IN THE
# ARIZONA COURT OF APPEALS
**DIVISION ONE**

---

QUINTON B., *Appellant*,

*v.*

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

No. 1 CA-JV 17-0163
FILED 10-26-2017

---

Appeal from the Superior Court in Maricopa County
No. JD529955
The Honorable Karen L. O'Connor, Judge

**AFFIRMED**

---

COUNSEL

Vierling Law Offices, Phoenix
By Thomas A. Vierling
*Counsel for Appellant*

Arizona Attorney General Office, Tucson
By Laura J. Huff
*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Judge Thomas C. Kleinschmidt[1] delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge Jon W. Thompson joined.

**K L E I N S C H M I D T**, Judge:

**¶1** Quinton B. (Father)[2] challenges the superior court's order terminating his parental rights to his biological daughter, N.B., based on six-months time-in-care and substance abuse. Because Father has shown no error, the order is affirmed.

## FACTS[3] AND PROCEDURAL HISTORY

**¶2** N.B. was born in April 2016. N.B. was born substance-exposed and Father's whereabouts were unknown. The Department of Child Safety (DCS) took N.B. into care and filed a dependency petition as to Father, alleging he had not established paternity; did not have a child support order for her; did not have an order granting him custody of her; failed to provide her with basic necessities; and failed to establish or maintain a relationship with her. The superior court adjudicated N.B. dependent as to Father after he failed to appear for his pretrial conference.

**¶3** At the preliminary protective hearing, the superior court ordered Father to participate in drug testing and paternity testing. DCS offered Father urinalysis testing, a hair-follicle test, a referral for substance abuse assessment and treatment, parent-aide supervised visits, and transportation. Father participated in one urinalysis test and tested positive

1 The Honorable Thomas C. Kleinschmidt, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Section 3, of the Arizona Constitution.

2 Although N.B.'s mother's parental rights were also severed, she is not a party to this appeal.

3 This Court views the evidence in a light most favorable to sustaining the superior court's findings. *See Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2 (App. 2008) (citing *Maricopa Cty. Juv. Action No. JS-8490*, 179 Ariz. 102, 106 (1994)).

for marijuana. By the end of summer 2016, he was closed out of substance abuse treatment for failing to complete an intake. Additionally, he failed to participate in any parenting classes and did not provide information to DCS regarding his residence.

**¶4** By November 2016, N.B. had been in care for more than six months. The superior court granted DCS's motion to change the case plan to severance and adoption based upon Father's failure to participate in services, provide information regarding his residence to DCS, and failure to remedy the circumstances that caused N.B. to be in an out-of-home placement. That month, Father began participating in parenting classes and completed an intake for substance abuse treatment. However, in a later report to the superior court, a DCS case manager noted Father had only completed four of his weekly urinalysis tests, all of which were positive for marijuana; he was often late or missed visits; he was not prepared to meet N.B.'s basic needs at visits, including her needs for bottles, diapers, wipes, and formula; he did not have the financial means to care for N.B. due to unemployment; and he did not have an appropriate home for her.

**¶5** An initial severance hearing was held in February 2017, and Father failed to appear without good cause. The superior court accepted evidence presented by DCS and terminated Father's parental rights on the grounds of six-months time-in-care and substance abuse, and found that termination was in N.B.'s best interests. *See* Ariz. Rev. Stat. (A.R.S.) § 8-533(B)(3), (8)(b).[4] This Court has jurisdiction over Father's timely appeal pursuant to A.R.S. §§ 8-235(A), 12-120.21(A)(1), -2101(A)(1), and Arizona Rules of Procedure for the Juvenile Court 103(A).

## DISCUSSION

**¶6** As applicable here, to terminate parental rights, a court must find that at least one statutory ground articulated in A.R.S. § 8-533(B) has been proven by clear and convincing evidence and that termination is in the best interests of the child by a preponderance of the evidence. *See* A.R.S. § 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41 (2005); *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12 (2000). Because the superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts," this Court will affirm an order terminating parental rights as long as it is supported by reasonable evidence. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86,

[4] Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

93, ¶ 18 (App. 2009) (quoting *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004), and citing *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555 (App. 1997)).

**¶7** Father argues the superior court erred in finding DCS properly proved the six-months time-in-care ground by applying an incorrect legal standard and shifting the burden to Father.[5] As relevant here, the six-months time-in-care ground required DCS to prove by clear and convincing evidence that Father "substantially neglected or wil[l]fully refused to remedy the circumstances that cause the child to be in an out-of-home placement, including refusal to participate in reunification services offered by the department." A.R.S. § 8-533(B)(8)(b).

**¶8** Citing the transcript and minute entry from the termination hearing, Father contends the superior court "applied an incorrect legal standard" by adding "an extra standard" under the six-month ground when it found Father had not "fully participated" in services. Further, he argues the court "illegally shifted the burden of proof to Father" when it found he had "not been able to demonstrate that he can parent this child and he had not successfully completed reunification services." Father's argument is premised solely upon the contents of the hearing's transcript and minute entry as the statements objected to were not included within the superior court's subsequent written Findings of Fact, Conclusions of Law, and Order issued April 21, 2017.

**¶9** However, when the court enters certain findings and terminates a parent's rights in a signed minute entry but further orders a party to submit an order, that order, not the signed minute entry, is the final appealable order. *See Pima Cty. Juv. Severance Action No. S-113432*, 178 Ariz. 288, 290 (App. 1993). Here, the superior court's above-referenced minute entry required DCS to submit a final order within ten days. The superior court subsequently issued a detailed, written order which contained all required elements under A.R.S. § 8-538 and found DCS proved grounds for termination by clear and convincing evidence. This final order, not the minute entry or trial transcript to which Appellant objects, serves as the final appealable order in this case. *See S-113432*, 178 Ariz. at 290 (finding a minute entry requiring submission of an order was not the final order); *see also United Cal. Bank v. Prudential Ins. of Am.*, 140 Ariz. 238, 308 (App. 1983) ("Appeals lie from findings of fact, conclusions of law, and judgments, not

---

[5] Father does not dispute the best interests finding, meaning that issue is waived. *See Crystal E. v. Dep't of Child Safety*, 241 Ariz. 576, 577-78 ¶ 5 (App. 2017).

from ruminations of the trial judge."). Because Father does not object to any findings articulated within the superior court's appealable final order, his argument is rejected.

**¶10** Even if this Court were to rely solely upon the contents of the trial transcript and minute entry, however, Father's argument would still fail. The superior court explicitly stated at the hearing and within the resultant minute entry that DCS had proven the statutory grounds by clear and convincing evidence. The court's addressing of Father's failure to complete services and failure to demonstrate parenting ability was evidence of his refusal to remedy the circumstances that resulted in N.B. being placed in care. *See* Ariz. R.P. Juv. Ct. Rule 66(F)(2)(a) (requiring courts to make specific findings of fact in support of orders terminating parental rights). DCS's case plan specifically required Father to participate in services and demonstrate his ability to parent at supervised visits. DCS presented evidence of his failure to comply with these requirements as evidence in support of termination based upon six-months time-in-care.

**¶11** Stated otherwise, the superior court's reference to what Father had "failed to demonstrate" was simply its observation that Father had not rebutted what DCS had proven. It was proper for the court to mention the evidence described above, and the court did not shift the burden of proof in so doing.

**¶12** We affirm the superior court's order terminating Father's parental rights based upon six-months time-in-care and need not address his similar arguments regarding the substance abuse ground. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3 (App. 2002) (citing *Michael J.*, 196 Ariz. at 251, ¶ 20, and *Jennifer B.*, 189 Ariz. at 555) ("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.").

## CONCLUSION

For the reasons set forth above, we affirm the superior court's order terminating Father's parental rights.