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



DIVISION ONE
FILED: 04/03/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JON B.) No. 1 CA-JV 11-0234
)
Appellant,) DEPARTMENT E
)
) **MEMORANDUM DECISION**
v.)
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Ariz. R.P. Juv. Ct. 103(G);
SECURITY and WILLIAM B., KAITLYN) ARCAP 28)
B.,)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD17920

The Honorable Christopher A. Coury, Judge

AFFIRMED

Ann M. Williams
Attorney for Appellant

Tempe

Thomas C. Horne, Arizona Attorney General
By Laure J. Huff, Assistant Attorney General
Attorneys for Appellee

Tucson

H A L L, Judge

¶1 Jon B. (Father) appeals the juvenile court's order severing his parental rights to William B. and Kaitlyn B.

(collectively, the children). For the following reasons, we affirm.

FACTUAL¹ AND PROCEDURAL BACKGROUND

¶2 Father is the biological father of William B. and Kaitlyn B.² Father's rights to the children were initially terminated in August 2009. However, this court reversed the termination, holding that there was not clear and convincing evidence that Father failed to protect the children from sexual abuse. *Jon B. v. Ariz. Dep't Econ. Sec.*, 1 CA-JV 09-0158, (Ariz. App. March 18, 2010) (mem. decision). Father's parental rights were reinstated in April 2010, and the juvenile court changed the case plan to family reunification. The court further ordered that the children continue to be dependent and remain wards of the court and in the legal care, custody, and control of the Arizona Department of Economic Security (ADES).

¶3 Thereafter, Father participated in a psychological evaluation, psychosexual evaluation, appeared telephonically for Family Child Team meetings, and cooperated in completing the

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's rights have also been terminated and she is not a party to this appeal. She is currently serving a fifteen-year prison sentence for sexual conduct with a minor and she also received lifetime probation for attempted sexual exploitation of a minor.

Interstate Compact on the Placement of Children (ICPC). The state of Arkansas, Father's current residence, rejected Father's ICPC due to both his 1991 conviction of first degree carnal abuse and because "by [Father's] own admission, [he] was aware of sexually inappropriate contact [between the children and Mother's boyfriend]. However, [Father] chose to leave the state of Arizona, thus leaving the children in the continued care of [Mother] and fully knowing that the children would be around [Mother's] boyfriend."

¶4 In July 2011, Child Protective Services (CPS) case manager Deborah Alyea submitted a report to the juvenile court wherein she recommended changing the case plan to severance and adoption because it was in the children's best interest and because Father was not permitted to have contact with the children as a result of the children's therapist's recommendation. Alyea further stated that "the length of time in care has been substantial and the children are in need of permanency. Father has failed to relocate to Arizona to participate in the necessary services in order to facilitate an effective family reunification. The children are in a stable and safe environment with their maternal grandmother who is a willing adoptive placement."

¶5 In August 2011, ADES moved to terminate Father's parental rights, alleging Father willfully abused or failed to

protect the children from willful abuse, Father had a felony conviction for carnal abuse that made him unfit as a parent, and the children had been in an out-of-home placement for fifteen months or longer.

¶16 The juvenile court held a contested severance hearing in October 2011. Father testified that in 2007, he pled guilty to a domestic violence incident involving Mother. Father also stated that he currently lived in Arkansas with his parents and he had no intention of moving to Arizona, despite indicating to the court in March 2011 that he would be moving back to Arizona. He also admitted that the state of Arkansas denied placing the children with him in Arkansas. Additionally, Father admitted that he intentionally chose not to read the police report detailing the children's sexual abuse, so he was unaware of the extent of the abuse they endured. Despite testifying that he believed it was his duty to provide financial support to the children, Father testified that he had failed to do so and did not have a savings account. Finally, Father admitted that from October 2007 to the present he had not raised the children. He stated that he had lived in Arkansas from November 2007 to March 2009 and then moved back to Arkansas permanently after his parental rights were terminated in August 2009.

¶17 Childhelp Children's Center therapist Mary Ducharme testified that she had been counseling the children from March

2009 through the date of trial. Ducharme recommended that Father be denied visitation rights with the children because of "the instability in his life. The children had already witnessed domestic violence, alcohol abuse, sexual abuse, [Father] had been in and out of their [lives]. . . . [The children] need to feel safe. They need structure. They need nurturing. They need limit setting. And it appeared that he was not able to provide that[.]" Ducharme further stated that it would not be in the children's best interests to be placed in Father's care because Father "has not been stable and consistent in their lives." Ducharme said that the impact of William's disclosure to Father regarding the sexual abuse he was subjected to and the fact that Father left Arizona thereafter and the abuse increased was "devastating" to the children and akin to "total abandonment." Ducharme stated that in order for Father to demonstrate he was able to parent the children, it was critical that he move back to Arizona to fully participate in CPS services and he failed to do so. Ducharme said that Father's failure to move to Arizona and his failure to ask about how the children were doing demonstrated that "he's not really showing an interest in parenting" the children. Ducharme further testified that the children "do not feel safe with [Father]." "Going back to [Father] . . . would have compromised the trust and safety they were [starting to] feel[.]" Ducharme

concluded that Father was unable to understand the trauma the children had been through, and he was not able to help the children feel safe and "move forward."

¶18 CPS case manager Alyea testified that although Father was required to keep in contact with her, he failed to contact her over the preceding four or five months. Alyea stated in the ten months she had been the case manager, Father had never called her to ask about the children. She testified that the children had been living with their maternal grandmother for almost four years and they were safe, familiar, and happy there. The children expressed to Alyea "on numerous occasions" that they wanted to be adopted by the grandmother and the grandmother stated she wanted to adopt the children. Alyea concluded that it would be in the children's best interests for Father's parental rights to be terminated because the children needed a stable and permanent placement.

¶19 The juvenile court terminated Father's rights on the basis that the children had been in an out-of-home placement for fifteen months or longer. The court found that ADES had provided reasonable efforts to reunify the children with Father and further reunification efforts would be futile. The court elaborated that:

[Father was] not able to parent. He [did] not have his own home. . . . He [can] afford an apartment, but . . . he [did] not have one. Arkansas [] denied an ICPC.

He [did] not liv[e] in Arizona. He voluntarily [chose] not to come back to Arizona. He [had] not actively parented the children since 2007, or at least in person. . . .

He [did] not read police reports. He [was not] familiar with the therapy. He [was not] familiar with the needs of the [children]. He [did not] know what happened to the [children.] He cannot parent at this point in time.

[H]e [cannot] parent in the foreseeable future. . . . He does [not] know what [the children's] needs are, and he would not present stability in that situation.

The court also found that it was in the children's best interests to terminate Father's parental rights.

¶10 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

¶11 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); *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). "Because the trial court is 'in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings,' this court will not reweigh the evidence but will look only to determine if there is evidence to sustain the court's ruling." *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004) (quoting *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987)).

¶12 Father argues the court erred by: (1) failing to provide reunification services during the initial dependency and during the appeal of Father's first termination and only provided services after this court reversed the termination order; (2) finding Father was unable to remedy the circumstances when no circumstances existed for Father to remedy; (3) relying on the Arkansas ICPC denial; and (4) relying on Father's residence outside of Arizona as a basis for determining further services for reunification would be futile.³ We address each contention in turn.

³ Father does not argue on appeal that the juvenile court erred in its best interests finding and we therefore do not address it in this decision.

¶13 Father first argues that the court erred by failing to provide services to him during the first termination proceeding as well as during the pendency of the appeal and only offered services after his initial parental termination order was vacated. Father cites no authority for the proposition that a failure to provide required reunification services during a termination proceeding that is reversed on appeal precludes a termination on remand during a period when reunification services have been provided.⁴ Indeed, we would think it inappropriate and perhaps harmful to a child to provide reunification proceedings while an appeal is pending after a parent's rights have been terminated.

¶14 Father relatedly argues that the court erred in terminating his parental rights because he complied with reunification services provided to him after the first severance order was vacated. Although Father was partially compliant with reunification services, he failed to move back to Arizona, which was deemed a vital step in potentially reuniting Father with the children, and he failed to regularly contact the CPS case manager. He also failed to obtain stable housing and failed to inquire about the extent of the abuse the children suffered as well as the treatment they were getting. We therefore conclude

⁴ The record also reflects that at least some reunification services were made available to Father during the first termination proceeding.

that Father was not fully compliant with participating in the services offered to him. Moreover, as noted by the court, and given Father's refusal to return to Arizona, the provision of reunification services was essentially a futile gesture. See *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 187, 192, 971 P.2d 1046, 1048 (App. 1999) (ADES not required to undertake futile rehabilitation services).

¶15 Second, Father maintains that the court erred by finding Father was unable to remedy the circumstances "when no circumstances existed for Father to remedy." We disagree. Father failed to parent the children, even minimally, since he moved to Arkansas in 2007. Despite telling the juvenile court he would move back to Arizona in an effort to reunify with the children, he failed to do so. He showed no interest in finding out about the horrific abuse the children suffered nor did he make any attempt to learn how the children were doing since the abuse or about the therapy in which they were participating. He also failed to obtain stable housing and failed to provide any financial support to the children. Further, Father did not maintain regular contact with the CPS case manager. Father was also initially denied visitations with the children because of his inconsistent, unstable presence in their lives as well as the "devastating" impact his departure from Arizona had on the children after he was informed of the abuse by William. Father

therefore had several major circumstances he needed to remedy and he failed to do so. The court did not err.

¶16 Third, Father argues that the juvenile court should not have relied on Arkansas' denial of the ICPC because the denial was based, in part, on a 1991 felony conviction. Again, there is no merit to this argument. The juvenile court simply stated that Arkansas denied Father's ICPC request to allow the children to move to Arkansas to live with Father. After the request was denied, the juvenile court noted that Father failed to return to Arizona in an effort to reunify with the children. There is no evidence in the record that Father's 1991 conviction, one of the bases for Arkansas' denial of the ICPC, was relied upon by the juvenile court in terminating his parental rights. More importantly, regardless of whether Arkansas' denial of the ICPC was reasonable or might later be reconsidered, the key factor here is that the children were in Arizona and Father chose to remain in Arkansas.

¶17 Father also argues that the juvenile court erred in relying on Father's out-of-state residence as a basis for determining that further reunification services would be futile. We disagree. Again, the children were prohibited from living in Arkansas with Father. Thus, Father had to relocate to Arizona in order to have a chance of reunifying with the children. He failed to do so and he testified that he had no plans to move to

Arizona in the future. We also note that the record fully supports the juvenile court's decision that reunification services would be futile. Ducharme testified that Father's continued residence in Arkansas after learning of the sexual abuse of the children was analogous to "total abandonment" and she believed that the children should not have been allowed visitations with Father, let alone live with Father because the children did not feel safe with Father and he did not provide a safe and consistent environment for them. Further, Father's failure to emotionally or financially support the children, his failure to fully comply with reunification services, his failure to obtain stable housing, his failure to demonstrate even a minimal interest in the children's mental and physical well-being also lent support to the court's determination that any further efforts at reunification would be futile.

¶18 Finally, the children were thriving in their current placement with the maternal grandmother and she wanted to adopt them and provide them with the safe and permanent placement they needed. Also, CPS case manager Alyea testified that it was in the children's best interests to terminate Father's parental rights. Thus, we hold that the court did not err.

CONCLUSION

¶19 For the foregoing reasons, we affirm.

_/s/ PHILIP HALL, Judge

CONCURRING:

_/s/ PATRICIA A. OROZCO, Presiding Judge

_/s/ JOHN C. GEMMILL, Judge