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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Sup. Ct. 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 06/23/2011
RUTH A. WILLINGHAM,
CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

PATRICK D.,) 1 CA-JV 10-0260
)
Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz.R.P. Juv.
SECURITY, DAKOTA D., ISABELL D.,) Ct.; Rule 28 ARCAP)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JS11552

The Honorable Margaret R. Mahoney, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Jamie R. Katelman, Assistant Attorney General
Attorneys for Appellee

The Stavris Law Firm, PLLC Scottsdale
By Alison Stavris
Attorneys for Appellant Patrick D.

O R O Z C O, Judge

¶1 Patrick D. (Father) appeals the juvenile court's order terminating his parental rights to Dakota D. and Isabell D. (collectively, Children). For the following reasons we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Dakota was born in August 2007. When Dakota was two days old, he was taken into care pursuant to a court order. The Arizona Department of Economic Security (ADES) filed a dependency petition as to Father alleging substance abuse, neglect and failure to protect. A dependency petition was filed as to Chrystal S. (Mother),¹ in part, because she and Dakota both tested positive for methamphetamines at Dakota's birth. In October 2007, the court found Dakota dependent as to Father and Mother (collectively, Parents) and established a case plan for family reunification. Parents did not substantially participate in the services being offered to them and the case plan was changed to severance and adoption. Before Isabell was born, ADES filed a motion for termination of parent-child relationship as to Dakota and Parents. Isabell was born in October 2008 and had been born exposed to methamphetamine. In November 2008, ADES alleged, inter alia, that Parents were abusing drugs and filed a dependency petition as to Isabell.

¶3 In April 2009 Parents appeared at the contested dependency hearing for Isabell. At this hearing, Parents denied

¹ Mother is not a party to this appeal.

the allegations in the dependency petition, and submitted the dependency issue to the juvenile court. Isabell was found dependent and on the same day, ADES withdrew its motion for termination of the parent child-relationship, as to Dakota, and the case plan was revised to family reunification. Isabell was returned to Mother in April 2009, and Dakota returned to Parents in July 2009. The dependency action as to Children was dismissed in September 2009.

¶4 ADES filed another dependency petition in April 2010 and a petition for termination of the parent-child relationship in June 2010. The petitions alleged Parents willfully abused Dakota or failed to protect him from willful abuse and that Children had been in State care, returned to Parents, and within eighteen months of being returned were removed pursuant to a court order. See Ariz. Rev. Stat. (A.R.S.) § 8-533.B.2, - 533.B.11 (Supp. 2010).² The court consolidated the petitions and a hearing was set for three days in September 2010. On the final day of the hearing, Parents failed to appear and did not present good cause to the court, after being advised of the possible ramifications for non-appearance without good cause. The court continued the final day of consolidated hearing for a month, and at the subsequent hearing gave Mother 10 additional days to

² We cite to the current version of applicable statutes where no revisions material to this decision have since occurred.

provide good cause for not appearing at the original time set for hearing. As of December 2010, Mother had not provided the court good cause as to why she failed to attend the September dependency/severance hearing. However, the juvenile court denied ADES' motion to enter a default as to Parents, and instead exercised its discretion to rule on the merits.

¶15 During the hearing, the court heard testimony and was presented evidence of Dakota's injuries. Dr. Quinn (Quinn) examined Dakota in April 2010 and testified that there were signs of injuries on his entire body and he appeared to have suffered blunt force trauma. Quinn further testified that while she had seen each individual injury on other children and heard explanations of each injury as an accident, the sum of Dakota's injuries made her concerned that the injuries were not accidental. Quinn testified she was troubled by the number of injuries, the severity of one injury, and her belief that Dakota had "suffered inflicted injury."

¶16 Father testified that Dakota's injuries occurred from playing hard and none of the injuries came from him. Mother testified that she never hit or saw anyone else hit Dakota. However, ADES case manager Kennedy (Kennedy) testified that since living in foster care, Dakota had not seen a doctor for any "self-inflicted" injuries.

¶7 After the hearing, the court took the matter under advisement. In December 2010, the court found that Children were dependent as to Parents. Also in December 2010, the juvenile court found that ADES established grounds for severance pursuant to A.R.S. § 8-533.B.2, and -533.B.11. In addition, the juvenile court found that termination was in the best interests of Children.

¶8 Father timely appealed. We have jurisdiction under Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 8-235 (2007) and 12-120.21.A.1. (2003).

DISCUSSION

¶9 While a parent's right to care, custody and control of his or her child has long been recognized as fundamental, it is not absolute. *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 78, ¶ 6, 117 P.3d 795, 797 (App. 2005). In reviewing a juvenile court's termination order, we view the evidence in the "light most favorable to sustaining the [juvenile] court's decision." *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). In Arizona, the State may terminate parental rights when finding "by clear and convincing evidence, at least one of the statutory grounds set out in section 8-533, and also that termination is in the best interest of the child." *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000); see A.R.S. §

8-533.B. Evidence is clear and convincing when it makes the proposition to be proved "highly probable or reasonably certain." *Kent K. v. Bobbie M.*, 210 Ariz. 279, 284-85, ¶ 25, 110 P.3d 1013, 1018-19 (2005) (internal quotation marks and citation omitted).

¶10 Father contends the court erred in finding that he willfully abused his child, failed to protect his children from abuse, or knew, or reasonably should have known his child was suffering from injuries. See A.R.S. 8-533.B.2.³ However, Father does not challenge the court's termination of his parental rights pursuant to A.R.S. § 8-533.B.11.⁴ Because there is a basis to

³ Section 8-533.B.2 states when a "parent has neglected or willfully abused a child" termination is justified. 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." A.R.S. § 8-533.B.2.

⁴ Section 8-533.B.11 states that termination is justified when all of the following are true:

- (a) The child was cared for in an out-of-home placement pursuant to court order.
- (b) The agency responsible for the care of the child made diligent efforts to provide appropriate reunification services.
- (c) The child, pursuant to court order, was returned to the legal custody of the parent from whom the child had been removed.
- (d) Within eighteen months after the child was returned, pursuant to court order, the child was removed from that parent's legal custody, the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency and the parent is currently unable to discharge parental responsibilities.

justify severance, which was not challenged, we need not address the statutory basis that is challenged. See *Michael J.*, 196 Ariz. at 251, ¶ 27, 995 P.2d at 687.

¶11 ADES must also prove that termination is in the best interest of the children. *Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, 453, ¶ 12, 123 P.3d 186, 189 (App. 2005); see A.R.S. § 8-533.B. "The central issue when determining the best interests of a child in a termination action is whether the child 'would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship.'" *Kimu P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 39, 42, ¶ 10, 178 P.3d 511, 514 (App. 2008) (quoting *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 6, 100 P.3d 943, 945 (App. 2004)). In demonstrating that termination would be in the children's best interest, ADES must present credible evidence of "how the child would benefit from a severance or be harmed by the continuation of the relationship." *Lawrence R. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 585, 587, ¶ 8, 177 P.3d 327, 329 (App. 2008) (internal quotation marks omitted).

¶12 Father claims the court's conclusions were reached in error, we disagree. Through the photograph exhibits admitted, the court was able to see the injuries to Dakota. Quinn's description of Dakota's physical injuries was admitted to the

court as an exhibit.⁵ In regards to Dakota's injuries, Quinn was very concerned about the number of injuries, the severity of the skull fracture, and the likelihood that Dakota "was beaten." Kennedy testified that since living in foster care, there is no evidence Dakota has suffered injuries similar to those detailed above.

¶13 In regards to drug use by Father, while he claims to be free from using illegal substances, he tested positive three months prior to the consolidated hearing. The court also heard testimony that with Father's parental rights severed, the children would benefit from being able to be adopted into a permanent home that is safe, stable, and drug-free. Lastly, Kennedy opined that Father is not able to discharge his parental responsibilities to either child because of his drug use, he had no proof of stable income or safe and stable housing, and the fact that Dakota sustained serious medical injuries and was not provided any medical attention.

⁵ The injuries found on Dakota included, inter alia: Right Ear: Cauliflower Ear and Laceration with scab behind ear; Left Ear: Multiple small superficial abrasions; Forehead: Red-brown abrasion and superficial linear abrasion; Left Cheek: Two round half-inch blue-grey bruises; Right Temple: One inch grey-blue bruise; Mouth - Upper Lip: Swollen with dried blood and cracked lips; Neck: Small superficial abrasions; Chest: Multiple scratches on anterior chest; bite mark; Left Elbow: one and one-half inch yellow-green bruise; Head: Skull fracture with bifurcation from mid-right occipital to lamboid suture.

¶14 Therefore, we find the court had more than sufficient evidence to find that termination of Father's parental rights was in the best interest of Children.⁶

CONCLUSION

¶15 For the aforementioned reasons we affirm the court's order terminating Father's parental relationship with Children.

/S/

PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

DONN KESSLER, Judge

/S/

MICHAEL J. BROWN, Judge

⁶ Here, the juvenile court's fourteen page order exemplifies the detail and precision courts should seek, especially when making decisions of important constitutional matters such as termination of parental rights. The court's detail greatly assisted this Court on appeal.