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



DIVISION ONE
FILED: 5/21/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JAMAAL B., SHA DONNA J.,) No. 1 CA-JV 12-0267
)
Appellants,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
)
ARIZONA DEPARTMENT OF ECONOMIC) (Not for Publication -
SECURITY, J.B., S.B.,) Ariz. R.P. Juv. Ct. 103(G);
) ARCAP 28)
Appellees.)
)
_____)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD-19681

The Honorable Ronald J. Steinle, III, Judge

AFFIRMED

Anne M. Williams Tempe
Attorney for Appellant Mother

Christina Phillis, Maricopa County Public Advocate Mesa
By Suzanne Sanchez, Deputy Public Advocate

Thomas C. Horne, Arizona Attorney General Phoenix
By Jamie R. Heller, Assistant Attorney General
Attorneys for Appellees

H A L L, Judge

¶1 Jamaal B. (Father) and Sha Donna J. (Mother), the
biological parents of J.B. (age eight) and S.B. (age five)

(collectively, the children), appeal the juvenile court's termination of their parental rights. For the following reasons, we affirm.

FACTUAL¹ AND PROCEDURAL BACKGROUND

¶12 On October 27, 2010, the children's maternal grandmother and temporary guardian filed a dependency petition alleging the children are dependent as to Mother and Father. Mother and Father denied the allegations set forth in the petition, but submitted the matter to the court without presenting evidence. After receiving the petitioner's evidence, the juvenile court found the children dependent as to Mother and Father.

¶13 At that time, the Arizona Department of Economic Security (ADES) implemented a case plan of family reunification and referred Mother and Father for supervised visits, substance abuse assessment and treatment, parent-aide services, psychological evaluation, and random drug testing.

¶14 On March 14, 2012, ADES moved to terminate Mother and Father's parental rights. ADES alleged that: (1) Mother and Father are unable to discharge their parental responsibilities

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).

because of mental illness and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period under Arizona Revised Statutes (A.R.S.) section 8-533(B)(3) (Supp. 2012), (2) Mother and Father are unable to discharge their parental responsibilities because of a history of chronic abuse of dangerous drugs and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period under A.R.S. § 8-533(B)(3), and (3) the children have been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order, Mother and Father have been unable to remedy the circumstances causing the out-of-home placement, and there is a substantial likelihood that the parents will not be capable of exercising proper and effective parental care and control in the near future under A.R.S. § 8-533(B)(8)(c).

¶15 The juvenile court held a four-day contested severance hearing. At the hearing, Mother testified that she has been unemployed since 2008 and her sole source of income is Social Security disability benefits in the amount of \$1,036 per month. Mother receives disability income because of anxiety and depression. When questioned about her ability to meet her monthly expenses on her disability income, Mother acknowledged that she is left with "only a few dollars" for food after she pays her regular monthly bills.

¶16 Mother further testified that she has used marijuana regularly for eleven years and smokes marijuana "at least once" daily, sometimes up to four times a day. In November 2011, Mother obtained a medical marijuana card based on pain in her low back and shoulder. After receiving her medical marijuana card, Mother began obtaining marijuana from "compassionate clubs" that allow an individual to "medicate and then hang out." Mother explained that, generally, she smokes marijuana at a "compassionate club" and then naps and "hangs out" for six hours so that she is not driving under the influence when she leaves.

¶17 Mother admitted that she has been involved in several domestic violence disputes and arrested for committing domestic violence twice. Mother also acknowledged that she has been diagnosed with bipolar disorder, psychosis and borderline personality disorder. Mother testified that she has been hospitalized on at least seven occasions for mental health issues, including suicidal and homicidal ideations. Although Mother was prescribed numerous medications to treat her mental health disorders, Mother "completely stopped taking them" and instead uses marijuana for treatment. Mother testified that she is pregnant, but nonetheless continues to smoke marijuana daily.

¶18 Father testified that he is unemployed and alternating between staying at a motel and living with friends and relatives. Father receives \$810 per month in Social Security

disability payments and is classified as severely mentally ill, suffering from post-traumatic stress disorder and bipolar disorder. Father acknowledged that he has been prescribed various psychotropic medications to treat his mental health issues, but he is not taking his medications or receiving any counseling or therapy and is instead using marijuana as his sole treatment. Father uses marijuana "six times a week," but may use marijuana multiple times a day if he feels he needs it. Father testified that he was not seeking custody of his children and is not currently able to provide housing or other basic necessities.

¶19 James S. Thal, Ph.D., testified that he conducted a psychological evaluation of Mother on April 13, 2011 and diagnosed her with bipolar disorder with psychosis, agoraphobia, and borderline personality disorder. When asked whether Mother would be likely to demonstrate minimally adequate parenting skills in the foreseeable future, Dr. Thal testified that his prognosis was "poor." Dr. Thal also evaluated Father and diagnosed him with post-traumatic stress disorder and borderline personality disorder. He opined that Father's parenting skills were possibly adequate if Father was properly treated and managed his mental health issues with his prescribed medications.

¶10 The case manager assigned to the case, Marcus Henry, testified that Father sporadically submitted to urinalysis testing and repeatedly tested positive for marijuana when he did comply with mandatory testing. Henry explained that Father's marijuana levels were extremely high, with the normal testing "cut off" being fifteen milligrams and Father's "level results were over 2,000." In January 2012, Father informed Henry that he received a medical marijuana card in November 2011 so it was no longer "a problem for him to smoke marijuana." Father also informed Henry that he would not participate in substance abuse treatment because he could legally use marijuana. Likewise, Mother's urinalysis compliance was "very sporadic" and Mother also informed Henry in January 2012 that she had obtained a medical marijuana card and would be smoking marijuana. When Mother submitted to urinalysis testing, her marijuana levels were "in the 2000 to 3000 range."

¶11 Henry testified that Mother and Father participated in parent-aide services and visitation. The case aide supervising Mother and Father's visits reported that Mother and Father appeared to be "high" during some visits.

¶12 Henry also testified that he advised Mother and Father that the children would not be returned to their care until they obtained stable housing, demonstrated an ability to financially provide for the children, and addressed their mental health

issues. Nonetheless, Mother and Father failed to obtain employment, Father failed to obtain housing,² and Mother and Father admittedly stopped using their prescription medications and instead used marijuana to treat all of their physical and mental health issues. Henry opined that Mother and Father's marijuana use places the children at risk of neglect because it undermines their ability to adequately supervise, assess dangers, and attend to their young children's needs. Finally, Henry testified that maternal grandmother is meeting all of the children's needs and severance of Mother and Father's parental rights is in the children's best interest because it would allow them to be adopted and live in a "predictable, safe, substance abuse free environment."

¶13 After taking the matter under advisement, the juvenile court entered a signed order terminating Mother and Father's parental rights. Specifically, the juvenile court found that Mother and Father are unable to discharge their parental responsibilities because of mental illness and chronic drug abuse, ADES made reasonable efforts to provide Mother and Father with rehabilitative services, Mother and Father have failed to remedy the circumstances that have caused the children to be in an out-of-home placement for greater than fifteen months, and

² Mother obtained housing through a government program, but Father could not live with Mother because the program prohibited persons with a felony conviction from residing in the home.

termination of parental rights is in the children's best interest.

¶14 Mother and Father timely and separately appealed. We have jurisdiction pursuant to A.R.S. § 8-235 (2007) and Rule 103(A) of the Arizona Rules of Procedure for the Juvenile Court.

DISCUSSION

¶15 To terminate parental rights, the juvenile court must find, by clear and convincing evidence, the existence of at least one of the statutory grounds for termination enumerated in A.R.S. § 8-533(B). *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). The juvenile court must also find, by a preponderance of the evidence, that termination is in the child's best interest. *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005).

¶16 We affirm an order terminating parental rights 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). "The juvenile court will be deemed to have made every finding necessary to support the judgment." *Maricopa County Juv. Action No. JS-8287*, 171 Ariz. 104, 111, 828 P.2d 1245, 1252 (App. 1991) (citation 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)).

¶17 On appeal, Mother contends the juvenile court committed fundamental error by considering her marijuana use as a basis for termination and argues that, pursuant to A.R.S. § 36-2813(D) (Supp. 2012), her marijuana use could not serve as the basis for severance of her parental rights unless the juvenile court specifically found that it "create[d] an unreasonable danger to the safety" of the children. Because Mother's appeal does not challenge the mental health and length of out-of-home placement statutory bases upon which the juvenile court also predicated severance of her parental rights, we affirm the court's severance ruling on those bases and need not address Mother's claims pertaining to the chronic drug abuse ground. See *Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205 ("If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.").

¶18 Father, on the other hand, contends that the juvenile court erred by finding the existence of any statutory ground for termination. Additionally, Father argues the court erred by finding severance of his parental rights is in the children's best interest. We address each issue in turn.

I. Out-of-Home Placement

¶19 Pursuant to A.R.S. § 8-533(B)(8)(c), the juvenile court may sever parental rights if the State has proven that a child has been in an out-of-home placement for a cumulative total period of fifteen months and "the parent has been unable to remedy the circumstances that caused the out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future." To terminate parental rights on this basis, the juvenile court must also find that ADES has made diligent efforts to provide reunification services. A.R.S. § 8-533(B)(8).

¶20 "It is well established that the State, before acting to terminate parental rights, has an affirmative duty to make all reasonable efforts to preserve the family relationship." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 186, ¶ 1, 971 P.2d 1046, 1047 (App. 1999). Reasonable efforts include providing a parent "with the time and opportunity to participate in programs" designed to help him become an

effective parent. *Id.* at 192, ¶ 37, 971 P.2d at 1053. ADES "is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *Maricopa Cnty. Juvenile Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). Likewise, ADES is not "oblige[d] . . . to undertake rehabilitative measures that are futile" and need only "undertake measures with a reasonable prospect of success." *Mary Ellen C.*, 183 Ariz. at 192, ¶ 34, 971 P.2d at 1053.

¶21 Father does not contend that ADES failed to provide him with appropriate and reasonable rehabilitative services and the record reflects that, during the nearly two-year-period between the dependency determination and the severance hearing, ADES offered Father numerous services. Instead, Father argues he remedied the circumstances causing the out-of-home placement. Specifically, Father asserts that he has "recovered from his mental health issues" and possesses "good parenting skills." Based on our review of the record, we conclude substantial evidence supports the juvenile court's findings to the contrary.

¶22 In his 2011 psychological evaluation of Father, Dr. Thal diagnosed Father with post-traumatic stress disorder and borderline personality disorder. During the evaluation, Father disclosed his lengthy history of mental illness and informed Dr. Thal that he had been prescribed numerous psychotropic drugs to

treat his mental health issues. Nonetheless, Father admitted at trial that he has discontinued use of all of his prescription medications and is instead self-medicating with marijuana to treat all of his mental and physical problems. Although Dr. Thal opined that Father may have the minimal parental skills necessary to effectively parent the children, he premised that opinion on Father seeking proper treatment to manage his mental health problems. Dr. Thal did not recommend that Father discontinue use of his prescription medications. He also did not suggest that Father could adequately manage his condition through marijuana use. Furthermore, Father acknowledged at trial that he is unemployed and homeless and presently unable to take custody of and provide for his children. Although Father testified that he hopes and plans to remedy those circumstances soon, by living with Mother, Father has a lengthy history of serious mental health issues and has chosen to forego medical treatment and instead self-treat with marijuana. The juvenile court was not required to give credence to Father's claim that he will be capable of exercising proper and effective parental care and control in the near future. Therefore, the record supports the juvenile court's finding that ADES provided Father reasonable and appropriate services, but Father was unable to

remedy the circumstances causing the children's out-of-home placement.³

II. Best Interest

¶23 Termination of the parent-child relationship is in the child's best interest if the child will benefit from the termination or would be harmed if the relationship continued. *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, 511, ¶ 15, 200 P.3d 1003, 1008 (App. 2008). In assessing the child's best interest, the juvenile court may consider several factors, including the child's adoptability and whether the current placement is meeting the child's needs. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 5, 982 P.2d 1290, 1291 (App. 1998).

¶24 At the severance hearing, the case manager testified that the children's maternal grandmother is meeting all of their physical, social, and emotional needs. In addition, he testified that the children are adoptable and maternal grandmother wishes to adopt them. Although Mother testified

³ Because we affirm the termination order based on the length of the children's out-of-home placement and Father's inability to remedy the circumstances causing the out-of-home placement, we need not determine whether the juvenile court also properly terminated Father's parental rights on grounds of mental health and chronic drug abuse. See *Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205 ("If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.").

