

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



DIVISION ONE
FILED: 10/23/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

WILLIAM M. ,) 1 CA-JV 12-0059
)
Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G), Ariz. R.P. Juv. Ct.;
SECURITY, BRODIE M. ,) Rule 28, ARCAP)
)
Appellees.)
)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD19526

The Honorable Bethany G. Hicks, Judge

AFFIRMED

Robert D. Rosanelli, Attorney at Law Phoenix
by Robert D. Rosanelli
Attorney for Appellant

Thomas C. Horne, Attorney General Phoenix
by Michael F. Valenzuela, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

P O R T L E Y, Judge

¶1 William M. ("Father") challenges the termination of his parental rights. Specifically, he argues that the juvenile court erred by finding that termination was in the child's best

interest. Because the record supports the finding that the termination was in the child's best interest, we affirm.

PROCEDURAL BACKGROUND

¶2 Father is the parent of a child born in 2008. The child was found to be dependent in October 2010, and the case plan was family reunification. After a series of report and review hearings, the case plan was changed to severance and adoption on January 6, 2012. The Arizona Department of Economic Security ("ADES") filed a motion for severance and, after the subsequent trial, Father's parental rights were terminated.

DISCUSSION

¶3 It is axiomatic that before a parent's rights to his or her child can be terminated, the juvenile court must find that one of the statutory grounds for severance is proven by clear and convincing evidence and that termination is in the child's best interest by a preponderance of the evidence. See *Kent K. v. Bobby M.*, 210 Ariz. 279, 110 P.3d 1013 (2005). We review the evidence in the light most favorable to sustaining the court's findings, *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2, 181 P.3d 1126, 1128 (App. 2008), and will affirm unless there is no reasonable evidence to support the court's factual findings. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998). We will not second-guess the court's findings because the judge

was in the best position to determine the credibility of the witnesses and weigh the evidence. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶4 The sole issue on appeal is whether the juvenile court erred when it determined by a preponderance of the evidence that termination was in the child's best interest. Accordingly, we review the record to determine whether there is evidence that the child would benefit by the termination or would be harmed by a continuation of the parent-child relationship, *Maricopa Cnty. Juvenile Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990), which would include whether the child is adoptable or whether the placement is meeting the child's needs. *Audra T.*, 194 Ariz. at 377, ¶ 5, 982 P.2d at 1291.

¶5 Here, the juvenile court found that Father was unable to discharge his parental responsibilities because of a twenty-five-year history of chronic drug abuse, and there were reasonable grounds to believe that the condition would continue for a prolonged indeterminate period. The court then found that "the child would be at risk if placed in Father's care because substance abuse contributes to unstable parenting." The court noted that the four-year-old had been in an out-of-home placement for more than fifteen months, was in a stable, secure environment, was adoptable and would "achieve stability and

consistency if adopted." As a result, the court found that the termination was in the child's best interest.

¶16 Although there was no evidence that the child's foster placement was willing to adopt him, there was evidence that they were willing to provide for him and would continue to meet his medical, physical, psychosocial, and emotion needs until an adoptive home was found. Consequently, there was sufficient evidence to support the court's best interest findings.

¶17 Father, however, argues that there was not sufficient evidence of best interest because he had not abused drugs for some four months prior to trial, did not pose a risk to the child, and was still capable of working and earning a very good salary and meeting his parental responsibilities. Despite his testimony, the "best interests inquiry focuses primarily upon the interests of the child, as distinct from those of the parent." *Kent K.*, 210 Ariz at 287, ¶ 37, 110 P.3d at 1021. The experienced juvenile court judge properly focused on the evidence when determining that termination was in the child's best interest, which included Father's history of drug abuse, his refusal to participate in reunification services, and the court's determination that his testimony lacked credibility. Consequently, we find no abuse of discretion.

CONCLUSION

¶8 Based on the foregoing, we affirm the judgment terminating Father's parental rights.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

ANDREW W. GOULD, Judge

/s/

JON W. THOMPSON, Judge