

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



DIVISION ONE
FILED: 07/21/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

RAMIRO G.,) 1 CA-JV 11-0027
)
Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz.R.P. Juv.
SECURITY, REYNA R., DAMIEN S.,) Ct.; Rule 28 ARCAP)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JS11643

The Honorable Dawn M. Bergin, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Jamie R. Katelman, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

David W. Bell Mesa
Attorney for Appellant

O R O Z C O, Judge

¶1 Ramiro G. (Father) appeals the juvenile court order terminating his parental rights to Damien S. and Reyna R. (collectively, the Children). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶12 The Children are the biological offspring of Father. Reyna was born in December 2005. Father, Reyna, and her mother (Mother) lived together until December 2006 and during this time, Father cared for the child by providing food, shelter, and supervision. When Father moved out he continued to see Reyna "about two or three times a week" until his arrest in November 2007. Damien was born in July 2007 and Father has never met him.

¶13 Father was arrested in November 2007, pled guilty to one count of possession of dangerous drugs for sale, and was sentenced to five years' imprisonment. Father is scheduled for deportation to Mexico upon conclusion of his sentence.

¶14 Father testified that since his incarceration, his contact with the Children has been limited to sending them "about three letters" and \$200; however, Father is not sure whether the Children received the letters or the money because Mother kept moving. The Children were placed in the custody of the Arizona Department of Economic Security (ADES) in November 2008 due to Mother's substance abuse.¹

¶15 ADES petitioned to sever Father's parental rights to the Children. At the severance hearing, Dr. M. testified that based upon his discussion with Reyna regarding her father figures, there was no mention of Father. Dr. M. characterized

¹ Mother is not a party to this appeal.

Reyna's relationship with Father as "minimal" stating, "Even if there had been some relationship evolve[ing] during that initial year and a half, obviously, [this] child now is 5 years of age and has gone on to other caretakers. . . . [S]he has no memory of her biological father at this point."

¶16 Dr. M. further testified, "in the case of Damien, the relationship would have been obviously non-existent in the sense the child was born at about the time of [Father's] incarceration." Dr. M. opined that prison visits could not suffice in fostering or maintaining an appropriate parental relationship between Father and the Children, with the Children of such young ages. Dr. M. also stated that "both children are very adoptable and would be able to . . . fit in nicely into prospective adoptive homes."

¶17 The juvenile court, upon balancing the Children's best interests, severed Father's parental rights based on, inter alia, the length of his five year prison sentence and its effect on the Children. Father timely appealed and we have jurisdiction in accordance with Arizona Revised Statutes (A.R.S.) section 8-235 (2007).

DISCUSSION

¶18 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). Using this standard of review, we will affirm the order “unless we must say as a matter of law that no one could reasonably find the evidence [supporting statutory grounds for termination] to be clear and convincing.” *Id.* (quoting *Murillo v. Hernandez*, 79 Ariz. 1, 9, 281 P.2d 786, 791 (1955)). Evidence is clear and convincing when it makes the proposition to be proved “highly probable or reasonably certain.” *Kent K. v. Bobby M.*, 210 Ariz. 279, 284-85, ¶ 25, 110 P.3d 1013, 1018-19 (2005) (internal quotation marks and citation omitted).

¶19 On appeal, Father argues that the juvenile court erred by finding clear and convincing evidence in support of severing Father’s parental rights to Reyna under A.R.S. § 8-533.B.4 (Supp. 2010). Specifically, Father posits that he “can and will be in a position to be a minimally adequate parent in the ‘foreseeable’ and ‘near’ future” given his assertions that he “did have a bonded relationship at one point with Reyna; he does not have much longer to serve in prison; and [Reyna was] not yet in an adoptive placement at the time of trial.”

¶10 Under A.R.S. § 8-533.B.4, the parent-child relationship may be severed “if the sentence of that parent is of such length that the child will be deprived of a normal home for a period of years.” A.R.S. § 8-533.B.4. In finding this ground for severance:

[the juvenile] court . . . should consider all relevant factors, including, but not limited to: (1) the length and strength of any parent-child relationship existing when incarceration begins, (2) the degree to which the parent-child relationship can be continued and nurtured during the incarceration, (3) the age of the child and the relationship between the child's age and the likelihood that incarceration will deprive the child of a normal home, (4) the length of the sentence, (5) the availability of another parent to provide a normal home life, and (6) the effect of the deprivation of a parental presence on the child at issue.

Michael J. v. Ariz. Dep't of Econ. Sec., 196 Ariz. 246, 251-52, ¶ 29, 995 P.2d 682, 687-88 (2000). With regard to the length of the incarceration, we view the time in prison as a whole and do not limit our inquiry to the amount of time remaining to be served by the parent on the sentence. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 281, ¶ 8, 53 P.3d 203, 206 (App. 2002) ("[w]hat matters to a dependent child is the total length of time the parent is absent from the family"). "After considering those and other relevant factors, the trial court can determine whether the sentence is of such a length as to deprive a child of a normal home for a period of years." *Michael J.*, 196 Ariz. at 252, ¶ 29, 995 P.2d at 688.

¶11 In this case, upon Father's incarceration, his relationship with Reyna was minimal. At the severance hearing, testimony indicated that prison visits would be insufficient to

cultivate or maintain a parent-child relationship between Father and Reyna given her young age. Reyna has no memory of Father, and his incarceration has prevented her from having a normal home since ADES assumed custody from Mother. In view of her young age, and the necessity of a stable parental figure as described by Dr. M., the juvenile court did not err in concluding that the *Michael J.* factors clearly and convincingly weigh in favor of severing Father's parental rights under A.R.S. § 8-533.B.4.

¶12 Father also argues on appeal that the juvenile court erred in finding that severance of Father's parental rights will serve the Children's best interests. Specifically, Father posits that the juvenile court erred in its finding as to Reyna under A.R.S. § 8-533.B.4, and therefore erred in its finding as to the Children's best interest, because their best interests demand that Reyna and Damien remain together. Despite conceding that the juvenile court's finding was correct under A.R.S. § 8-533.B.4 as to Damien, according to Father, because his parental rights to Reyna should not be severed; so, too, his parental rights to Damien should remain intact.

¶13 The State argues that Father has abandoned his claim that the juvenile court erred in finding that termination is in the best interests of the Children, because he failed to provide any citation to legal authorities on this issue. Assuming that Father did abandon this claim, we nevertheless, in our

discretion, chose to address the juvenile court's findings regarding the Children's best interests. Given that "[p]reservation of the family relationship is of prime importance" to all parties involved, including the court, parent, and child, *Ariz. St. Dep't of Econ. Sec. v. Mahoney*, 24 Ariz. App. 534, 537, 540 P.2d 153, 156 (1975), Father is entitled to have this issue addressed.

¶14 Always underlying a court's inquiry is the duty to examine the best interests of the children. A.R.S. § 8-533.B. "[A] determination of the [children's] best interest must include a finding as to how the [children] would benefit from a severance or be harmed by the continuation of the relationship." *Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990). "Factors considered are whether: 1) an adoptive placement is immediately available; 2) the existing placement is meeting the needs of the child[ren]; and 3) the children are adoptable." *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 380, ¶ 30, 231 P.3d 377, 384 (App. 2010) (internal citations omitted). That termination is in the children's best interests must be proven by a preponderance of the evidence. *Lawrence R. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 585, 587, ¶ 7, 177 P.3d 327, 329 (App. 2008).

¶15 In this case, Dr. M. testified that both children are "very adoptable." Dr. M. opined that Father's relationship with

the Children was minimal or non-existent, and that it would benefit them to build substantial and lasting relationships with parental figures. At the severance hearing, an ADES caseworker testified that the Children were currently placed together in a licensed foster home and that an adoptive home had been identified. Because the preponderance of evidence indicates that the Children are adoptable and that their interests would be better-served through the opportunity to cultivate more substantial and permanent relationships with parental figures - an opportunity that is immediately available through placement in an adoptive home - it is in the Children's best interests to sever Father's parental rights.

CONCLUSION

¶16 For the foregoing reasons, the juvenile court order terminating Father's parental rights to the Children is affirmed.

/S/

PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

PATRICIA K. NORRIS, Judge

/S/

PHILIP HALL, Judge