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



DIVISION ONE
FILED: 2/28/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JOHNATHON H., AMY H.,) No. 1 CA-JV 12-0227
)
Appellants,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
)
ARIZONA DEPARTMENT OF ECONOMIC) (Not for Publication -
SECURITY, BRANDON H., CODY H.,) 103(G) Ariz.R.P. Juv. Ct.;
) Rule 28 ARCAP
Appellees.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD12421

The Honorable Margaret R. Mahoney, Judge

AFFIRMED

David W. Bell Mesa
Attorney for Appellant Johnathon H.

Robert D. Rosanelli Phoenix
Attorney for Appellant Amy H.

Thomas C. Horne, Attorney General Mesa
By Eric Devany, Assistant Attorney General
Attorney for Arizona Department of Economic Security

G E M M I L L, Judge

¶1 Johnathon H. ("Father") and Amy H. ("Mother") appeal

the juvenile court's order terminating their parental rights to their children Brandon H. and Cody H. (the "children"). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶12 Father and Mother were married in July 2005. Between 2003 and 2009, Arizona Department of Economic Security ("ADES") received several reports that the children were being neglected. During this time, both Father and Mother were convicted of drug-related crimes and placed on probation. ADES temporarily removed the children in 2008.

¶13 On January 25, 2011, Father and Mother were arrested at their home on outstanding felony warrants and suspicion of child neglect. The arresting officers reported that the parents appeared to be under the influence of drugs or alcohol. The officers reported that the family home was extremely dirty, there was very little food, and there was limited electricity. Officers found several dangerous items accessible to the children including a sharp knife, blow torch, propane tank, and stacked television sets. The children reported to Child Protective Services ("CPS") that they had witnessed domestic violence in the home and did not always have enough to eat.

¶14 The initial ADES case plan was family reunification. The plan required the parents to demonstrate a commitment to sober and law-abiding lifestyles and improved parenting skills.

To provide assistance, parents were provided reunification services including TERROS substance abuse treatment, Treatment Assessment Screening Center ("TASC") drug testing, parent aide services, supervised visitations, and domestic violence counseling. After the parents failed to take full advantage of the services, the case plan was changed to severance and adoption. In January 2012, ADES filed a motion to terminate Father's and Mother's parental rights.

¶15 In the motion, ADES alleged two grounds for termination: a) Father and Mother were unable to parent because of a history of chronic drug abuse pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(3)(Supp. 2012), and b) Father and Mother refused to remedy their children's nine-month out-of-home placement pursuant to A.R.S. § 8-533(B)(8)(a). After a two-day severance hearing in August 2012, the juvenile court granted the motion to terminate Father's and Mother's parental rights on both grounds and found severance to be in the best interests of the children.

¶16 Father and Mother timely and separately appealed, and we have consolidated the case on appeal. We have jurisdiction pursuant to A.R.S. §§ 8-235(A) (2007) and 12-120.21(A)(1) (2003).

ANALYSIS

¶17 A juvenile court may terminate a parent's rights if it

finds clear and convincing evidence of one statutory ground for severance and a preponderance of evidence that termination is in the best interests of the children. A.R.S. § 8-533(B), *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). "The juvenile court, as the trier of fact in a termination proceeding, is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002) (citation omitted). On review, therefore, we will accept the juvenile court's findings of facts unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous. *Jesus M.*, 203 Ariz. at 280, ¶ 4, 53 P.3d at 205. When we conclude that clear and convincing evidence supports one of the statutory grounds for severance, we need not address claims pertaining to the other grounds. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 251, ¶ 27, 995 P.2d 682, 687 (2000).

A. Chronic Substance Abuse

¶18 One of the statutory grounds for parental termination is chronic substance abuse. A.R.S. § 8-533(B)(3). In order to establish this basis for parental termination, the juvenile court must find by clear and convincing evidence that: 1) the parent has a history of chronic abuse of controlled substances

or alcohol; 2) the parent is unable to discharge parental responsibilities because of his or her chronic substance abuse; and 3) there are reasonable grounds to believe that the condition will continue for a prolonged and indeterminate period. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 377, ¶ 15, 231 P.3d 377, 381 (App. 2010).

¶9 Evidence of a parent's "significant history of drug use, recent drug use, and failure to complete various reunification services [is] sufficient evidence to show that [] drug abuse [will] continue for a prolonged, indeterminate period." *Id.* at 378-79, ¶ 26, 231 P.3d 382-83. Further, a parent's failure to maintain sobriety at a time when such failure would likely contribute to the termination of parental rights is "evidence he [or she] has not overcome his [or her] dependence on drugs and alcohol." *Id.* at 379, ¶ 29, 231 P.3d at 383.

a. Severance of Father's Parental Rights

¶10 Father concedes that he has a history of substance abuse but argues that he is capable of performing his parental responsibilities in the near future. The record of Father's chronic and recent substance abuse, however, supports the juvenile court's finding that his substance abuse will continue for a prolonged and indeterminate period.

¶11 Father admits that he began smoking marijuana in high

school and started using methamphetamine when he was twenty-four or twenty-five years old. In addition, he acknowledged using alcohol, mushrooms, and cocaine. Father admits that his drug use has caused him marital problems, financial difficulties, unemployment, and the loss of custody of his children. At the time the children were removed, he could not maintain steady employment, working only occasional "side jobs." The children indicated to the CPS case manager that they had witnessed domestic violence in the home and that they were afraid of their Father. During the dependency period, he was in and out of jail for various arrests. Father's longest incarceration occurred from January 2012 to March 2012 after he was arrested on domestic violence charges and for violating probation. The record is clear that Father's drug use led to neglect of his children, and his inability to discharge his parental duties.

¶12 After the children were in CPS custody, Father failed to substantially comply with drug abuse treatment and testing. Between March and August 2011, he submitted only thirteen of twenty-four required urinalysis tests through TASC and tested positive for methamphetamine five times. Between August 2011 and January 2012, he continued to miss testing and repeatedly tested positive for methamphetamine. After his incarceration he attended outpatient group sessions with TERROS in May 2012, but admitted that he had recently relapsed.

¶13 Father suggests that he has been sober since finishing a residential treatment program through the Maverick House within two months of the severance trial. His temporary abstinence from drugs, however, does not outweigh his significant history of abuse or consistent inability to abstain during the dependency proceedings. *Raymond F.*, 224 Ariz. at 379, ¶¶ 27-29, 231 P.3d at 383 (terminating Father's parental rights despite four months of sobriety because a reasonable belief existed that his drug use would continue). We affirm the juvenile court's finding to terminate Father's parental rights based on chronic substance abuse.

b. Severance of Mother's Parental Rights

¶14 Mother argues that although she has a history of drug abuse, there is no evidence that she is currently unable to discharge her parental obligations. We conclude the record supports the juvenile court's finding that Mother's substance abuse, similar to Father's, will also continue to render her incapable of performing her parental responsibilities for a prolonged and indeterminate period.

¶15 Mother admits that she began using alcohol when she was thirteen and she used marijuana "off and on" since she was twenty. She admitted she used cocaine in her twenties and tried mushrooms twice in her thirties. According to TERROS records from 2005, Mother was a "daily user of meth and alcohol." Even

after completing a residential drug treatment program in 2005, she admitted that she continued to use marijuana. Mother testified she suffers from depression, bipolar disorder, and mild schizophrenia. She occasionally uses illegal drugs to manage her depression.

¶16 In March 2012, Mother reported to Magellan Health staff that after a relapse she went through "a two[-]week period where she lost track of what was happening to her." She has not held a job for the last six years and has been living on Supplemental Security Income. Because Father and Mother could not pay the electric bill, Mother testified they could not run the stove, microwave, or vacuum. When the children were removed, the police found the home was extremely dirty and dangerous for small children.

¶17 Mother also argues the juvenile court erred in finding ADES made diligent efforts to provide her with appropriate reunification services, as required under both alleged grounds for termination. See *Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, 453, ¶ 12, 123 P.3d 186, 189 (App. 2005) (concluding ADES has an implicit duty to provide reasonable reunification services when terminating parental rights based on chronic substance abuse). ADES fulfills this duty by providing the 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. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶ 37, 971 P.2d 1046, 1053 (App. 1999). ADES, however, is not required to make efforts that would be futile. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 94, ¶ 20, 219 P.3d 296, 304 (App. 2009).

¶18 Mother specifically contends that ADES should have provided her with residential drug treatment. Both case managers contradicted her claim by testifying that Mother did not ask to be referred for residential drug treatment. ADES presented evidence that it had provided numerous services to Mother to assist her including substance abuse assessment and treatment through TERROS, urinalysis testing through TASC, supervised parent visitations, and parent aide services. She also received mental health services through Magellan Health Services.

¶19 Mother failed to comply with the substance abuse services that ADES offered. Between February and August 2011, she submitted only six of the thirty-four required tests, testing positive for methamphetamine four times. TERROS reported that Mother had attended only one substance abuse class and never returned. Because of her inconsistent attendance and continued drug use, TERROS recommended the higher-level substance abuse treatment through the LADDER program. Mother, however, was equally non-compliant with the LADDER program and

frequently missed group sessions. Between August 2011 and June 2012, she submitted to only six of the fifty-seven required tests, testing positive one time for methamphetamine. We conclude there is sufficient evidence to uphold the juvenile court's finding that ADES made a diligent effort to provide Mother with appropriate reunification services.

¶20 Mother's failure to substantially participate in the reunification services and to maintain sobriety during the dependency proceeding supports the finding that she has not overcome her substance abuse. We conclude the record supports the juvenile court's finding that Mother's drug abuse will continue for a prolonged and indeterminate period, and we affirm the termination of her parental rights.¹

B. Best Interests of the Children

¶21 Father contends that severance of his parental rights is not in the best interests of the children. "[A] determination of the [children's] best interest must include a finding as to how the [children] would benefit from a severance or be harmed by the continuation of the relationship." *Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990) (emphasis in original). Factors considered are whether: 1) an adoptive placement is immediately available, 2)

¹ Mother has not challenged that the termination of her parental rights were in the best interests of the children.

the existing placement is meeting the needs of the children, and 3) the children are adoptable. *Raymond F.*, 224 Ariz. at 379, ¶ 30, 231 P.3d at 383.

¶22 The record supports the juvenile court's determination that severance is in the best interests of the children. The CPS case manager testified that the children were neglected when they were in their parents' custody. The children were not provided adequate supervision, food, clothing, or shelter. Parents have not demonstrated a sustained ability to remain sober and free from criminal activity. The parents' drug use and incarcerations created a dangerous and unstable environment for the children.

¶23 In contrast, the CPS case manager reported that the children are well-adjusted to their current placement and their new schedule. The case manager opined that the children should remain in their foster placement to be adopted because the children have bonded with the foster family and have been there for over a year and a half. The foster family is stable and committed to helping Cody H. with his learning difficulties. In all the visits by CPS, the children appeared happy and comfortable. The evidence is sufficient to sustain the juvenile court's decision that severance is in the best interests of the children.

CONCLUSION

¶24 For the foregoing reasons, we affirm the juvenile court's decision terminating Mother's and Father's parental rights to Brandon H. and Cody H.

/s/

JOHN C. GEMMILL, Presiding Judge

CONCURRING:

/s/

JON W. THOMPSON, Judge

/s/

DONN KESSLER, Judge