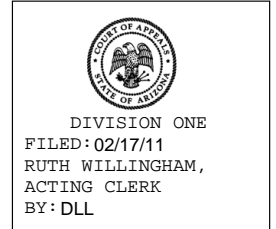


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



JUAN F.,) 1 CA-JV 10-0160
)
Appellant,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G), Ariz. R.P. Juv.
SECURITY, JUAN C.,) Ct.; Rule 28, ARCAP)
)
Appellees.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JS11478

The Honorable Christopher A. Coury, Judge

AFFIRMED

Robert D. Rosanelli, Attorney at Law Phoenix
by Robert D. Rosanelli
Attorney for Appellant

Thomas C. Horne, Attorney General Phoenix
by Michael F. Valenzuela, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

P O R T L E Y, Judge

¶1 Juan F. ("Father") appeals the termination of his parental rights. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶12 Father's first child was born in January 2007.¹ The child had developmental disabilities and "numerous other medical conditions." After receiving reports that expressed concern over the parents' ability to parent soon after the child's birth, the Arizona Department of Economic Security ("ADES") took the child into custody.

¶13 ADES offered family reunification services for approximately eighteen months, and then moved to terminate the rights of both parents. After the termination trial, the juvenile court denied ADES's motion to sever because "the Department never provided the parents with a parent aide for over two hours weekly, did not provide the parents with a parent aide who had training to address these parents' mental deficits, and did not provide parents with training tailored to the parents' mental deficits."² ADES then provided additional reunification services and filed a second termination motion in September 2009. The juvenile court found that their parenting skills had improved as a result of the reunification services, but concluded that the "parents are still unable to

¹ Father's wife also had her parental rights terminated, but she is not a party to this appeal. As explained below, Father's parental rights to his first child are not at issue in this case. He also has another child that lives in Mexico.

² The Honorable Cathy M. Holt (Ret.) presided over the first termination trial and the initial dependency hearing.

independently parent [the] child and there is no evidence that they will be able to do so in the near or distant future." The court then terminated their parental rights in December 2009.

¶4 During the severance involving the first child, Mother gave birth to another child in November 2009. They concealed the pregnancy, but ADES became aware of the birth and took the child into custody. The second child does not appear to have any medical conditions or developmental disabilities.

¶5 ADES filed a dependency petition on the second child in November 2009. There was an initial dependency hearing, and a February 2010 mediation. A dependency trial was scheduled for May 2010.

¶6 ADES also moved to terminate Father's parental rights in February 2010, and alleged that he was unable to discharge his parental responsibilities because of a continuing mental deficiency, Arizona Revised Statutes ("A.R.S.") section 8-533(B)(3) (2007); and his parental rights to a different child had been terminated for the same cause within the preceding two years, § 8-533(B)(10). The juvenile court consolidated both actions, and they were tried in May 2010. The juvenile court found the child dependent, terminated Father's parental rights as alleged in the petition, and found that termination was in the best interest of the child. Father appealed, and we have

jurisdiction pursuant to A.R.S. §§ 8-235(A), 12-120.21(A)(1), and -2101(B) (2003).

DISCUSSION

¶7 Father challenges both findings by the juvenile court terminating his parental rights.³ We view the facts in a light most favorable to upholding the juvenile court's order. See *Ariz. Dep't of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, 549, ¶ 7, 225 P.3d 604, 606 (App. 2010). "We will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002). Termination of parental rights is appropriate when ADES proves by clear and convincing evidence that there is a statutory basis for the termination. *Id.* We will affirm the termination if any one of the statutory grounds is proven. See *id.* at ¶ 3.

¶8 Father first contends that the juvenile court erred by terminating his parental rights due to his mental deficiency. Although he does not challenge that he has a mental deficiency, he contends that there is no reasonable evidence to support the court's finding that he cannot discharge his parental responsibilities for the foreseeable future.

³ Father does not challenge the best interests finding or the sufficiency of the reunification services offered by ADES.

¶9 Section 8-533(B)(3) provides that termination is proper when "the parent is unable to discharge parental responsibilities because of . . . mental deficiency . . . and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." "[T]he term 'parental responsibilities' is capable of being understood by persons of ordinary intelligence as referring to those duties or obligations which a parent has with regard to his child." *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 378, ¶ 20, 231 P.3d 377, 382 (App. 2010) (quoting *Maricopa Cnty. Juvenile Action No. JS-5894*, 145 Ariz. 405, 408-09, 701 P.2d 1213, 1216-17 (App. 1985)). There are no exclusive factors to guide the juvenile court, and the court is given flexibility to determine what is appropriate based on the circumstances of each case. *Id.* Moreover, the court must find that the child's welfare is at risk, not merely that the child might be better off elsewhere. *Maricopa Cnty. Juvenile Action No. JS-5209 & No. JS-4963*, 143 Ariz. 178, 185, 692 P.2d 1027, 1034 (App. 1984).

¶10 Father received a psychological evaluation from Dr. Kathryn Menendez in May 2008. She noted that Father displayed a "paucity of information and ideation regarding parenting issues[,] . . . although he was successful in indicating his love and commitment toward his child." Father was unable to complete one test because he failed to understand the directions

and, based on his completed tests, Dr. Menendez diagnosed Father with borderline intellectual functioning and possible mild mental retardation.

¶11 In conjunction with the child born in 2007, Father received various parental reunification services from ADES between January 2007 and December 2008. After the initial severance motion was denied in January 2009, Father was given additional supervised visits and parent aide training. For example, he received parent aide training on nutrition and meal planning, family health, and normal child development in August 2009.

¶12 Dr. Menendez performed a second psychological evaluation in March 2010. Father's results on two intelligence tests indicated intellectual functioning in the deficient range, and he was diagnosed with mild mental retardation. His responses on the parenting questionnaire, however, indicated improvement from his 2008 examination, as he was able to identify symptoms of a sick child and healthy foods. Dr. Menendez concluded that Father could function as a "secondary parent" but "may place his children at inadvertent risk" if he assumed primary care.

¶13 At trial, Dr. Menendez testified that Father's responses on the parenting questionnaire were "global and over-generalized." She also expressed concerns with his responses to

the social, emotional, and educational questions on the parent questionnaire, which "might impact parenting over time." She testified, for example, that Father understood that he needed to toilet train his child, but he believed toilet training should be accomplished by the time the child was six or seven years old. Or, he realized that parental supervision was important, but he would not allow the child to go someplace unsupervised until the age of eighteen or twenty. Dr. Menendez also gave the following example of an over-generalized global response:

[I]f a child was failing in school, he believed that he should be talked to, meaning the child should be talked to, and the father should pick him up at school to determine his attendance. So if a child is failing at school, mere attendance, being sure that they're attending regularly, might be a rather global approach to address school failure.

¶14 Father continued to display superficial understanding of basic parenting responsibilities in his responses to other questions. When asked about using a thermometer, Father testified that he would take the child to the doctor if the child's temperature was over 100 degrees. But when asked how he would respond if the child's temperature was fifty-three degrees, Father responded, "Just check to see if it's normal, if he's - I would - I would check to see if he has a - has a fever and take him to the doctor if I needed to."

¶15 Father also had the following exchange with the ADES attorney:

[ADES Attorney]: Can you think of anything that you could do as a parent if the child's temperature was 101 in order to bring the temperature back to normal when you're at home?

[Father]: Yes.

[ADES Attorney]: What?

[Father]: I would check him. I would what do you call it - I would check all his medicine to see if there's something I could give him.

[ADES Attorney]: What medicine are you talking about?

[Father]: I wouldn't take him out.

[ADES Attorney]: What medicine are you talking about?

[Father]: All I'm saying is - is I - I wouldn't take him out - outside if the temperature were at 100 or 99.

¶16 Father contends that he has "demonstrated, through supervised visitations with a parent aide, that he can clothe, clean and feed the child" and understands when the child is ill. The case aide, however, testified that the Father needed assistance changing the child's diaper, and that he had difficulty feeding and burping the child.

¶17 The juvenile court agreed and stated that "even after the extensive training, . . . these parents are not able to

independently parent." The court found testimony from ADES case investigator, Joanna Lynch, "particularly telling." She visited the parents in the hospital shortly after the child was born in November 2009. The baby was crying in a bassinet when she arrived, and the parents did not try to comfort the child for five minutes and then not until prompted by Investigator Lynch.

¶18 Additionally, the case manager, Jenny Bilskie, testified that Father's condition was untreatable with medication or other services and stated that "[w]e have worked with [him] for over three years now, and we've seen over and over that [he is] unable to parent a child. [He is] unable to be [an] independent parent[]." The juvenile court reached a similar conclusion and found that Father was "simply not able to make independent judgments necessary to parent . . . on a day-to-day basis."

¶19 Based on the testimony from Dr. Menendez, the length of time Father received services from ADES, and the observations of ADES staff, there is substantial evidence to support the juvenile court's finding that Father's mental deficiency prevents him from discharging his parental duties, and there are

reasonable grounds to believe the condition will continue for a prolonged period of time.⁴

CONCLUSION

¶20 Based on the foregoing, we affirm the juvenile court's order terminating Father's parental rights.

/s/

MAURICE PORTLEY, Judge

CONCURRING:

/s/

PETER B. SWANN, Presiding Judge

/s/

PATRICK IRVINE, Judge

⁴ Because we find that there is a statutory basis to terminate Father's parental rights, we need not examine the other basis utilized by the juvenile court.