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UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JEFFERY M., *Appellant*,

v.

ARIZONA DEPARTMENT OF ECONOMIC SECURITY, T.C., *Appellees*.

No. 1 CA-JV 13-0137
FILED 11-26-2013

Appeal from the Superior Court in Maricopa County
No. JD509207
The Honorable Peter A. Thompson, Judge

AFFIRMED

COUNSEL

Robert D. Rosanelli, Phoenix

Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Amanda Holguin

Counsel for Appellee Arizona Department of Economic Security

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MEMORANDUM DECISION

Presiding Judge Winthrop delivered the decision of the Court, in which Judge Downie and Judge Thompson joined.

WINTHROP, Presiding Judge:

¶1 Jeffery M. (“Father”) appeals the juvenile court’s order terminating his parental rights to T.C. (“Child”). Father argues that reasonable evidence does not support the statutory grounds for termination. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Child was born in February 2012 to Father and Rosanna C. (“Mother”). Although Mother and Father had ended their relationship by Child’s birth, Father formally acknowledged paternity. Four days later, Child Protective Services (“CPS”) took Child into temporary custody, and the Arizona Department of Economic Security (“ADES”) later filed a dependency petition alleging that Child was dependent as to Father and Mother based on the parents’ history of drug abuse and domestic violence. In April 2012, after Father’s failure to appear at the initial dependency hearing, the juvenile court found Child dependent as to Father and set the case plan for family reunification.

¶3 Because of an on-going paternity dispute with Mother regarding another child, Father purportedly had doubts that he was Child’s father. As a result, Father only saw Child at the hospital once after her birth and once in an early supervised visit. From April to October 2012, Father was absent from Child’s life. Father never provided clothing, cards, or gifts for Child, even after paternity was established.

¶4 In the early stages of this case, ADES offered Father various services in furtherance of the reunification plan, including substance abuse treatment, urinalysis testing, visitation, parent aide services, and access to domestic violence education. Father later blamed his failure to maintain contact with Child and engage in ADES-provided services on his continuing concern as to paternity. When Father reappeared in October 2012, he requested a paternity test from ADES. He took the test in

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December, and it confirmed his paternity. ADES then attempted to contact Father, but could not locate him. Meanwhile, in December, the juvenile court authorized a change in the case plan to severance and adoption, and ADES filed a motion to terminate Father's parental rights to Child.¹

¶5 In late January 2013, ADES had the opportunity to tell Father about the results of the paternity test when he contacted the case manager and claimed he was working in Tucson but would be back in Phoenix the following week. Father requested visitation with Child, but that request was rejected because it was not in Child's best interest. When he returned to Phoenix, Father was arrested in connection with a previous criminal matter and spent seventeen days in jail.

¶6 After paternity had been more fully established to Father's satisfaction, ADES attempted to engage Father in drug rehabilitative services and urinalysis testing. In March 2013, Father failed a drug screening. Father refused to participate in ADES-offered services, choosing instead to enroll in an inpatient treatment program on the eve of the severance hearing "in order to show [ADES] that [he] was trying to make a change," rather than as an acknowledgment of drug dependency.

¶7 In April 2013, the juvenile court held a termination adjudication hearing. At the hearing, the CPS case manager testified about the rehabilitative services offered to Father and his unwillingness to engage in those services, Father's lack of support for Child, and his lack of contact with Child. Father testified about his confusion regarding paternity, his inability to maintain contact with CPS, his drug abuse and later efforts to maintain sobriety, and his employment.

¶8 In a May minute entry, the juvenile court terminated Father's rights; the court later filed its signed order in June. The court found that, although ADES offered appropriate reunification services, Father failed to engage in those services. The court also found that Father failed to provide financial support for Child and did not maintain contact with Child or CPS. The juvenile court terminated Father's parental rights to Child pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-

¹ ADES also sought to terminate Mother's parental rights, though Mother is not subject to this appeal.

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533(B)(8)(a) (West 2013)² (out-of-home placement greater than nine months), 8-533(B)(8)(b) (out-of-home placement greater than six months for child younger than three years old), and 8-533(B)(1) (abandonment).

¶9 We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, A.R.S. § 8-235(A), and Rule 103(A) of the Arizona Rules of Procedure for the Juvenile Court. Although Father filed his notice of appeal before the juvenile court filed a signed order finalizing its minute entry ruling on termination, we maintain jurisdiction. See *Barassi v. Matison*, 130 Ariz. 418, 422, 636 P.2d 1200, 1204 (1981) (“[A] premature appeal from a minute entry order in which no appellee was prejudiced and in which a subsequent final judgment was entered over which jurisdiction may be exercised need not be dismissed.”).

ANALYSIS

¶10 Father argues that the juvenile court erred when it terminated his parental rights to Child because reasonable evidence does not support the statutory grounds for termination. We disagree.

¶11 Because “the juvenile court [is] in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings,” *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987), we will not disturb the juvenile court’s order terminating parental rights unless its findings are clearly erroneous, meaning no reasonable evidence supports them. *Audra T. v. Ariz. Dep’t of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998).

I. Termination Pursuant to A.R.S. § 8-533(B)(8)(a)

¶12 To terminate parental rights pursuant to A.R.S. § 8-533(B)(8)(a), ADES must prove, by clear and convincing evidence, see *Santosky v. Kramer*, 455 U.S. 745, 769-70 (1982), that (1) a child has been in an out-of-home placement for nine months or more pursuant to a court order, (2) ADES “has made a diligent effort to provide appropriate reunification services,” and (3) the parent has “substantially neglected or

² We cite the current version of the applicable statutes if no revisions material to our analysis have since occurred.

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wilfully refused to remedy the circumstances that cause the child to be in an out-of-home placement.” A.R.S. § 8-533(B)(8)(a).

¶13 Father argues that ADES did not make a diligent effort to provide reunification services.³ ADES “is not required to provide every conceivable service or to ensure that a parent participates in each service it offers,” *Maricopa County Juvenile Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994), nor is it obligated to undertake futile rehabilitative measures. *Maricopa County Juv. Action No. JS-5209 & No. JS-4963*, 143 Ariz. 178, 189, 692 P.2d 1027, 1038 (App. 1984). However, ADES “must provide a 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).

¶14 At the termination adjudication hearing, ADES entered into evidence CPS reports that list the services offered to Father at the beginning of these proceedings, primarily outpatient substance abuse treatment and random drug testing. The record also reflects that ADES offered Father and Mother parent-aide services and community services to have them engage in domestic violence education. The CPS case manager also testified that ADES re-offered drug treatment services to Father after his previously acknowledged paternity of Child had been confirmed, but that Father rejected their services in favor of his preferred inpatient treatment. Father testified that he could not reach the CPS case manager initially assigned to this case in order to begin services, that he did not have a drug problem, and that his stay in the drug treatment facility was for the benefit of the legal proceedings.

³ Father does not challenge the juvenile court’s conclusion that Child remained in an out-of-home placement for longer than nine months and that Father substantially neglected or wilfully refused to remedy the circumstances that caused that out-of-home placement, and any argument based on those issues is deemed waived. *See Childress Buick Co. v. O’Connell*, 198 Ariz. 454, 459, ¶ 29, 11 P.3d 413, 418 (App. 2000) (recognizing that “issues not clearly raised in appellate briefs are deemed waived”). Similarly, Father does not challenge the juvenile court’s finding that termination was in the best interest of Child, and any argument on that issue is also deemed waived.

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¶15 The juvenile court concluded that ADES made a diligent effort to provide reunification services, but that Father failed to participate in those services. Because the juvenile court was in the best position to weigh the evidence and judge the credibility of Father and the CPS case manager, *see Pima County Dependency Action No. 93511*, 154 Ariz. at 546, 744 P.2d at 458, we affirm.

II. Other Statutory Grounds

¶16 The juvenile court also terminated Father's parental rights pursuant to A.R.S. § 8-533(B)(8)(b) (out-of-home placement greater than six months for child younger than three years old) and § 8-533(B)(1) (abandonment). Because reasonable evidence supports termination pursuant to A.R.S. § 8-533(B)(8)(a), we need not address claims pertaining to the other statutory grounds. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002). In an abundance of caution, however, we note the juvenile court's conclusion pursuant to A.R.S. § 8-533(B)(8)(b) would be affirmed in an analysis nearly identical to the one above. We further note ADES provided reasonable evidence to support the conclusion of the juvenile court regarding Father's abandonment of Child pursuant to A.R.S. § 8-533(B)(1).

CONCLUSION

¶17 We affirm the decision of the juvenile court terminating Father's parental rights to Child.



Ruth A. Willingham · Clerk of the Court
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