

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ANGEL R., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, D.R., K.R., *Appellees*.

No. 1 CA-JV 19-0423
FILED 7-14-20

AMENDED PER ORDER FILED 7-14-20

Appeal from the Superior Court in Mohave County
No. B8015JD201704007
The Honorable Rick A. Williams, Judge

AFFIRMED

COUNSEL

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

Arizona Attorney General's Office, Mesa
By Amanda Adams
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Cynthia J. Bailey delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Kent E. Cattani joined.

B A I L E Y, Judge:

¶1 Angel R. (Father) appeals the order terminating his parental rights to his children, D.R. (born in June 2015) and K.R. (born in October 2018). Rosanna T. (Mother)'s parental rights have also been terminated, but she is not a party to this appeal.¹ Because Father consented to place his children for adoption and has shown no error, the order terminating his parental rights is affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 In January 2017, D.R. was taken into the Department of Child Safety's (DCS) care. DCS filed a dependency petition, which alleged Father and Mother exposed D.R. to domestic violence, Father and Mother were unable to meet D.R.'s basic needs, Father was in jail and Mother was using methamphetamine. In May 2017, the court found D.R. dependent as to both parents.

¶3 After the dependency finding, Father and Mother engaged in services and maintained their sobriety. As a result of their compliance with the case plan, DCS returned D.R. to Father and Mother's custody in late December 2017. However, within two months of D.R.'s return, DCS sought to remove her due to Father and Mother's domestic violence and Father's methamphetamine use in D.R.'s presence.

¶4 In October 2018, Mother gave birth to K.R. DCS took K.R. into temporary custody and placed him with D.R.'s foster family. DCS filed a dependency petition alleging Father and Mother were unable to care for K.R. due to their history of substance abuse and domestic abuse. Additionally, DCS alleged Father and Mother could not meet K.R.'s basic needs because they lacked stable housing and income. Father did not

¹ Although Mother filed a notice of appeal, her appellate counsel filed an affidavit pursuant to the Arizona Rules of Procedure for the Juvenile Court 106(G), avowing counsel found "no non-frivolous issue to raise." Accordingly, this court dismissed Mother's appeal.

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contest the allegations in the dependency petition. In late 2018, the juvenile court adjudicated K.R. dependent as to both parents.

¶5 For a time, both parents engaged in services again, including Arizona Families First (AFF) services, substance abuse treatment, drug testing and supervised visitation. Both parents successfully completed AFF services and substance abuse treatment. In April or May 2019, each parent tested positive for amphetamine and methamphetamine. After receiving the test results, the court amended the case plan from reunification to severance and adoption. After the case plan changed, both parents' attendance at addiction support meetings became sporadic and they each frequently failed to drug test. In fact, neither Father, nor Mother submitted a drug test for the entire month of October. Both parents also stopped attending scheduled visitations after September 11, 2019.

¶6 DCS moved to terminate the parental relationship as to both children based on neglect, substance-abuse and 15-months time-in-care grounds. *See* Arizona Revised Statutes (A.R.S.) § 8-533(B)(2), (3), (8)(c) (2020). At the outset of the severance hearing, parents' counsel jointly submitted Father and Mother's signed consents to place the children for adoption. DCS moved to amend its severance motion to include consent as a ground as to each parent. *See* A.R.S. § 8-533(B)(7). The court accepted each parent's consent form and their voluntary absence from the hearing, before granting each counsel's request to be excused for the remainder of the hearing.

¶7 At the hearing, the assigned DCS case manager testified and was cross-examined by the guardian ad litem. The court also admitted, without objection, 30 exhibits. At the conclusion of the hearing, the court found both Father and Mother had the benefit of counsel for the entirety of the proceedings and, thus, each parent signed their consent "in a knowing, intelligent and voluntary manner." The court concluded that DCS proved all the alleged statutory grounds for termination for each parent by clear and convincing evidence and termination was in the best interests of the children.

¶8 Father filed a motion to set aside the order terminating parental rights. Father argued he misunderstood the purpose of the consent. Father's "understanding was that the Consent was only to get DCS 'out of their life' and not a Consent to relinquish their parental rights. Had Father and Mother known that the Consent would legally terminate their parental rights to the children, they would not have signed." The court denied the motion.

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¶9 This court has jurisdiction over Father's timely appeal pursuant to Article 6, Section 9, of the Arizona Constitution, A.R.S. §§ 8-235(A), 12-120.21(A)(1), and -2101(A)(1) (2020) and Arizona Rules of Procedure for the Juvenile Court 103 and 104.

DISCUSSION

¶10 Father's only argument on appeal is that the court committed reversible error by dismissing his counsel before DCS' presentation of evidence at the severance hearing. Father does not contest the basis of the severance or the court's finding that termination was in the children's best interest. Father's right to counsel is both a statutory and a constitutional right. *See Christy A. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 299, 307, ¶ 28 (App. 2007). Due process entitles Father to effective participation of counsel. *Bob H. v. Ariz. Dep't of Econ. Sec.*, 225 Ariz. 279, 283, ¶ 16 (App. 2010).

¶11 This court reviews constitutional issues de novo. *Brenda D. v. Dep't of Child Safety*, 243 Ariz. 437, 442, ¶ 15 (2018). Because Father did not object to the dismissal of his counsel in his motion to set aside the order terminating his parental rights, fundamental error review applies. *Id.* at 447, ¶ 37. Father therefore "bears the burden to establish that (1) error exists, (2) the error is fundamental, and (3) the error caused [him] prejudice." *Id.* at 447-48, ¶ 38. An error is fundamental if it "goes to the very foundation of a case." *Id.* at 448, ¶ 38. To prove prejudice, Father must demonstrate that a reasonable fact-finder could have reached a different result. *Id.*

¶12 Father argues the court denied his right to effective participation and due process when it released his counsel before testimony began. However, Father neglects to acknowledge he waived his right to trial when he submitted the consent form. *See Ariz. R. P. Juv. Ct. 66(D)(1)*. The consent form stated, "I understand that my parental rights may be terminated based upon any of the grounds enumerated in A.R.S. § 8-533. I further understand that I will no longer have *any* legal rights, privileges, duties and obligations." The court accepted Father's consent form and voluntary abstention from the hearing, *then* dismissed counsel. Because Father waived his rights before his counsel was dismissed, the court did not deny Father's right to effective participation of counsel. *Contra Bob H.*, 225 Ariz. at 282-83, ¶¶ 14-18 (proceeding in the absence of counsel, "Mother was denied the right to effective participation of counsel and thus also denied due process."). Accordingly, Father has failed to demonstrate any error occurred. *See Brenda D.*, 243 Ariz. at 447-48, ¶ 38.

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¶13 Even if the court erred by waiving Father’s counsel’s presence at the hearing and that error was fundamental, Father fails to allege any prejudice resulted. *See id.* Father does not argue on appeal “that any of the evidence presented at the [trial] was inadmissible, . . . was insufficient to establish the grounds for the severance or the juvenile court’s finding of [D.R. and K.R.’s] best interests.” *Id.* at 448, ¶ 39. “Because [Father] presented no evidence that a reasonable [fact-finder] would have concluded differently,” Father failed to satisfy his burden to establish fundamental error resulting in prejudice. *Id.*

CONCLUSION

¶14 The order terminating Father’s parental rights to D.R. and K.R. is affirmed.



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