IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

CARLOS B., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, E.B., *Appellees*.

No. 1 CA-JV 17-0159
FILED 8-31-2017

Appeal from the Superior Court in Maricopa County
No. JD528802
The Honorable Karen L. O'Connor, Judge

AFFIRMED

COUNSEL

John L. Popilek PC, Scottsdale
By John L. Popilek
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Ashlee N. Hoffman
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Peter B. Swann joined.

C A T T A N I, Judge:

¶1 Carlos B. ("Father") appeals from the superior court's ruling terminating his parental rights to his daughter E.B. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Father and Evangelina G. ("Mother") are the parents of E.B., born in February 2015.[1] E.B. was taken into care three months later, after Mother went to the hospital for an injury allegedly inflicted by Father and after E.B.'s sibling was taken to the hospital with unexplained bruising on his back. Further investigation by the Department of Child Safety ("DCS") raised concerns of domestic violence and substance abuse, and that the parents were unable to meet the child's needs. The superior court later found E.B. to be dependent as to Father, and DCS offered him services including substance-abuse testing and treatment, visitation, parent aide, and domestic violence classes.

¶3 Despite six referrals for drug testing over the course of the dependency, Father completed only three drug tests, all of which were positive for illicit substances: methamphetamine and marijuana in June 2015 and April 2016, and cocaine and marijuana in May 2016. Father similarly failed to complete a drug treatment program. He did not finish even the intake on his first referral, and while he completed the intake for his second referral, he declined to participate in the treatment program, citing a scheduling conflict with a new job. Although the case manager gave Father information on community treatment programs to accommodate his schedule, Father never completed substance-abuse treatment.

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[1] Mother's parental rights were terminated based on relinquishment and consent to adoption, and she is not a party to this appeal.

¶4 Father participated in some parent-aide services during the first seven months of the dependency, but his engagement was inconsistent and he completed only a handful of one-on-one sessions. And, after December 2015, he failed to participate at all. Similarly, he had some visits with E.B. early on, but his attendance was inconsistent and he was unprepared to care for the child during the visits. Father last saw E.B. around the end of December 2015.

¶5 Father was in and out of jail over the course of the dependency, and although he would generally contact the DCS case manager when released, he consistently failed to follow through with services thereafter. Father had several domestic violence convictions from before the dependency, and DCS received several additional reports of his violence against Mother while the dependency was ongoing.

¶6 Father was incarcerated on domestic violence and burglary charges in October 2016, and he remained in confinement at the time of the severance hearing the following March. During his incarceration, Father completed 14 hours of parenting classes and 8 hours of cognitive thinking classes. He was also accepted into (but had not yet begun) Maricopa County's jail-based drug-treatment class and post-release substance abuse program.

¶7 In December 2016, DCS moved to terminate Father's parental rights to E.B. based on 9- and 15-months' time in care. *See* Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(8)(a), (c).[2] At the severance hearing that followed, Father acknowledged that he had made mistakes and had failed to participate consistently in services. He testified, however, that he intended to change his ways, attend and complete all classes, and go to every visit after being released, and he asked for more time to prove he could be a better father.

¶8 The superior court terminated Father's parental rights to E.B., finding that severance was warranted on both grounds alleged and that termination would be in E.B.'s best interests. Father timely appealed, and we have jurisdiction under A.R.S. § 8-235(A).

DISCUSSION

¶9 The superior court is authorized to terminate a parent–child relationship if clear and convincing evidence establishes at least one

[2] Absent material revisions after the relevant date, we cite a statute's current version.

statutory ground for severance, and a preponderance of the evidence shows severance to be in the child's best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). We review a severance ruling for an abuse of discretion, deferring to the superior court's credibility determinations and factual findings. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004); *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

¶10 Severance based on 15-months' time in care under A.R.S. § 8-533(B)(8)(c) requires proof that: (1) the child has been in an out-of-home placement for at least 15 months, (2) "[DCS] has made a diligent effort to provide appropriate reunification services," (3) "the parent has been unable to remedy the circumstances" necessitating the out-of-home placement, and (4) "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." The relevant circumstances are those existing at the time of severance. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 96 n.14, ¶ 31 (App. 2009).

¶11 Father argues the superior court erred by finding statutory grounds for severance; he does not challenge the best interests finding. He claims that the classes and programs he took advantage of in jail—including one with a post-release drug rehabilitation component—show that he would be capable of parenting in the near future, and he asserts that the court erred by denying him a few more months to participate in services and demonstrate his ability to create a safe, stable, and permanent home where E.B.'s needs could be met.

¶12 As described above, over the two years that preceded the termination hearing, Father failed to take advantage of services DCS offered him. He failed to consistently complete drug tests (and the three tests he did complete were positive for illegal drugs), so he did not demonstrate an ability to maintain sobriety outside of incarceration. Father never fully engaged in drug treatment, and his acceptance into the jail-based drug-treatment program, while commendable, does not show that he will necessarily overcome his long-term substance abuse in the near future. *See* A.R.S. § 8-533(B)(8)(c). Moreover, Father had not seen E.B. since the end of December 2015, and the court reasonably concluded he had never demonstrated effective parenting ability; the fact that Father completed 14 hours of parenting classes in jail, while commendable, does not dictate a contrary conclusion. And Father never addressed his track record of repeated domestic violence or otherwise showed a capacity to provide a safe and violence-free home.

¶13 Although the superior court rightly acknowledged Father's engagement in classes during his most recent incarceration and his intent to change his behavior and become a better parent, Father's prior patterns of behavior provided a basis for the court's finding that he had been unable to remedy the circumstances necessitating out-of-home placement and would not be capable of parenting effectively in the near future. *Cf. Maricopa Cty. Juv. Action No. JS-501568*, 177 Ariz. 571, 577 (App. 1994). Accordingly, the record supports termination of Father's parental rights based on 15-months' time in care. Because we affirm on this basis, we need not address the alternative severance ground of 9-months' time in care. *See Jesus M.*, 203 Ariz. at 280, ¶ 3.

CONCLUSION

¶14 For the foregoing reasons, we affirm.

AMY M. WOOD • Clerk of the Court
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