parenting Son in the near future. Dr. Thal also opined that Mother's personality disorder would prevent her from providing proper and effective parental care and that it would continue for a prolonged indeterminate period because such personality disorders are deeply ingrained.

¶12 After taking the matter under advisement, the court granted ADES's motion to terminate Father's and Mother's parental rights. The juvenile court severed Mother's and

Father's parental rights pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(8)(c) (West 2012)¹ because Son had been cared for in an out-of-home placement for a total period of fifteen months pursuant to court order, and there is a substantial likelihood that Mother and Father will not be capable of exercising proper and effective parental care and control in the future.

¶13 Additionally, the juvenile court severed Mother's parental rights pursuant to A.R.S. § 8-533(B)(3) because there was clear and convincing evidence that Mother was unable to discharge her parental responsibilities due to mental illness, and there were reasonable grounds to believe the condition will continue for a prolonged indeterminate period.

¶14 Mother and Father timely appeal.² This court has jurisdiction pursuant to A.R.S. §§ 8-235(A), 12-120.21(A)(1), and 12-2101(B).

DISCUSSION

¶15 The right to custody of one's child is fundamental, but it is not absolute. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248, ¶¶ 11-12, 995 P.2d 682, 684 (2000).

¹ We cite the current version of the applicable statutes where no revisions material to this decision have since occurred.

² Mother filed her appeal one day late, but the juvenile court excused her untimely filing.

To justify termination of parental rights, a juvenile court must find, by clear and convincing evidence, at least one statutory basis for termination pursuant to A.R.S. § 8-533. *Id.* at 249, ¶ 12, 995 P.2d at 685. The court must also find by a preponderance of the evidence that the termination is in the child's best interest. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005).

¶16 In reviewing a severance order, we view the evidence in the light most favorable to sustaining the order. See *Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994). "[T]he juvenile court was in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings." *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987). Accordingly, we do not reweigh the evidence but determine only whether there is evidence to sustain the juvenile court's ruling. *Maricopa County Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996). "[W]e will affirm a severance order unless it is clearly erroneous," and "we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002).

I. Father

¶17 Father argues that the trial court abused its discretion when it found that there is a substantial likelihood that he will not be capable of exercising proper and effective parental care and control in the future. Father contends he is now gainfully employed and pays for his own apartment. He notes that his apartment is clean and safe for children.

¶18 Reasonable evidence supports the juvenile court's findings. Although Father obtained housing and employment prior to the severance hearing, he failed to establish a bond with Son. Instead of spending time with Son during supervised visits, Father played poker and fixed his bike. Father even left one visit to open a bank account. The parent aide warned Father that he needed to display more physical affection for Son, but Father failed to do so.

¶19 Father also failed to fully participate in the therapy sessions with Son's developmental therapist. Father read books during some of the therapy sessions and did not display physical affection for the Son when the Son climbed on his lap. Parent-aide reports, bonding evaluations, and psychological evaluations all revealed that Father had difficulty bonding with Son and that he did not provide the affection Son needed to develop properly. Accordingly, the trial court did not abuse its discretion.

¶20 We also find no support for Father's argument that the trial court abused its discretion when it found that severance was in Son's best interest. A determination of a child's best interest must include a finding as to how the child would benefit from the severance or be harmed by the continuation of the relationship. *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). Factors that support a finding that the child would benefit from the severance of parental rights include evidence of an adoption plan, that the child is adoptable, or that the existing placement is meeting the child's needs. *Audra T. v. Ariz. Dep't Econ. Sec.*, 194 Ariz. 376, 377, ¶ 5, 982 P.2d 1290, 1291 (App. 1998).

¶21 Dr. Thal testified that even after 170 hours of parent-aide assistance, Father was still emotionally detached from Son and failed to display physical affection. Additionally, foster parents have been caring for Son for several months and are willing to adopt him. Under these circumstances, we find no abuse of discretion.

II. Mother

¶22 Mother argues that the trial court abused its discretion when it found that ADES made a diligent effort to reunite her with Son. Mother contends that she complied with all available services and that if her "mental illness was the main issue, CPS should have provided her with counseling to

address those issues. Providing her with services that did not address her mental health issues was setting her up for a certain failure."

¶23 ADES must establish by clear and convincing that it made a "diligent effort to provide appropriate reunification services." A.R.S. § 8-533(B)(8). ADES fulfills its duty to provide services to a parent when it gives a parent "the time and opportunity to participate in programs designed to help [him or] her become an effective parent." *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). The services provided must have a "reasonable prospect of success," but ADES is not required to provide rehabilitative services when it establishes by clear and convincing evidence that such services would be futile. *Mary Ellen C. v. Ariz. Dep't Econ. Sec.*, 193 Ariz. 185, 187, ¶ 1, 192, ¶ 34, 971 P.2d 1046, 1048, 1053 (App. 1999).

¶24 Reasonable evidence supports the juvenile court's finding that ADES made diligent efforts to reunify Mother with Son. ADES offered Mother psychological evaluations, supervised visits, transportation, child care, parent-aide services, behavioral self referral, and bonding assessments. ADES provided these services to Mother for a period of approximately twenty-one months.

¶25 During the reunification process, Mother participated in approximately 170 hours of parent-aide services. After reviewing all of the reports from the parent aides and CPS caseworkers and conducting a psychological evaluation of Mother, Dr. Thal found that Mother suffered from a personality disorder that makes it difficult for her to empathize and form emotional connections with Son. Dr. Thal did not recommend psychiatric services because he believed there is no medication to address Mother's personality disorder. He opined that sending Mother to therapy would have been a "wasted service" because Mother did not believe she had a problem. Given these circumstances, we cannot say the trial court abused its discretion in finding that ADES made diligent efforts to reunify Mother with Son.

CONCLUSION

¶26 For the foregoing reasons, we affirm the juvenile court's termination of Father's and Mother's parental rights to Son.

/S/

DONN KESSLER, Judge

CONCURRING:

/S/

DIANE M. JOHNSEN, Presiding Judge

/S/

MICHAEL J. BROWN, Judge