FILED BY CLERK
MAY 17 2012
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MIGUEL G., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and DAKOTA G., Appellees.	2 CA-JV 2011-0128 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 13905700

Honorable Joan L. Wagener, Judge Pro Tempore

AFFIRMED

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By Jeanne Shirly
Tucson
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H O W A R D, Chief Judge.

¶1 Miguel G. appeals from the juvenile court's order terminating his parental rights to his daughter, Dakota G., born July 2006, based on Miguel's abuse or neglect of

Dakota, his mental illness, and Dakota's placement in court-ordered, out-of-home care for fifteen months or longer.[1] *See* A.R.S. § 8-533(B)(2), (B)(3), (B)(8)(c). Miguel argues insufficient evidence supported the court's finding that termination was warranted based on abuse or neglect and asserts that the Arizona Department of Economic Security (ADES) did not provide adequate services to address his mental illness. We affirm.

¶2 A juvenile court may terminate a parent's rights if it finds clear and convincing evidence of one of the statutory grounds for severance and a preponderance of evidence that termination of the parent's rights is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). "[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] court's decision, and we will affirm a termination order that is supported by reasonable evidence." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009) (citation omitted). That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶3 In April 2009, police officers arrested Miguel for domestic violence and, later that day, arrested Dakota's mother, Norma M., at his home for trespassing and for violating an order of protection. The home was "unfit," with no running water, electrical service, or gas service. Child Protective Services (CPS), a division of the Arizona Department of Economic Security (ADES), took temporary custody of Dakota.

[1]The juvenile court also terminated the parental rights of Dakota's mother, Norma M. Norma is not a party to this appeal.

¶4 Norma and Miguel had an extensive history of domestic violence, and Norma had lived in shelters with Dakota on several occasions, but always had returned to Miguel, most recently in late March 2009. Miguel had a history of mental illness, including diagnoses of schizophrenia, bipolar disorder, and post-traumatic stress disorder. Dakota ultimately was placed with paternal relatives, and ADES filed a dependency petition. The juvenile court found Dakota dependent as to both her parents, initially setting a case plan for family reunification.

¶5 Miguel was provided services including anger-management, domestic violence, and parenting classes, as well as a variety of medical and psychological services provided through the Veteran's Administration. Dr. Jill Plevell performed a neuropsychological evaluation of Miguel. She noted a history of "Dementia and Organic Personality Syndrome with atrophy that affects the frontal, temporal, and parietal lobes of his brain" and concluded Miguel was unable to parent effectively and was unlikely to be able to do so in the future. She testified at trial that, due to his brain atrophy, Miguel could not control his emotions and behavior and had difficulty with "real[i]ty based judgment." She also stated he could learn and retain new material, but could not apply that new information effectively.

¶6 Miguel attended counseling with therapist Leonard Banes for approximately six months, but stopped seeing Banes after he refused to recommend that Miguel be given custody of Dakota. Miguel then began sessions with psychologist Dr. George Goldman, but his attendance was sporadic, attending only ten sessions in one year with an unexplained eight-month gap. Goldman had recommended that he see Miguel weekly. At the severance hearing, Goldman testified that Miguel was capable of learning to be a fit parent. But he acknowledged Miguel needed "more consistent,

regular . . . sessions," recommending Miguel consistently attend another six months of therapy before CPS considered whether Miguel could have overnight visits with Dakota.

¶7 In February 2011, the juvenile court found Dakota could not safely be returned to either parent and ordered ADES to file a motion to terminate their parental rights. In that motion, ADES alleged termination of Miguel's parental rights was warranted based on neglect or abuse, chronic mental illness, and time-in-care grounds. After a twelve-day contested severance hearing, the court terminated both parents' rights to Dakota, finding that all alleged statutory bases for termination had been proven by clear and convincing evidence and that termination was in Dakota's best interests. This appeal followed.

¶8 Miguel does not contest the juvenile court's conclusion that he is unable to discharge his parental responsibilities due to a mental illness that would continue for a prolonged indefinite period. *See* § 8-533(B)(3). He contends, however, that termination was not warranted on that ground because ADES had failed in its obligation to make a diligent effort to address that mental illness. *See Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 33, 971 P.2d 1046, 1053 (App. 1999) (ADES must provide appropriate services addressing parent's mental illness when termination sought on that ground). He argues ADES's provision of services was deficient because: 1) it had not provided Plevell's evaluation recommendations to Banes; 2) his CPS case manager had not communicated with Goldman; and 3) ADES had forbidden him from "directly contacting" his case manager. "Although CPS need not provide 'every conceivable service,' it must provide 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.

185, ¶ 37, 971 P.2d at 1053, *quoting Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994).

¶9 But Miguel has not identified what effect, if any, CPS's purported failure to provide Plevell's recommendations to Banes may have had on his treatment or the services provided, much less argued that his treatment and services somehow were deficient absent those recommendations. Second, as ADES points out, even assuming Banes did not receive a copy of those recommendations, Banes testified that he implemented each in substance. And Plevell testified the services provided to Miguel had been appropriate. In any event, Miguel only saw Banes for a brief period before he chose instead to seek therapy from Goldman. And he failed to attend appointments regularly with Banes or Goldman. Thus, even assuming ADES had failed to forward Plevell's recommendations to Banes, Miguel has not demonstrated that omission rendered the services ADES had provided insufficient.

¶10 Miguel's second argument also fails. Although Miguel's case manager acknowledged he had not spoken with Goldman, he also testified that he had telephoned Goldman but that his calls had not been returned. And we agree with ADES that, in any event, Miguel has not attempted to demonstrate how his treatment would have been different or what additional services would have been provided had his case manager and Goldman spoken.

¶11 Finally, we find unconvincing Miguel's argument that his participation in services was inhibited somehow by CPS's decision to bar him from contacting his case manager directly. Miguel ignores that this decision was made as a result of his "increasingly abusive" interactions with his case manager and other CPS staff. And

Miguel was permitted to communicate with his case manager through counsel. Miguel has not explained why this arrangement was insufficient or unjustified.

¶12 The record clearly shows that Miguel was provided extensive services to address his mental illness. He has identified no basis to conclude those services were inadequate and no basis to conclude the juvenile court erred in terminating his parental rights based on § 8-533(B)(3). We therefore need not address Miguel's remaining arguments. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 27, 995 P.2d 682, 687 (2000).

¶13 The juvenile court's order terminating Miguel's parental rights to Dakota is affirmed.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge