

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

DAVID K., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY,¹ P.K., V.K., *Appellees*.

No. 1 CA-JV 15-0283
FILED 3-29-2016

Appeal from the Superior Court in Maricopa County
No. JD508343
The Honorable Karen L. O'Connor, Judge

AFFIRMED

COUNSEL

The Stavris Law Firm, PLLC, Scottsdale
By Alison Stavris
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Cathleen E. Fuller
Counsel for Appellee Department of Child Safety

¹ Pursuant to S.B. 1001, Section 157, 51st Leg., 2nd Spec. Sess. (Ariz. 2014) (enacted), the Department of Child Safety (DCS) is substituted for the Arizona Department of Economic Security (ADES) in this matter. *See* ARCAP 27. For consistency, we refer to DCS in this decision even where, at the time, actions were taken by ADES.

MEMORANDUM DECISION

Presiding Judge Jon W. Thompson delivered the decision of the Court, in which Judge Maurice Portley and Judge Patricia K. Norris, joined.

T H O M P S O N, Judge:

¶1 David K. (father) appeals from the juvenile court's order terminating his parental rights as to P.K. and V.K. (collectively the children). For the following reasons, we affirm.

FACTS² AND PROCEDURAL HISTORY

¶2 Amber W. (mother) and father are the biological parents of P.K., born in July 2011, and V.K., born in November 2012.³ In September 2011, DCS took P.K. into temporary custody after receiving a report that father was arrested for driving under the influence of intoxicating substances. The report stated that father was driving at a very high speed, while P.K. was improperly restrained in the vehicle. DCS filed a dependency petition based on father's and mother's neglect and substance abuse, and the juvenile court found P.K. dependent as to both. Father completed reunification services, and the juvenile court thereafter dismissed the dependency as to father.

¶3 In November 2013, DCS took the children into temporary custody after a case manager reported that V.K. was in the unsupervised care of mother, who was acting erratically. When father later arrived home with P.K., he smelled of marijuana. The report stated that father's home was extremely unclean, contained spoiled food, and smelled of urine and feces. A week later, father agreed to complete a urinalysis, and tested

² 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).

³ Mother's parental rights to children were terminated on August 13, 2015, and are not subject to this appeal.

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positive for marijuana. Thereafter, father failed to appear at the following two scheduled drug tests.

¶4 DCS filed a dependency petition alleging that father and mother suffered from substance abuse, neglected the children by failing to provide appropriate parental care and supervision, and had a prior dependency involving P.K. After a contested dependency hearing, the juvenile court found the children dependent as to both parents and placed the children into foster care. DCS established a case plan for father of reunification and offered him the following services: parent aide, supervised visitation, random drug testing, transportation, and substance abuse treatment.

¶5 In May 2014, father completed his intake assessment at TERROS Families F.I.R.S.T. (TERROS) and began participating in the parent aide service.⁴ Father failed to attend the scheduled drug treatment groups and random drug tests, which resulted in TERROS discontinuing services. Father also missed several scheduled visitations with the children; he displayed hostility to the parent aide during their meetings; and he missed several parent aide meetings. Consequently, DCS closed out parent aide services.

¶6 Thereafter, father regularly engaged in a parent-aide-visitiation-only service and attended most supervised visitations with the children. However, father's participation in the substance abuse testing and treatment remained inconsistent. Father completed a second intake assessment with TERROS and was scheduled for a group intake, which he failed to attend. Father also missed multiple group meetings, an individual meeting, and a drug screening.

¶7 Although father knew DCS wanted him to submit to urinalysis testing at the Treatment Assessment Screening Center (TASC), father missed 61 of the 71 random urinalysis tests scheduled from late November 2013 to May 2015. Father tested positive for marijuana in July 2014, and positive for benzodiazepines in April 2015.

¶8 In September 2014, DCS filed a motion for termination of father's parental rights on the grounds of chronic abuse of drugs and six

⁴ Father was incarcerated for probation violations related to his 2011 DUI conviction for two weeks in February 2014. Father was again incarcerated from early March 2014 to April 2014, and from August 2014 through November 2014.

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months' time in care. DCS later amended the petition to also include the grounds of nine months' time in care, fifteen months' time in care, and P.K.'s prior removal. See Ariz. Rev. Stat. (ARS) § 8-533(B)(3), (8)(a)-(c), (11) (Supp. 2014). DCS also alleged that termination was in the children's best interest. After a contested severance hearing, the juvenile court found that DCS had established the grounds for severance, and that termination was the children's best interests. Accordingly, the juvenile court terminated father's parental rights to the children.

¶9 Father timely appealed. We have jurisdiction pursuant to A.R.S. sections 8-235 (2014), and 12-2101(A)(1) (Supp. 2015).

DISCUSSION

¶10 The juvenile court may terminate the parent-child relationship only upon finding that clear and convincing evidence demonstrates at least one statutory ground for severance; the court must also determine that severance is in the child's best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). On appeal, "we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a [termination] 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) (citations omitted). Father argues that the state failed to provide sufficient evidence to support the juvenile court's finding of severance based on the fifteen months' time in care grounds. He does not argue that DCS failed to provide him with sufficient reunification services.

¶11 Pursuant to A.R.S. § 8-533(B)(8)(c), the juvenile court can properly sever a parent's rights if (1) the child has been in out-of-home placement for fifteen months or longer; (2) the parent has been unable to remedy the circumstances causing the child to be in out-of-home placement; and (3) a substantial likelihood existed that the parent would not be able to properly care for the child in the near future. We consider "those circumstances existing at the time of the severance that prevent a parent from being able to appropriately provide for his or her children." *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22, 152 P.3d 1209, 1213 (App. 2007) (internal quotes and citation omitted). To avoid severance, the parent must make more than trivial or de minimus efforts at remediation. *Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 576 n.1, 869 P.2d 1224, 1229 n.1 (App. 1994).

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¶12 Reasonable evidence supports the juvenile court's finding that DCS had proven the fifteen months' time in care ground. By the time of the severance trial in July 2015, V.K. had been in an out-of-home placement for nineteen months, and P.K. had been in an out-of-home placement for two and a half years. During that time, father inconsistently participated in services and failed to complete parent aide services. The DCS caseworker testified that father has not demonstrated that he has a stable living environment and employment, and has not established sobriety for substances. The caseworker noted that father inconsistently attended substance abuse classes at TERROS and has not completed a random urine analysis at TERROS in five months. She also testified that father continues to not call TASC for urinalysis testing on a consistent basis, he has missed numerous tests, and he had a positive drug test two months prior to the trial.

¶13 The juvenile court found that "[f]ather has been unable to remedy the circumstances that cause the child to be in out-of-home placement and there is a substantial likelihood that [f]ather will not be capable of exercising proper and effective parental care and control in the near future." Although father presented evidence that he made some effort to remedy the circumstances through substance abuse testing and treatment, and that he was often loving and attentive during the supervised visitations, the juvenile court had to resolve any conflicts in the evidence, and we decline to re-weigh the evidence. *See Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205. Accordingly, the juvenile court did not err in finding that the statutory ground for termination had been met by clear and convincing evidence.⁵

¶14 Father also challenges the juvenile court's finding that severance was in the children's best interest. To establish that termination is in a child's best interests, the record must contain proof that the child either would benefit from the severance or be harmed if the parental relationship continues. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19, 83 P.3d 43, 50 (App. 2004). The benefit derived from termination may include "evidence that the child is adoptable and the existing

⁵ Because we find the court did not err in terminating father's parental rights under A.R.S. § 8-533(B)(8)(c), we do not address the additional grounds for termination. *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.").

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placement is meeting the child's needs." *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, 511, ¶ 15, 200 P.3d 1003, 1008 (App. 2008).

¶15 Reasonable evidence supports the finding that the children would be harmed by the continuation of the parental relationship and benefited by severance and adoption. The DCS caseworker testified that father's substance abuse continued to place the children at risk of harm. Additionally, the DCS case manager testified that the children's current placement is willing to adopt both of them; the children are bonded to the foster placement; the placement is meeting all of the children's needs, and the children are progressing well. Notwithstanding father's acknowledged love for his children, the children's need for stability and security outweighed father's interests in trying to parent them. Therefore, the court's determination that DCS had established that severance was in the children's best interests was not an abuse of discretion. *See Jesus M.*, 203 Ariz. at 280, ¶ 4, 53 P.3d at 205 (stating that in termination proceedings, the juvenile court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings").

CONCLUSION

¶16 Based upon the foregoing, we affirm the juvenile court's termination order.



Ruth A. Willingham · Clerk of the Court
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