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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: 5/23/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ANGEL C.,) 1 CA-JV 12-0284
)
Appellant,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz. R. P. Juv.
SECURITY, J.C.,) Ct.; Rule 28 ARCAP)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD509194

The Honorable Brian K. Ishikawa, Judge

AFFIRMED

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Phoenix

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C A T T A N I, Judge

¶1 Angel C. appeals the juvenile court's order terminating his parental rights to J.C.¹ For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY²

¶2 J.C was born on June 3, 2010; his biological parents are Angel C. and Crystal C. In December 2010, the Arizona Department of Economic Security ("ADES") received a report resulting from allegations involving the parents' fighting, inappropriate behavior, and possible domestic violence. ADES offered family preservation services and provided the parents information regarding available mental-health services.

¶3 In March 2011, ADES filed an in-home dependency petition seeking increased oversight because of the parents' "unstable mental health and continued substance abuse." The juvenile court found J.C. to be dependent, bringing him under the supervision and control of ADES.

¶4 On August 11, 2011, ADES removed J.C. from his parents' care, citing the parents' lack of safe and appropriate

¹ The caption in this appeal is amended to refer to the child by his initials.

² On appeal from an order terminating parental rights, we view 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, 206, ¶ 2, 181 P.3d 1126, 1127 (App. 2008).

housing, continued substance abuse, failure to consistently avail themselves of proffered social services, and domestic violence.³ ADES continued to offer family reunification services, including drug abuse testing and treatment, mental health assessments and treatment, and parent-aide and visitation assistance.

¶15 Angel was diagnosed in March 2011 as having a cannabis and alcohol abuse problem. From March 2011 until August 2012, Angel submitted to weekly urinalysis testing. Angel tested positive for marijuana twice in March 2011 and for cocaine in April 2012.⁴ After his initial diagnosis, Angel participated in recommended outpatient treatment for two months before refusing services. Two months later, Angel re-engaged in treatment, but only attended half of the treatment sessions, leading to discontinuation due to lack of participation. After a third referral, Angel graduated from the substance-abuse program, but he refused to participate in the required aftercare program. Angel subsequently relapsed and tested positive for cocaine. He

³ ADES removed J.C. the day his parents were being evicted. At the time of removal, ADES observed high piles of clutter and trash stacked along the walls and floor of the home, and J.C. had dirt markings underneath his fingernails and along his legs, hands, and feet. The parents became homeless after the eviction.

⁴ Between March 2011 and August 2012, Angel missed 24 of 75 scheduled drug tests.

did not participate in any further substance abuse treatment programs.

¶16 Based on Angel's claim that he had been diagnosed with schizophrenia and bipolar disorder as a child, ADES instructed him to self-refer for mental health services. After an intake assessment in March 2011, Angel was scheduled for weekly coping skills sessions and a psychiatric evaluation. Angel "minimally participated in the [coping skills] group and did not maintain consistent attendance as needed." Two months later, Angel completed a psychiatric evaluation and was diagnosed with adjustment disorder with depressive mood and partner-relational problems. Angel was prescribed medication for depression, anxiety, and insomnia, but he refused medication-management services.

¶17 Mental health services were discontinued in August 2011 for non-participation. Angel stated that he was not interested in medication management and preferred to manage his mental health concerns through marijuana use. Angel refused to participate in two psychological evaluations in May 2012, and he failed to comply with further recommended mental health treatment.

¶18 In November 2011, ADES offered Angel parent-aide services and supervised visitation. Angel missed 9 of 37

scheduled visitations over the next eight months.⁵ Angel also missed 13 of 17 scheduled parent-aide sessions. In June 2012, parent-aide services were discontinued "with all objectives not completed and not successful."

¶19 During visitation with J.C., Angel appeared tired and made statements about not sleeping for days. He watched television while J.C. played alone, and he had to be directed by staff to engage with J.C. The quality of the supervised visits decreased, rather than improved, over time. After parent-aide services ended, ADES again offered Angel supervised visits, but he failed to attend.

¶10 Angel made little, if any, progress in dealing with his homelessness and unemployment; he remained unable to provide for J.C.'s basic needs, including providing diapers and consistently providing food.

¶11 In May 2012, ADES filed a Motion for Termination of Parent-Child Relationship. After a one-day hearing, the court found severance to be in the best interests of the child and terminated Angel's parental rights to J.C. based on abandonment, substance abuse, mental illness, and nine months' time in care

⁵ Angel expressed concern over a lack of transportation in March 2012; parent-aide services subsequently provided transportation, but Angel still missed three visits with J.C.

without remedying the circumstances that caused the out-of-home placement.⁶

¶12 Angel timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") section 8-235.⁷

DISCUSSION

¶13 The juvenile court may terminate a parent-child relationship only upon a finding that at least one statutory ground for severance has been established by clear and convincing evidence, and that severance is in the best interests of the child. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). We review the juvenile court's severance order for an abuse of discretion and accept the court's factual findings unless clearly erroneous. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004).

¶14 The juvenile court may terminate a parent's rights pursuant to A.R.S. § 8-533(B)(8)(a) if (1) the child has been in out-of-home placement for nine months or longer, (2) ADES "has made a diligent effort to provide appropriate reunification

⁶ The court also terminated Crystal's parental rights; she is not a party to this appeal.

⁷ Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

services," and (3) "the parent has substantially neglected or wilfully refused to remedy the circumstances that cause[d] the child to be in an out-of-home placement." The relevant circumstances are those existing at the time of severance. *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22, 152 P.3d 1209, 1213 (App. 2007).

¶15 "[P]arents who make appreciable, good faith efforts to comply with remedial programs outlined by ADES will not be found to have substantially neglected to remedy the circumstances that caused out-of-home placement." *Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 576, 869 P.2d 1224, 1229 (App. 1994). Nevertheless, "[t]ermination is not limited to those who have *completely* neglected" remedial services. *Id.* A court acts within its discretion to terminate parental rights for a parent who makes only "sporadic, aborted attempts to remedy" the circumstances causing out-of-home placement. *Id.*

¶16 Angel does not challenge the superior court's determination that severance would be in J.C.'s best interests and does not dispute that J.C. had been in out-of-home placement for nine months or longer. Nor does he dispute that ADES offered him appropriate reunification services. Angel argues only that there was insufficient evidence to establish that he substantially neglected or willfully refused to remedy the

circumstances that caused J.C. to be in an out-of-home placement. We disagree.

¶17 Angel missed 24 of 75 scheduled urinalysis tests. He also tested positive twice for marijuana and once for cocaine. Additionally, his participation in substance abuse treatment was inconsistent at best. During his first referral, he participated for two months, but then refused services. During his second referral, he attended sessions only 50 percent of the time, leading to termination of services due to lack of participation. During his third referral, he refused to participate in the required aftercare program, and he relapsed by testing positive for cocaine consumption a month after graduating from the substance abuse program. Angel refused any substance abuse treatment after that time, and in August 2012, he stopped submitting to urinalysis testing altogether. Accordingly, his sporadic efforts to participate in substance abuse testing and his refusal to participate in an aftercare program even after his cocaine relapse did not demonstrate a good faith effort to comply with substance abuse services.

¶18 Angel's failure to complete parent-aide objectives, the resulting unsuccessful close out of parent-aide services, along with his missed visitation opportunities provided further evidence that he substantially or willfully neglected to remedy the circumstances that caused J.C. to be placed into care. As

noted previously, Angel refused to participate in one-on-one sessions; he watched television during supervised visits while J.C. played alone; he had to be reminded by staff to interact with his son; he made little, if any, progress in finding stable housing or employment; and he was unable to care for J.C.'s basic needs. Angel missed 13 of 17 scheduled one-on-one sessions and 9 of 37 scheduled visits. After the parent-aide services terminated "with all objectives not completed and not successful," Angel did not follow-up when offered four additional visits offered by ADES, and he last saw J.C. in June 2012. Accordingly, Angel did not demonstrate a good faith effort to comply with parent-aide and visitation services.

¶19 Additionally, Angel did not comply with recommended mental health treatment programs. He refused to participate in two scheduled psychological evaluations and he minimally participated in a coping skills group and did not maintain consistent attendance as needed. Although Angel submitted to one psychiatric evaluation and was diagnosed with adjustment disorder with depressive mood and partner-relational problems, he refused to comply with medication-management services, preferring to manage his mental health concerns with marijuana. Accordingly, Angel did not demonstrate a good faith effort to comply with mental health assessment and treatment services.

¶20 Because Angel's efforts to participate in substance abuse testing and treatment, parent-aide services, visitation, and mental health assessment and treatment services were sporadic and ineffectual, the juvenile court did not err by finding clear and convincing evidence of substantial neglect or willful refusal to remedy the circumstances leading to J.C.'s out-of-home placement. Because the court properly based severance on nine months' time in care without remediation, we need not address the other severance grounds. See *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002). Accordingly, the court did not abuse its discretion by severing Angel's parental rights.

CONCLUSION

¶21 For the foregoing reasons, we affirm.

/S/
KENT E. CATTANI, Judge

CONCURRING:

/S/
PATRICIA A. OROZCO, Presiding Judge

/S/
PETER B. SWANN, Judge