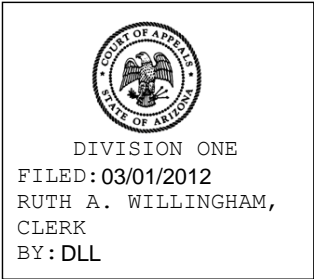


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ROBERT C., KIMBERLY B.,) No. 1 CA-JV 11-0173
)
Appellants,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) 103(G) Ariz. R.P. Juv.
ARIZONA DEPARTMENT OF ECONOMIC) Ct.; Rule 28 ARCAP)
SECURITY, CRAIGORY C.,)
)
)
Appellees.)
)
)
_____)

Appeal from the Superior Court in Yavapai County

Cause No. V1300JD820050002

The Honorable Ethan A. Wolfinger, Judge *Pro Tem*

AFFIRMED

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Economic Security

D O W N I E, Judge

¶1 Robert C. ("Father") and Kimberly B. ("Mother") separately appeal the juvenile court's order terminating their parental rights. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In 2004, the Arizona Department of Economic Security ("ADES") received a report that Mother was neglecting her three children, including nine-month-old D.U. Mother was offered services, but was noncompliant with drug and alcohol treatment and admitted ongoing substance abuse. Her parental rights to D.U. were terminated based on mental illness and substance abuse.

¶3 C.C., the biological child of Father and Mother, was born in September 2006. In May 2007, ADES filed a dependency petition as to C.C. based on Mother's incarceration and substance abuse and Father's charges of domestic violence and DUI. After services were provided to both parents, the dependency petition was dismissed in May 2008. In April 2009, Father was arrested twice on the same day for two separate incidents of aggravated DUI with C.C. in the car. In February 2010, ADES opened services for Mother.

¶4 In June 2010, Child Protective Services ("CPS") investigated a report that Mother drove while intoxicated with

C.C. in the car and left him in the care of a "homeless adult." An ADES caseworker found Mother "extremely intoxicated" along with two males in the home; C.C. was asleep in his bedroom. Mother admitted needing assistance to stop drinking and was admitted for detoxification and residential treatment. Father was incarcerated at the time. ADES filed a dependency petition, alleging Mother neglected C.C. and was unable to protect him due to substance abuse and prior dependencies, and Father neglected the child due to criminal activity, incarceration, and prior dependency. The juvenile court found C.C. dependent as to both parents and placed him in ADES' custody.

¶15 The initial case plan for C.C. was family reunification. Mother completed in patient substance abuse treatment and participated in outpatient treatment; Father was released from prison to a halfway house. Both parents participated in services, including drug testing, supervised visits, and parenting skills training. Mother's visitation progressed to unsupervised and overnight visits, and Father was allowed visits in the community rather than at an ADES office.

¶16 Over time, however, ADES reported "many concerns" about Mother's and Father's parenting abilities. The parents were "argumentative" in response to parenting advice. They ignored suggestions to provide C.C. with a healthy diet and gave him "candy, ice cream and junk food," despite his "extreme"

tooth decay and a history of "chronic failure to thrive." Father denied any problems with C.C.'s teeth, despite the child's complaints of pain and a dentist's advice to pull two teeth and cap the others due to cavities. During a supervised visit, Father left C.C. "standing alone, shivering" at a community pool and asked strangers to watch him while Father swam and played in the water. Father spoke negatively about ADES, C.C.'s foster parents, and the case plan in front of C.C. Father told C.C. there were "monsters" and "spiders" in his foster home, which caused C.C. to have nightmares. Father told C.C. there was "no reason" he could not live with Mother, which caused C.C. to be inconsolable when returned to his foster home. C.C. hit himself in the face when angry or frustrated and pulled his hair and eyebrows. C.C. was diagnosed with attention deficit/hyperactivity disorder and oppositional defiant disorder and was prescribed medication.

¶17 In November 2010, Mother relapsed and was found intoxicated before a visit with C.C. A caseworker found Mother at home, drunk and barely able to walk unassisted, with an unknown man. Mother threatened the ADES worker upon learning the worker would report her condition. Mother tested positive for alcohol for three consecutive months, beginning in December 2010.

¶18 In February 2011, the parents participated in joint visitation with C.C., which caused the child to exhibit increased aggression. The parents submitted to psychological examinations. The psychologist reported Father was "impulsive, distractible, and easily frustrated" and "unable to protect his child" or "independently care [for C.C.] in a minimally adequate fashion." The psychologist found Mother "emotionally unstable, impulsive, and depressed" and opined she may be unable to "place [C.C.'s] needs ahead of her own." The psychologist recommended a case plan of severance and adoption.

¶19 In February 2011, Mother was arrested for extreme DUI and fleeing the scene of an accident. Father attended a case planning meeting with "an unfocused appearance" and "slurring words" and admitted taking "prescription" drugs because "he wanted to 'be mellow' for the meeting." The Court Appointed Special Advocate ("CASA") reported that Father "would not have been sufficiently able to care for a child at that level of medication."

¶10 In March 2011, ADES changed the case plan to severance and adoption, citing Mother's "failure to maintain her sobriety" and Father's "gross disregard for [C.C.'s] health and safety." ADES filed a motion to terminate parental rights because Mother and Father neglected C.C. or failed to protect him from neglect, pursuant to Arizona Revised Statutes ("A.R.S.") section 8-

533(B)(2); Mother was unable to discharge parental responsibilities because of a history of chronic abuse of dangerous drugs, controlled substances and/or alcohol, pursuant to § 8-533(B)(3); and Mother and Father were unable to discharge parental responsibilities because of mental illness, pursuant to § 8-533(B)(3). ADES further alleged termination was in C.C.'s best interests because he was adoptable, and adoption would "provide permanency and stability." The parents contested the allegations, and the matter proceeded to trial.

¶11 At the conclusion of trial, the court terminated Mother's rights based on neglect and chronic substance abuse. It terminated Father's rights based on neglect and mental illness. The court further found termination was in C.C.'s best interest. Mother and Father timely appealed. We have jurisdiction pursuant to A.R.S. § 8-235.

DISCUSSION

¶12 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). We review the court's findings of fact for clear error and will reverse only if there is no reasonable evidence to support its findings. *Anonymous v. Anonymous*, 25 Ariz. App. 10, 12, 540 P.2d 741, 743 (1975).

I. Father's Claims

¶13 Father contends there was insufficient evidence of neglect. We disagree.¹

¶14 Termination of parental rights is justified when clear and convincing evidence demonstrates that the parent has neglected a child. Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(2). Neglect means "[t]he inability or unwillingness of a parent . . . to provide [a] child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare." A.R.S. § 8-201(22)(a).

¶15 The juvenile court found Father had an "ongoing inability and/or unwillingness to do what is necessary to adequately provide for and protect [C.C.] and minimize potential risks," and that his behavior and judgment demonstrated past neglect and posed "a substantial risk of future neglect." The record supports these findings.

¶16 Father told C.C. monsters and spiders lived in his foster home, causing the child to have nightmares. Father

¹ Father also contends there was insufficient evidence that his mental illness would continue for a prolonged, indeterminate period of time. Because we conclude sufficient evidence supports the termination due to neglect, we decline to address additional bases for severance. See *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002) (court need not address additional grounds for termination if one statutory ground supporting severance exists).

maligned CPS and C.C.'s foster parents in front of the child. Father "vehemently" denied C.C. had any medical, dental, or psychological issues, and did not believe C.C. needed medication to control his ADHD. Although Father knew C.C. had extreme dental decay that required teeth to be pulled and capped, he "rejected the idea" that C.C. should avoid sweets and sticky foods. The evaluating psychologist opined that Father's failure to take medication prescribed for his own ADHD "compromise[d] his ability to parent," and that he was unable to meet the needs of "any" child, especially a child with C.C.'s special needs.

¶17 The record further evidences Father's lack of judgment regarding C.C.'s safety. ADES demonstrated Father has "a chronic history of child neglect," including a prior substantiated report for neglect of another son. Father was charged twice in one day for driving while intoxicated with C.C. in the car. Father was arrested in 2007 after a domestic violence episode with Mother in C.C.'s presence. Father believed C.C. was "wrongly removed" from Mother's care, "hesitatingly" acknowledged Mother's alcoholism, and described her as a "very capable caregiver and parent." Father described C.C. as a "healthy baby who gained weight normally," despite his diagnosis as "a failure to thrive infant." Father left four-year-old C.C. alone beside a swimming pool. Father attended a case planning meeting while impaired by prescription drugs. The

evaluating psychologist opined Father was unable to protect C.C. from "the mother or his own poor judgment." The CASA opined that C.C.s "best interests appear[ed] secondary to the parents' wants."

¶18 The record supports the determination that Father neglected C.C.

II. Mother's Claims

¶19 ADES presented evidence that Mother suffers from chronic substance abuse. Termination of parental rights is justified when clear and convincing evidence demonstrates a parent is unable to discharge parental responsibilities because of a history of chronic abuse of alcohol, and there are reasonable grounds to believe the condition will continue for a prolonged, indeterminate period. A.R.S. § 8-533(B)(3).

¶20 During a clinical interview in 2005, Mother admitted drinking "60 beers a day" and smoking methamphetamine. Her parental rights to D.U. were terminated in 2005 due, in part, to substance abuse. When C.C. was removed in June 2010, Mother admitted drinking "two pints of whiskey per day" and reported trying to "cut back to drinking only beer," but with severe withdrawal symptoms. Mother completed a 28-day inpatient treatment program in July 2010. In November 2010, Mother relapsed and was found "intoxicated and barely able to walk or talk" with a "strange man" in her apartment. The next day,

Mother appeared "disheveled" and "reeked of alcohol." Mother's AA sponsor told an ADES caseworker Mother was not attending meetings or taking her medications. Mother tested positive for alcohol for three consecutive months, beginning in December 2010. She was arrested for extreme DUI in February 2011. A psychologist diagnosed her with "[a]lcohol [d]ependence."

¶21 The record also demonstrates Mother was unable to adequately protect C.C. due to her condition. Mother admitted ingesting alcohol and methamphetamine while pregnant with C.C., and C.C. has "some physical features of fetal alcohol syndrome." There was an earlier dependency action in 2007 because Mother was "intoxicated and arrested and there was no caregiver able to take care of" C.C. In June 2010, Mother reportedly left C.C. at a park in the care of "two homeless men" she met the week before and drove while intoxicated with C.C. in the vehicle. Mother was "extremely intoxicated" in C.C.'s presence. C.C.'s teeth had "extreme decay," yet Mother never took him to a dentist.

¶22 The evaluating psychologist opined Mother's condition would continue for a prolonged, indeterminate period of time and offered a "very guarded" prognosis for adequate parenting in the foreseeable future. He further recommended Mother demonstrate sobriety for at least 12 months in "a normal life" outside a therapeutic environment before being entrusted with a young child's care. At the time of the severance hearing, Mother was

residing in a treatment facility to address her mental health and substance abuse issues. Although ADES provided substance abuse treatment and counseling, parenting classes, parent aide and other services throughout the three dependency actions, Mother was unable to internalize those teachings and failed to reach parenting goals in her relationship with C.C.

III. Child's Best Interests

¶23 In addition to finding at least one statutory basis for termination, the court must also find, by a preponderance of the evidence, that severance is in the child's best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (App. 2005).

A. Father's Claim

¶24 Father contends ADES failed to demonstrate how continuing the parent-child relationship would be detrimental to C.C. or how C.C. would benefit from its termination. See *Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990) ("[A] determination of the child's best interest must include a finding as to how the child would benefit from a severance or be harmed by the continuation of the relationship."). The record reflects otherwise.

¶25 The case manager and evaluating psychologist both testified termination was in C.C.'s best interests because he needed a safe, stable structured environment that has consistent

discipline and is substance free to address his special needs. They also testified Father could not provide such an environment. The case manager opined C.C.'s safety would be at risk in Father's care because of Father's "overuse" of medication, recent use of alcohol, and "poor judgment." The psychologist echoed this concern, testifying C.C. was not safe in Father's care and that placing him with both parents together would be "the worst case scenario."

B. Mother's Claim

¶126 Mother contends termination was not in C.C.'s best interests because ADES did not identify a placement for him and because he would not benefit from termination "at this time." A court considers factors such as: (1) whether an adoptive placement is immediately available, (2) whether the existing placement is meeting the child's needs, and (3) whether the child is adoptable. See *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 379, ¶ 30, 231 P.3d 377, 383 (App. 2010). ADES, though, is not required to identify a specific adoptive home; rather, it must establish that the child is adoptable. *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994) (citations omitted).

¶127 ADES presented evidence C.C. is "very adoptable," that it made efforts to identify a permanent placement, and that it was awaiting an answer from C.C.'s current foster parents about

