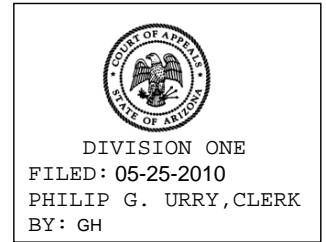


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



RALPH O. ,) 1 CA-JV 09-0229
)
Appellant,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G), Ariz. R.P. Juv. Ct.
SECURITY, ALYSIA O. ,) Rule 28 ARCAP)
)
Appellees.)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD14966

The Honorable Roger E. Brodman, Judge

AFFIRMED

Law Office of Anne M. Williams
by Anne M. Williams
Attorney for Appellant Father Ralph O.

Tempe

Terry Goddard, Attorney General
by Amanda L. Holguin, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

Phoenix

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P O R T L E Y, Judge

¶1 Ralph O. ("Father") challenges the termination of his parental rights to his daughter ("the child"). Specifically, he

argues that the Arizona Department of Economic Security ("the Department") failed to make reasonable and diligent efforts to provide appropriate family reunification services. For the following reasons, we affirm the termination of his parental rights.

FACTS AND PROCEDURAL HISTORY

¶2 At the time of his daughter's birth on October 19, 2008, Father was out on bond, confined to his home, and wearing an ankle bracelet. He was awaiting trial on felony charges of theft of means of transportation and unlawful flight from law enforcement vehicle. Shortly after the child's birth, the Department received a report that her parents were unable to provide for her. The Department consequently took the child into temporary custody when she was only two days old.

¶3 Father attended a meeting with the Department two days later, at which time he was offered "an array of services including TERROS, an MMPI, parent aide, supervised visits, random UA's through TASC and transportation." He was also informed of contact information for the Department and advised that he needed to stay in contact.

¶4 Shortly after the meeting, Father removed his ankle bracelet and fled.¹ He later testified that he was arrested in December 2008, convicted of unlawful flight, and sentenced in April 2009 to five years in prison. It was not until the date of his sentencing, however, that Father's counsel informed the juvenile court that Father had been incarcerated. Other than participating in one supervised visit with the child in November 2008, Father did not participate in any other services.

¶5 The Department filed a dependency petition on October 27, 2008, and the child was found dependant on January 14, 2009. The case plan of family reunification was changed to severance and adoption during the permanency hearing on May 15, 2009.

¶6 The Department's motion to terminate parental rights was filed in May 2009, and amended on June 26, 2009, to allege length of sentence and time in care as grounds for terminating Father's rights. See Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(4), (8)(a) (Supp. 2009).² Father contested severance, and, following a bench trial, the juvenile court, in a comprehensive order, found that the Department proved both statutory bases and found severance was in the best interests of the child.

¹ After learning that Father had fled, the Department unsuccessfully attempted to locate him in December 2008, and January 2009.

² We cite to the current version of the statute because no revisions material to this decision have since occurred.

¶7 Father appeals, and we have jurisdiction pursuant to A.R.S. §§ 12-120.21 and -2101(B) (2003).

DISCUSSION

¶8 Father argues that the juvenile court erred when it terminated his parental rights because the Department "failed to fulfill their statutory mandate to make reasonable efforts to reunify the family."³ Father primarily relies upon *Mary Ellen C. v. Arizona Department of Economic Security*, 193 Ariz. 185, 971 P.2d 1046 (App. 1999), in which we reversed a termination order after finding that the Department had failed to make reasonable effort to assist the parent. Father argues that the Department failed to make reasonable efforts because, after it learned of his incarceration in April 2009, it was required to bring the child to visit him and provide other services.⁴ We disagree.

¶9 To justify termination of parental rights in Arizona, a juvenile court must find, by clear and convincing evidence, A.R.S. § 8-863(B) (2007), the existence of at least one statutory basis for termination pursuant to A.R.S. § 8-533(B), and also find, by a preponderance of the evidence, that

³ Father does not dispute that the substantive elements under subsections (B)(4) and (B)(8)(a) were sufficiently proven at trial. Because Father does not challenge the applicability of subsection (B)(4), we need not consider the factors set forth in *Michael J. v. Arizona Department of Economic Security*, 196 Ariz. 246, 251-52, ¶ 29, 995 P.2d 682, 687-88 (2000).

⁴ Father does not argue that the services offered prior to his incarceration were inadequate.

termination is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). In reviewing a severance order, we view the evidence in the light most favorable to sustaining the order. See *In re Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994). "[W]e will affirm a severance order unless it is clearly erroneous," and "we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶10 Termination of parental rights under subsection (B)(8)(a) requires proof that a child has been in court-ordered out-of-home placement for at least nine months, that the Department has "made a diligent effort to provide appropriate reunification services," and that the parent has "substantially neglected or willfully refused to remedy the circumstances" necessitating the placement. Termination under subsection (B)(4) requires proof that "the parent [has been] deprived of civil liberties due to the conviction of a felony" and "the sentence . . . is of such length that the child will be deprived of a normal home for a period of years."

¶11 Unlike subsection (B)(8)(a), however, subsection (B)(4) imposes no statutory duty on the Department to provide reunification services. *James H. v. Ariz. Dep't of Econ. Sec.*,

210 Ariz. 1, 2-3, ¶¶ 6-9, 106 P.3d 327, 328-29 (App. 2005) (holding that "the legislature has not imposed a statutory duty on the part of the Department to provide reunification services for a subsection (B)(4) severance"). Likewise, there is no constitutional obligation to provide reunification services where there is no "reasonable prospect of success." *Id.* at 2, ¶ 8, 106 P.3d at 328. "In [the] case of a lengthy prison sentence, . . . reunification efforts [are] not required because prolonged incarceration is something neither the Department nor the parent [can] ameliorate through reunification services." *Id.* at 3, ¶ 9, 106 P.3d at 329.

¶12 We nevertheless agree with the juvenile court's conclusion that the Department "did make reasonable and diligent [reunification] efforts," that Father did not make "efforts to comply with [the offered] services," and that he "made no effort to stay in touch with [Child Protective Services]." The Department "is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). Nor is it "oblige[d] . . . to undertake rehabilitative measures that are futile." *Mary Ellen C.*, 193 Ariz. at 192, ¶ 34, 971 P.2d at 1053. It need only "undertake measures with a reasonable prospect of success." *Id.*

¶13 Here, Father chose to not participate in the array of services offered by the Department in October 2008. Instead, he placed, as the juvenile court found, “[h]is own personal interest in freedom over his daughter.” Moreover, when the child was approximately two months old, he was jailed after fleeing, and subsequently made no effort to maintain contact with the child or the Department. In fact, he had not established any bond with the child, and had only seen her twice, once at her birth, and once during a November 2008 visit. He even testified that he is a stranger to her, and that it was not in her best interests to visit him in prison.

¶14 The evidence supports the juvenile court’s conclusion that the “parent-child relationship [could not] be nurtured during incarceration.” Reunification efforts would not have remedied the physical separation between Father and the child, or the fact that he is a stranger to her. See *James H.*, 210 Ariz. at 3, ¶ 9, 106 P.3d at 329 (“The damage to the parent-child relationship that justifies severance stems from the enforced physical separation of the parent from the child, and nothing the Department has to offer in the way of services can affect that reality.”). Additionally, Father’s efforts to reunify the family after April 2009 would not have “remed[ied] his inability to provide a normal home” for the child during his

incarceration. *Id.* Based on the record, the juvenile court did not err in the termination order.

CONCLUSION

¶15 For the foregoing reasons, we affirm the judgment.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Judge

/s/

MARGARET H. DOWNIE, Judge