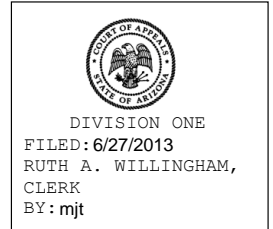


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



JOSE H.,) No. 1 CA-JV 13-0024
)
Appellant,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Rule 103(G) Ariz. R. P.
SECURITY, N.T.,) Juv. Ct.; Rule 28, ARCAP
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD8647

The Honorable Colleen McNally, Judge

AFFIRMED

Law Office of Anne M. Williams, P.C.
By Anne M. Williams
Attorney for Appellant

Tempe

Thomas C. Horne, Arizona Attorney General
By Nicholas Chapman-Hushek
Attorneys for Appellee Arizona Department of Economic Security

Phoenix

B R O W N, Judge

¶1 Jose H. ("Father") appeals the juvenile court's order terminating his parental rights to his son ("the child").¹ Father argues that the court "fundamentally erred" by giving greater weight and consideration to the testimony of witnesses (a psychologist and a Child Protective Services ("CPS") case manager) who testified in support of the motion for termination than to the reports of the Mexican home study evaluators and Father's treating therapist in Mexico regarding Father's ability to parent. For the following reasons, we disagree, and therefore affirm the court's order.

BACKGROUND

¶2 We view the evidence presented to the juvenile court in the light most favorable to affirming the court's findings. *Matter of Appeal in Maricopa Cnty., Juvenile Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994).

¶3 Father and Mother² are the unmarried parents of the child, born in March 2011. After the child was born substance exposed, the Arizona Department of Economic Security ("ADES") was notified, and the child was taken into CPS custody. At the time of the child's birth, Father was living in Mexico, having

¹ The caption has been amended to safeguard the identity of the juvenile pursuant to Administrative Order 2013-001.

² The rights of Mother were also terminated, but she is not a party to this appeal.

been deported³ in December 2010 after being sent to jail in October 2010. Father had previously lived in the United States for about seven years, although not continuously.

¶4 A few weeks after the child was born, ADES filed a dependency petition as to both Mother and Father. With regard to Father, ADES alleged he had neglected the child because his deportation and inability to reenter the United States prevented him from providing the child with adequate food, shelter, clothing, and medical care, and that he was unable to parent the child, as evidenced by the recent termination of his parental rights as to the two other children. The juvenile court determined that the allegations of the petition were true and found the child dependent as to Father in December 2011. The court approved a case plan of family reunification despite the objection of the child's guardian ad litem ("GAL"), who believed a plan of severance and adoption was more appropriate.

¶5 Based on the court's ruling, ADES offered services to Father, including interstate compact with Mexico, parenting skills class, random drug and alcohol testing, therapy, and domestic violence counseling. To achieve reunification, CPS

³ At the time Father was deported, he and Mother were involved in dependency/termination proceedings for their two older children. In February 2011, the juvenile court terminated Father's parental rights to those two children based on fifteen months time-in-care stemming from Father's unresolved issues with substance abuse, domestic violence, and failure to protect the children from Mother's drug addictions.

informed Father he would need to refrain from substance abuse, demonstrate his ability to handle stress, refrain from committing domestic violence, develop fundamental parenting skills, and participate in services that Mexico's social services agency would offer him.

¶16 At a review hearing in June 2012, CPS submitted an addendum report, which summarized a home study conducted on Father by DIF.⁴ The addendum report noted several concerns about the home study, including a lack of information regarding Father's history of domestic violence or any efforts to remedy that issue. The report also noted that CPS "had considerable concerns about [Father's] relationship patterns" and that he had never met the child nor had he made any attempts to send the child any cards, pictures, or financial support. Notwithstanding these concerns, CPS requested that the case plan remain family reunification to give ADES more time to make an "educated decision" regarding the best interests of the child. The GAL, however, renewed her request to proceed with severance and adoption. Over Father's objection, the juvenile court changed the case plan and directed the GAL to file a motion for termination. In the subsequent motion, the GAL alleged that

⁴ "Sistema Nacional para el Desarrollo Integral de la Familia" is the National System for Integral Family Development in Mexico. It is commonly referred to by the acronym "DIF." <http://sn.dif.gov.mx> (last visited June 19, 2013).

termination of Father's rights was justified under Arizona Revised Statutes ("A.R.S.") section 8-533(B)(8)(a) (nine months' time-in-care), (B)(8)(c) (fifteen months' time-in-care), and (B)(10) (prior termination of parental rights for the same cause within the last two years). Father contested the motion and the court held a three-day severance hearing.

¶17 Father testified at the hearing by phone because he was unable to legally enter the United States. He admitted he had numerous contacts with police during his relationship with Mother, which he attributed to Mother's substance abuse. He repeatedly denied any domestic violence, but did admit that his alcohol abuse caused him to lose relationships with his other children (who still reside in Mexico), his job, and his driving privileges. He also admitted that even though he had agreed to have no contact with Mother as a result of the dependency of their two older children, he had sexual intercourse with her knowing that she was abusing drugs at the time. Mother became pregnant with the child. Father's explanation was that Mother "trapped" him by inviting him for meals and talking about the children.

¶18 Father also testified he had not consumed alcohol since 2007 but only participated in one urinalysis test for alcohol. In coordination with Mexican social services Father participated in two home studies. He also participated in

substance abuse counseling, substance abuse testing, domestic violence classes and alcohol support meetings. Father expressed frustration in working with CPS and admitted he never tried to provide any support or gifts to the child or otherwise attempt to start a relationship with the child, whom he had never met. Instead, he testified that if he had been asked to provide support or to make contact, he would have done so.

¶19 Dr. Buwalda, who conducted psychological consultations with Father in 2010 and 2012, noted that Father did not take any responsibility for his deportation or his involvement with CPS. Buwalda stated that she continues to have concerns regarding father's motivation to parent. Although Father had at most fifteen therapy sessions in Mexico over a two-year period, Buwalda explained she had reviewed the summary reports from the sessions and it "would be a bold statement" to conclude that Father was "fantastic" as the therapy notes indicate, or that he no longer had any issues with alcohol, aggressiveness or violence.

¶10 Buwalda also participated in a psychological consultation with Father's girlfriend, K.G., in July 2012. Buwalda reported she had concerns about K.G.'s comments that CPS was only involved in Father's life because of Mother's substance abuse problem and that she and Father would allow Mother to visit the child upon reunification. Buwalda was concerned that

K.G. did not understand Father's role in the dependency and that Father would not protect the child from Mother. Buwalda testified that she was not so much troubled by Father's relationship with K.G. but with Father's dishonesty about the relationship.

¶11 Jennifer Bilskie, a CPS supervisor, testified in detail about her involvement in the case, her efforts to coordinate services for Father in Mexico, and her largely unsuccessful attempts to receive information from the Mexican service providers. Bilskie acknowledged that Father had participated in services that were offered in Mexico, but she did not believe those efforts were effective in helping Father to parent. Bilskie opined that Father had not remedied the circumstances that caused the child to be placed in out-of-home care and that a substantial likelihood exists that Father would be unable to parent the child in the near future. Bilskie explained that Father: (1) had not established any relationship with the child such as making efforts to make contact or to provide for his support; (2) never admitted he had an issue with domestic violence; and (3) made it difficult to assess his situation due to his lack of honesty.

¶12 Bilskie also explained that despite repeated efforts to obtain information about Father's counseling sessions, no information was provided until about a week before trial, and

that included only a brief summary of ten to fifteen sessions that occurred through April 2011. Bilskie was also skeptical of the home studies conducted in Mexico, indicating that Father was not truthful about his living arrangements. Counsel for ADES joined in the GAL's motion during closing arguments.

¶13 The juvenile court subsequently granted the motion for termination. In its findings of fact, the court summarized the testimony presented and noted that Father's testimony was "internally inconsistent and lacked credibility." The court found that ADES had made diligent efforts to provide appropriate services to Father and to assist with family reunification. The court then concluded that the GAL had proven, by clear and convincing evidence, each of the three statutory grounds asserted in the motion. The court also determined that the GAL had proven by a preponderance of the evidence that termination was in the child's best interests. Father timely appealed. We have jurisdiction pursuant to A.R.S. § 8-235 and Rule 103(A) of the Arizona Rules of Procedure for the Juvenile Court.

DISCUSSION

¶14 Father asserts that the court fundamentally erred by giving greater weight and consideration to the testimony of the CPS case manager and forensic psychologist than to that of the numerous Mexican DIF home study evaluators and Father's treating psychotherapist. As noted by ADES, however, Father's argument

is not supported by any substantive analysis, citations to relevant authorities, or references to the record, which could constitute abandonment and waiver of his claims. ARCAP 13(a)(6) (requiring the appellant's brief to contain arguments that include "citations to the authorities, statutes and parts of the record relied on"); *State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989) ("[O]pening briefs must present significant arguments, supported by authority, setting forth an appellant's position on the issues raised. Failure to argue a claim usually constitutes abandonment and waiver of that claim."). The "argument" section of Father's brief consists of slightly more than one page but includes nothing more than general statements of the law regarding severance and dependency cases. Thus, the opening brief is essentially useless. Nonetheless, considering the importance of Father's rights at stake here, in our discretion we will consider Father's "argument" as best we can and decide the issue purportedly raised based on our research and review of the record. See *Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984) (recognizing that courts prefer to decide each case upon its merits rather than dismissing on procedural grounds).

¶15 To justify termination of Father's parental rights, the juvenile court had to find the existence of at least one

statutory ground by clear and convincing evidence. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). The court was also required to find that termination was in the best interests of the child by a preponderance of the evidence. *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005). On review, we accept the juvenile court's "findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002) (citation omitted).

¶16 Father argues that the juvenile court should have deferred to the assessments made by his treating therapist and the home studies in Mexico, rather than those of Buwalda and Bilskie. The law is well-established, however, that this court does not make credibility determinations or weigh the evidence on appeal. Instead, the juvenile court serves as the trier of fact and as is therefore in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings. *Jesus M.*, 203 Ariz. at 280, ¶ 4, 53 P.3d at 205.

¶17 The juvenile court found that the home studies performed in Mexico were deficient in addressing the issues of substance abuse, domestic violence, and relationships of the

parties in the home. The court also noted that the reports from Father's therapist in Mexico failed to describe his use of alcohol or any information about behavioral changes or whether Father had obtained any insight or recognition about his actions regarding domestic violence or substance abuse and the affect it had on his parenting.

¶18 Although Father argues that the juvenile court should have deferred to the recommendations of the Mexican service providers, he does not make any assertion that he was somehow prevented from calling one or more of the providers to testify at the hearing. The juvenile court also found that Father's testimony was inconsistent and lacked credibility. Moreover, there was sufficient testimony which demonstrated Father's inability to discharge his parental duties. Witnesses testified, *inter alia*, that Father (1) continued to deny any responsibility for domestic violence toward Mother; (2) appeared to bully the women he was in relationships with; (3) refused to acknowledge any involvement in domestic violence; (4) failed to keep a log of when he attended Alcoholics Anonymous meetings; and (5) was only tested for alcohol use once during the four urinalysis tests he participated in.

¶19 Given the conflicting testimony and evidence presented, we conclude that the juvenile court appropriately exercised its role as the trier of fact in determining that the

GAL presented clear and convincing evidence justifying termination of Father's parental rights on all three statutory grounds.⁵

CONCLUSION

¶20 We affirm the juvenile court's order terminating Father's parental rights.

_____/s/_____
MICHAEL J. BROWN, Judge

CONCURRING:

_____/s/_____
PATRICIA K. NORRIS, Presiding Judge

_____/s/_____
JOHN C. GEMMILL, Judge

⁵ Father does not challenge the juvenile court's determination that severance was in the best interests of the child.