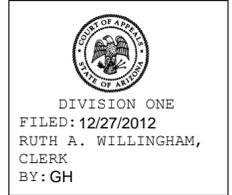


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DEREK G. ,) No. 1 CA-JV 12-0166
)
Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Rule 103(G) Ariz. R. P.
SECURITY, D.G. ,) Juv. Ct., ARCAP 28)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD504030

The Honorable Mark F. Aceto, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Tucson
By Laura J. Huff, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

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

B R O W N, Judge

¶1 Derek G. ("Father") appeals the juvenile court's order severing his parental rights with respect to his son ("the child").¹ For the reasons set forth below, we affirm.

BACKGROUND

¶2 Father is the biological parent of the child, born in 2003. In August 2008, Child Protective Services ("CPS") became involved with the child after receiving reports that the child's mother² had been using narcotics and would sporadically leave the child and his siblings at relative's houses and quickly drive away. At the time CPS intervened, the child had been living with his maternal aunt for approximately six months and had lived with her periodically over the past few years. When CPS received the initial report, Father's location and residence were unknown. On August 21, 2008, the Arizona Department of Economic Security ("ADES") filed a petition alleging the child was dependent as to Father due to neglect and a lack of support. The matter was submitted to the juvenile court, which granted the petition.

¶3 The initial case plan was family reunification. The parties agreed that to facilitate the plan, Father would

¹ On the court's own motion, it is hereby ordered amending the caption for this appeal to protect the identity of the minor child. The above referenced caption shall be used on all documents filed in this appeal.

² Mother's parental rights were previously terminated and she is not a party to this appeal.

participate in various programs aimed at establishing greater communication between Father and the child and fostering a better relationship between them. After locating Father's residence in Texas, CPS also arranged for a home study through the Interstate Compact for the Placement of Children. In April of 2009, however, CPS reported that Father had not yet participated in any of the offered services, though he maintained contact with ADES. CPS also discovered that Father had come to visit Arizona, but had not arranged for any visitation with the child while in the state. At that time, the child also reported to his therapist fears about seeing Father and expressed anxiety about talking with Father over the phone.

¶14 In June of 2009, authorities in Texas denied placement with Father, citing his extensive criminal history, his continuing failure to participate in any offered services, and his sporadic attempts to contact the child. The child's current placement also reported to CPS that she was often unable to reach Father for his weekly telephone call with the child. Furthermore, the child had told CPS that he did not like Father.

¶15 In July 2009, CPS learned that Father had moved to California and arranged for a home study there. After the study was arranged, however, Father moved to a different area of California. In November 2009, California authorities denied placement with Father, emphasizing Father's minimal relationship

with his other children, his apparent instability, and his unwillingness to participate in any services. As of November 2009, Father had not seen the child since August, and prior to that, he had most recently seen the child at his birthday party in April 2008.

¶16 In January 2010, ADES moved to sever Father's parental rights pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-533(B)(1) and -533(B)(8)(c) (2012)³, alleging abandonment and extended out-of-home placement. The juvenile court denied ADES' motion, and a month later the court ordered that the child be placed with his paternal grandmother every weekend in order to facilitate visits between the child and Father. While staying with his grandmother, however, the child was allegedly sexually abused by his brother. Based on that incident, CPS terminated the child's visitation with his grandmother.

¶17 In July 2010, ADES filed an amended dependency petition alleging that the child was dependent as to Father due to Father's ongoing drug use, failure to foster a relationship with the child, and failure to provide support. The day after ADES filed the petition, Father robbed and shot a man, injuring the victim's leg. Father was soon arrested and placed in jail. In December 2010, the juvenile court held a review hearing and

³ Absent material revisions after the relevant date, we cite a statute's current version.

ordered that the child have some contact with Father, whether by phone or in person, so long as such visitation would not be harmful to the child. After one jail visit, however, CPS determined that it would seek further guidance from the court because the child was reportedly afraid to return.

¶8 In August 2010, Father was convicted of armed robbery, assault, and misconduct involving weapons stemming from the July 2010 incident. He was sentenced to thirteen years' imprisonment for the crimes. Based on the conviction, ADES moved to sever Father's parental rights pursuant to A.R.S. § 8-533(B)(4) alleging his sentence was of sufficient length to deprive the child of a normal home for a period of years. Following a hearing, the juvenile court granted ADES' motion to sever. Father timely appealed.

DISCUSSION

¶9 Father argues severance of his parental rights was erroneous and contrary to the evidence in the record. We disagree.

¶10 On appeal, "we accept the juvenile court's findings of fact in support of severing the parent-child relationship unless they are clearly erroneous." *Matter of Maricopa County Juvenile Action No. JS-8287*, 171 Ariz. 104, 111, 828 P.2d 1245, 1252 (App. 1991) (internal quotations and citations omitted). Furthermore, "[w]e will review a juvenile court's termination

order in the light most favorable to sustaining the court's decision and will affirm it unless we must say as a matter of law that no one could reasonably find the evidence supporting statutory grounds for termination to be clear and convincing." *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10, 210 P.3d 1263, 1266 (App. 2009) (internal quotations and citations omitted).

¶11 ADES moved for severance under A.R.S. § 8-533(B)(4), which states that a parent-child relationship may be severed if, due to the conviction of a felony, "the sentence of that parent is of such length that the child will be deprived of a normal home for a period of years." Neither the statute nor case law specifies any certain amount of time for the sentence. *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, 354-55, ¶ 14, 972 P.2d 684, 687-88 (App. 1998). Instead, before severing a parent's rights under § 8-533(B)(4), the juvenile court must make a fact specific inquiry as to whether the sentence is of such length that it will deprive the child of a normal home for a period of years. *Id.* (citing *Maricopa County Juv. Action No. JS-9104*, 183 Ariz. 455, 460, 904 P.2d 1279, 1284 (App. 1995)).

¶12 Father argues the juvenile court erred by failing to consider the fact that ADES arranged for only one visit between Father and the child while Father was in jail, and ADES failed to provide any visitation during Father's imprisonment. Father

also asserts that ADES failed to provide for telephonic contact with the child. At its core, Father's argument challenges the adequacy of services provided by ADES. We summarily reject Father's contention, because ADES has "no duty to provide reunification services prior to seeking termination based upon a length of sentence." *James H. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 1, 3, ¶ 10, 106 P.3d 327, 329 (App. 2005). Moreover, Father cites no authority that ADES was obligated to compel the child to visit Father in jail or prison or to speak with him by phone.

¶13 To the extent Father may be challenging the sufficiency of the evidence supporting severance under A.R.S. § 8-533(B)(4), we turn to the factors set forth in *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 251-52, ¶ 29, 995 P.2d 682, 687-88 (2000). In determining whether severance is appropriate, a juvenile court must consider all relevant factors, including, but not limited to:

- (1) The length and strength of any parent-child relationship existing when incarceration begins,
- (2) the degree to which the parent-child relationship can be continued and nurtured during the incarceration,
- (3) the age of the child and the relationship between the child's age and the likelihood that incarceration will deprive the child of a normal home,
- (4) the length of the sentence,
- (5) the availability of another parent to provide a normal home life, and
- (6) the effect of the deprivation

of a parental presence on the child at issue.

Id. Although the court is required to consider all relevant factors, "there is no threshold level under each individualized factor . . . that either compels, or forbids severance. It is an individualized, fact-specific inquiry." *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, 450, ¶ 15, 153 P.3d 1074, 1079 (App. 2007).

¶14 In making its determination that severance was appropriate, the juvenile court found as follows:

Father's incarceration will deprive the child of a normal home. There is no other parent who is willing or able to take care of [him]. Father is unable to support or nurture the child. He cannot supervise him nor can he provide for the child's safety or protection. The incarceration causes the child's needs not to be met and deprives him of permanency in his home life.

Our review of the record indicates that reasonable evidence supports each of the court's findings. First, at the time of severance, Mother's parental rights had been terminated for almost two years and Father's efforts to create a meaningful relationship with the child had been minimal. Second, Father's incarceration prevents him from providing any form of financial support and allows for only sporadic emotional support through infrequent visits or phone calls. Third, it is indisputable that Father is unable to supervise the child from prison.

