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See Ariz. R. Supreme Court 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

KURTIS C.,)
) No. 1 CA-JV 11-0015
)
 Appellant,) DEPARTMENT D
)
 v.) **MEMORANDUM DECISION**
)
 ARIZONA DEPARTMENT OF ECONOMIC) (Not for Publication -
 SECURITY, JAKOB C.,) 103(G) Ariz.R.P. Juv. Ct.;
) Rule 28 ARCAP
 Appellees.)

Appeal from the Superior Court in Maricopa County

Cause No. JD17727

The Honorable Margaret R. Mahoney, Judge

AFFIRMED

David W. Bell
Attorney for Appellant

Mesa

Thomas C. Horne, Attorney General
By Michael F. Valenzuela, Assistant Attorney General
Attorney for Arizona Department of Economic Security

Phoenix

G E M M I L L, Judge

¶1 Kurtis C. appeals from the trial court's order terminating his parental rights to his son, Jakob. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 On October 25, 2007, Joanna J. ("Mother") gave birth

to Jakob.¹ Kurtis ("Father") is Jakob's biological father. Father and Mother have never married. Since Jakob's birth in 2007, Jakob has never lived with Father and Father has seen Jakob only a handful of times during supervised visits. Throughout Jakob's life, Father has been incarcerated several times and has most recently been serving a sentence for resisting arrest, which occurred in April 2009. Jakob has lived with his aunt and uncle since he was approximately one year old.

¶13 In February 2009, Jakob's best interest attorney filed a dependency petition, alleging Jakob was dependent as to Father and Mother. The petition alleged, among other things, that Father was "unwilling or unable to provide the necessary care and control that [Jakob] needs." It alleged that Father was not able to maintain a suitable house for Jakob, does not have stable employment, and has not maintained a relationship with Jakob. The petition also alleged that Father struggles with substance abuse issues. The court, in a subsequent hearing, substituted the Arizona Department of Economic Security ("ADES") as the petitioner, granted ADES temporary legal custody of Jakob, and gave Jakob's aunt and uncle temporary physical custody of Jakob.

¶14 Later that month, ADES referred Father for random

¹ Mother also had her parental rights to Jakob severed, but she is not a party to this appeal.

urine analysis ("UA") testing through Treatment Assessment Screening Centers ("TASC"). Father first tested with TASC on March 20, 2009, and tested positive for amphetamines, cocaine, and tetrahydrocannabinol. Over the course of the next month, Father was arrested and incarcerated multiple times, and missed five UA testings with TASC. Also in March 2009, Father was referred to TERROS Families F.I.R.S.T. ("TERROS") for a substance abuse treatment assessment. Father, however, did not take advantage of TERROS's services and his file was "closed out" with TERROS in late March 2009. Father admits that he has never been able to complete a substance abuse treatment program because of his repeated incarcerations.

¶15 At a June 2009 dependency hearing, the court found Jakob dependent as to Father, and ordered the case plan to be family reunification. The court also ordered that Father be offered the following services: (1) random UA testing at TASC, (2) a TERROS assessment and any recommendation resulting from the assessment, (3) a parent aide referral, and (4) a psychological consultation and any recommendation resulting from the consultation. The same day, a second-referral was submitted for Father to complete weekly random UA testing through TASC. According to Danyelle Glenn, Father's case manager with Child Protective Services ("CPS"), Father was further advised to complete a UA test at TASC after the hearing, but he did not.

¶16 In the following months, Glenn attempted to provide Father with reunification services. On June 11, 2009, Glenn met with Father and submitted a referral for parent aid services, as well as a substance abuse treatment assessment through TERROS. Father was assessed by TERROS on June 18, 2009. During his assessment, he told the intake therapist that he was not interested in gaining custody of Jakob, and that he was at TERROS to get treatment for his substance abuse problems. He informed the TERROS therapist that he spends all of his money on drugs, and that he uses crack and smokes marijuana a few times a week. The therapist concluded that TERROS was not appropriate for Father and recommended Father seek psychiatric services, counseling, and supportive services from Magellan.

¶17 Father contacted Magellan, and Magellan referred Father to Jewish Family and Children Services ("JFCS"). JFCS advised Father that it was not accepting new clients and that Father should check back at the end of the month. During a phone conversation on June 30, 2009, Glenn advised Father to continue contacting Magellan.

¶18 In July 2009, Father's parent aide attempted to contact Father several times. Father, however, was in jail and parent aide was unable to initiate services. Also in July, Father told Glenn that he was scheduled for an intake assessment, presumably with JFCS. Glenn, however, was not able

to determine if Father completed the assessment. In her August 2009 report to the juvenile court, Glenn stated that Father was not taking advantage of the reunification services provided to him, and she recommended the case plan be changed to "Adoption by Relative." In November 2009, at Father's request, CPS provided Father with a paternity test. The results of the test revealed that Father is Jakob's biological father.

¶9 In May 2010, ADES moved to have the case plan changed to severance and adoption, and the court approved the change. ADES also filed a motion to terminate Father's parental rights. The motion alleged that Father's parental rights to Jakob should be terminated pursuant to Arizona Revised Statutes ("A.R.S.") § 8-533(B)(8)(c) (Supp. 2010), because Jakob has been in an out-of-home placement for fifteen months or longer and Father has been unable to remedy the circumstances that caused Jakob to be in an out-of-home placement.

¶10 The court held a severance hearing in November 2010. During the severance hearing, the court heard testimony from Father and Angela Tapia, a CPS case worker assigned to Jakob in December 2009. Father, who was serving a prison sentence at the time of the hearing, testified via telephone that ADES offered him the following reunification services: (1) a paternity test, (2) UA testing with TASC, (3) a TERROS assessment, (4) substance abuse treatment with Magellan, and (5) parent aide counseling.

He admitted that he stopped UA testing because of his repeated incarcerations, and that he has not completed a substance abuse treatment program. Father testified that he would be released from prison in either April or July 2011.

¶11 Tapia testified that Jakob had been in ADES care for fifteen months at the time ADES filed its motion to terminate Father's parental rights. She also testified that it is likely that neither parent will be able to parent Jakob in the near future. According to Tapia, ADES has made diligent efforts to provide reunification services to Father, such as a substance abuse assessment through TERROS, a parent aide referral, UA testing through TASC, and a paternity test. Father, however, failed to comply with the services provided to him, except for completing the paternity test. She also testified that Jakob is adoptable, and that severance and adoption is the appropriate case plan.

¶12 On January 6, 2011, the court issued an order severing Father's parental rights to Jakob. The court found "the fifteen month out-of-home placement ground as to Father to have been proven by clear and convincing evidence." The court also found that "ADES diligently offered to Father a variety of services to help Father remedy the circumstances that cause Jakob to be in care[,] but that Father did not make an adequate effort to participate in those services and has been unable to remedy the

circumstances that cause Jakob to be in care. The court also found by a preponderance of the evidence that severance was in Jakob's best interest, a finding that is not challenged on appeal.

¶13 Father timely appeals and we have jurisdiction pursuant to A.R.S. § 8-235 (2007).

ANALYSIS

¶14 Father's sole argument on appeal is that the court erred in finding that ADES made diligent efforts to provide him with appropriate reunification services. In a severance case, we view the evidence in the light most favorable to sustaining the juvenile court's order. *Ariz. Dep't of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, 549, ¶ 7, 225 P.3d 604, 606 (App. 2010). Because the juvenile court is in the best position to weigh the evidence, judge the credibility of witnesses, and make appropriate factual findings, we will not reweigh the evidence but will only look to determine if there is evidence to support the court's ruling. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004). We will not disturb the court's ruling absent an abuse of discretion. *Id.*

¶15 In order for Father's parental rights to be severed under A.R.S. § 8-533(B)(8)(c), ADES was required to "prove by clear and convincing evidence that it had made a reasonable effort to provide [Father] with rehabilitative services or that

such an effort would be futile." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 193, ¶ 42, 971 P.2d 1046, 1054 (App. 1999); see also A.R.S. § 8-533(B)(8) (ADES must make diligent effort to provide appropriate reunification services prior to termination). Generally, ADES must "undertake measures with a reasonable prospect of success" in reuniting the family. *Mary Ellen C.*, 193 Ariz. at 192, ¶ 34, 971 P.2d at 1053. "Although CPS need not provide 'every conceivable service,' it must provide a parent with the time and opportunity to participate in programs designed to improve the parent's ability to care for the child." *Id.* at ¶ 37 (quoting *Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994)).

¶16 Here, substantial evidence supports the juvenile court's finding that ADES made diligent efforts to provide Father with reunification services. Beginning in February 2009, ADES offered Father various reunification services including a paternity test, two referrals to TASC for UA testing, two referrals to TERROS, a referral for parent aide services, and substance abuse treatment with Magellan. At the severance hearing, Father admitted that he had been offered numerous reunification services, and that his repeated incarcerations inhibited him from participating in UA testing with TASC and from completing substance abuse treatment. Moreover, the record

indicates that the CPS case managers assigned to Jakob frequently contacted Father and encouraged him to participate in reunification services. We also note that the court on a couple of occasions made findings that ADES was making reasonable efforts to finalize the family reunification plan then in effect. Father did not contest these findings, nor did he request additional services. Based upon this record, and Father's own testimony that he received reunification services, the court did not abuse its discretion in finding ADES made diligent efforts to provide Father with reunification services.

¶17 Father argues that the court's finding is erroneous because ADES stopped providing Father with UA testing two months before the court's dependency finding in June 2009. The record reveals, however, that ADES submitted a second referral to TASC in June 2009 for Father to complete weekly UA testing. In addition, Glenn advised Father immediately after the dependency hearing to complete a UA test at TASC before the close of the business day, but Father did not follow Glenn's advice. Accordingly, Father's argument is unpersuasive.

¶18 Father also asserts that he testified during the severance hearing that he attended substance abuse services through Magellan, and that Tapia was not able to effectively contradict Father's testimony. To the extent Father is arguing that the court should have found Father more credible than

Tapia, we note that the court is in the best position to weigh the credibility of witnesses and we do not reweigh the evidence on appeal. See *Mary Lou C.*, 207 Ariz. at 47, ¶ 8, 83 P.3d at 47. More importantly, the court never found that Father did not attend substance abuse services through Magellan. Rather, the court found that Father failed to "participate substantially" in a substance abuse treatment program. This finding is supported by Father's testimony that he has never completed a substance abuse treatment program.

¶19 Finally, Father argues that "the maternal relatives made it difficult to have contact with Jakob or to provide support from him because [of] the restraining orders in place." The restraining orders against Father, however, are irrelevant to the issue of whether ADES provided Father with reunification services.

CONCLUSION

¶20 The juvenile court's order terminating Father's parental rights to Jakob is affirmed.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
PATRICK IRVINE, Presiding Judge

_____/s/_____
PHILIP HALL, Judge