

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

CORY C., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, A.C., E.C., *Appellees*.

No. 1 CA-JV 17-0564
FILED 5-22-2018

Appeal from the Superior Court in Yavapai County
No. V1300JD201780010
The Honorable Anna C. Young, Judge

AFFIRMED

COUNSEL

Robert D. Rosanelli, Attorney at Law, Phoenix
By Robert D. Rosanelli
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Nicholas Chapman-Hushek
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge James B. Morse Jr. delivered the decision of the Court, in which Judge Kent E. Cattani and Judge Lawrence F. Winthrop joined.

M O R S E, Judge:

¶1 Cory C. ("Father") appeals the juvenile court's termination of his parental rights to A.C. and E.C. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Father and Angela B. ("Mother") are the biological parents of E.C., born in June 2014, and A.C., born in June 2013.¹ Father is also the biological father of G.C., born in July 2010.²

¶3 E.C. tested positive for marijuana at birth. At the time, Father, Mother, A.C., and E.C. were living in a motel in Anaheim, California, and California Child Protective Services ("CCPS") learned that Father and Mother were reportedly using drugs and neglecting G.C. and E.C. In June 2016, CCPS was advised that the family had been evicted, they were living in their van, Father was selling methamphetamine in front of his children, and A.C. had been physically abused. Father and Mother denied living in a van, and CCPS did not substantiate the other allegations.

¶4 By October 2016, Father and Mother had moved the family to Arizona. In March 2017, the Department of Child Safety ("DCS") took temporary custody of the three children and petitioned for dependency, alleging Father and Mother neglected to seek medical treatment for the children's chronic, untreated lice and exposed the children to physical and

¹ Mother's parental rights were also terminated, but Mother is not a party to this appeal.

² The dependency action for G.C. was brought under a separate case, and G.C. is not a party to this appeal.

verbal domestic violence.³ On April 5, 2017, the juvenile court found A.C. and E.C. dependent as to Father and Mother.

¶5 At the June and August 2017 Report and Review Hearings, DCS reported that Father failed to participate in services that had been offered, including random drug testing, counseling for domestic violence, counseling for anger management, and family treatment court. Also, Father was only sporadically attending scheduled visits with his children.

¶6 In September 2017, DCS moved to terminate Father's parental rights, and the juvenile court held an initial severance hearing. Father contested the motion and mediation was scheduled. During mediation, Father agreed to not contest the severance. However, Father did not appear at the November 8, 2017 pretrial conference and the no-contest agreement was not signed. The juvenile court found that Father failed to appear without good cause and therefore found a waiver of legal rights and admission of the allegations in the termination motion. The juvenile court then proceeded with the hearing in Father's absence, taking judicial notice of the record and hearing testimony from DCS. The court found that DCS proved neglect, pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(2), a history of chronic substance or alcohol abuse, pursuant to A.R.S. § 8-533(B)(3), and that termination was in A.C. and E.C.'s best interests.

¶7 Father timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 8-235(A), 12-120.21(A)(1), and -2101(A).

DISCUSSION

¶8 Father argues that the juvenile court's finding of neglect and history of chronic substance abuse are clearly erroneous and not supported by substantial evidence in the record. We will affirm a juvenile court's termination of parental rights absent an abuse of discretion and accept its findings of fact unless they are clearly erroneous. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004).

¶9 Before the court may terminate parental rights, "due process requires that the State support its allegations by at least clear and convincing evidence." *Santosky v. Kramer*, 455 U.S. 745, 747-48 (1982). However, a parent may waive this due process right by failing to appear.

³ DCS also alleged that Mother neglected the children based on substance abuse and mental illness.

CORY C. v. DCS, et al.
Decision of the Court

Arizona Rules of Procedure for the Juvenile Court 64(C) provides in pertinent part:

[T]he notice of hearing shall advise the parent, guardian or Indian custodian that failure to appear at the initial hearing, pretrial conference, status conference or termination adjudication hearing, without good cause, may result in a finding that the parent, guardian or Indian custodian has waived legal rights, and is deemed to have admitted the allegations in the motion or petition for termination.

See also A.R.S. § 8-537(C) (authorizing a court to find a "parent has waived the parent's legal rights and is deemed to have admitted the allegations" if the parent fails to appear at a pretrial conference after receiving adequate notice). "This rule implicitly authorizes the juvenile court to terminate parental rights by default if a parent fails to appear without good cause at any one of the four types of court proceedings." *Marianne N. v. Dep't of Child Safety*, 243 Ariz. 53, 56, ¶ 16 (2017). "If the parent never appears, when the hearing concludes the parent will be deemed to have admitted the factual allegations in the motion." *Brenda D. v. Dep't of Child Safety*, 243 Ariz. 437, ___, ¶ 2 (2018). Then, a court may "terminate the parent-child relationship based on the record and evidence presented." *Marianne N.*, 243 Ariz. at 58, ¶ 22.

¶10 The juvenile court acted within its discretion in finding that Father failed to appear without good cause and was deemed to have admitted the allegations in the motion. Father does not contest this finding. Instead, he argues that, despite his admissions, there was insufficient evidence in the record to support the termination of his parental rights. We disagree.

¶11 The conduct and conditions deemed admitted by Father's failure to appear are sufficient to support the juvenile court's finding. Under A.R.S. § 8-533(B)(2), parental rights may be severed if "the parent has neglected or willfully abused a child. This abuse includes serious physical or emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child." Here, DCS established that Father neglected A.C. and E.C. by (1) not providing appropriate housing, (2) not displaying sobriety, (3) exposing the children to domestic violence, (4) exposing the children to substance abuse, and (5) neglecting to provide medical care for the children. Father's appeal

CORY C. v. DCS, et al.
Decision of the Court

challenges only the medical care admission and does not acknowledge the existence and effect of his other admissions, which are sufficient to support the juvenile court's statutory finding.

¶12 Because clear and convincing evidence supports termination based on neglect, we need not address the other grounds alleged. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3 (App. 2002).⁴

CONCLUSION

¶13 For the foregoing reasons, we affirm the juvenile court's order terminating Father's parental rights.



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

⁴ Father has not challenged the court's finding that severance of his parental rights was in the best interest of his children; accordingly, we do not address this issue further.