

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JOSEPH F., *Appellant,*

v.

DEPARTMENT OF CHILD SAFETY, J.F., *Appellees.*

No. 1 CA-JV 17-0251
FILED 8-31-17

Appeal from the Superior Court in Yavapai County
No. P1300JD201400031
The Honorable Anna C. Young, Judge

VACATED; REMANDED

COUNSEL

Robert D. Rosanelli, Phoenix
Counsel for Appellant

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

MEMORANDUM DECISION

Judge Diane M. Johnsen delivered the decision of the Court, in which Judge James P. Beene and Judge Michael J. Brown joined.

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JOHNSON, Judge:

¶1 Joseph F. ("Father") appeals from the superior court's order terminating his parental rights to his child. In an order issued on May 1, 2017, the court found Father was unable to discharge his parental responsibilities because of a history of chronic abuse of dangerous drugs, controlled substances and/or alcohol and that there were reasonable grounds to believe that the condition would continue for a prolonged indefinite period pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(3) (2017).¹ The court also found that Father's parental rights to another child were terminated on the same ground (substance abuse) on June 26, 2015. *See* A.R.S. § 8-533(B)(10).

¶2 After being incarcerated for about nine months, Father was released from jail approximately two weeks before the termination hearing. He testified that while in jail, he participated in various programs and completed a seven-month substance-abuse treatment program and participated in one-on-one counseling, parenting classes, anger management classes, substance-abuse meetings, substance-abuse groups and a 12-step substance-abuse program.

¶3 On appeal, Father argues there is no evidence to support the superior court's finding that as of the time of the hearing in this case, he continued to abuse dangerous drugs. He contends he has been sober since June 2016 and has addressed his substance-abuse issues. He argues that as a result, there was no evidence to support the court's related finding that substance abuse will prevent him from discharging his parental responsibilities.

¶4 The Department of Child Safety ("DCS") concedes that insufficient evidence supports the court's finding that at the time of the severance hearing, Father was unable to discharge his parental responsibilities due to substance abuse, as required under A.R.S. § 8-533(B)(3). DCS further concedes that as a result, the court erred by finding that Father's parental rights were terminated to another child for the same "cause," under A.R.S. § 8-533(B)(10).

¹ Absent material revision after the relevant date, we cite a statute's current version.

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¶5 As Father argues, and as DCS concedes, the record contains no evidence that Father had abused substances during his incarceration or was abusing drugs at the time of the hearing, or that at the time of the hearing, Father was then unable to discharge his parental responsibilities due to substance abuse. For these reasons, we vacate and remand the order terminating Father's rights.



AMY M. WOOD • Clerk of the Court
FILED: JT