

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: 08/23/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

JOSE H., ) 1 CA-JV 11-0040  
)  
Appellant, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) Rule 28, Arizona Rules of  
SECURITY, ADAM T., JOSE T., ) Civil Appellate Procedure)  
)  
Appellees. )  
\_\_\_\_\_ )

Appeal from the Juvenile Court in Maricopa County

Cause No. JD 8647

The Honorable Colleen McNally, Judge  
The Honorable Samuel A. Thumma, Judge

**AFFIRMED**

Robert D. Rosanelli Phoenix  
Attorney for Appellant

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

**W I N T H R O P**, Chief Judge

¶1 Jose Haros ("Appellant") challenges the juvenile court's ruling terminating his relationship with his two sons ("the children"). Appellant argues that the court's ruling was

clearly erroneous and contrary to the substantial evidence in the record. For the following reasons, we affirm.

#### **FACTS AND PROCEDURAL BACKGROUND**

¶2 Appellant and Andree T. ("Mother") are the biological parents of the children.<sup>1</sup> Mother had a long history of substance abuse, of which Appellant was aware, and both of Appellant's children were born exposed to substances. Accordingly, the children were placed in the custody of the Arizona Department of Economic Security ("ADES") and Child Protective Services ("CPS") as wards of the court and were eventually found to be dependent as to Appellant. Ultimately, CPS initiated a case plan of "[s]everance and adoption by relative," with the children being adopted by their maternal grandfather.

¶3 At trial, ADES sought to have Appellant's rights terminated pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(8)(c) (Supp. 2010).<sup>2</sup> Appellant participated telephonically with the assistance of a court interpreter.

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<sup>1</sup> The juvenile court's ruling also terminated Mother's parental rights to the children.

<sup>2</sup> Pursuant to A.R.S. § 8-533(B)(8)(c), a parent-child relationship may be terminated if it is shown that termination is in the best interests of the children and

8. [T]he 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, that the agency responsible for the care of the child has made a diligent effort to provide

¶4 The primary witness for ADES was CPS case manager Victoria Lopez, who had worked with both Appellant and Mother throughout the pendency of the children's placement. Lopez testified that Appellant initially contacted her in March 2009, and he asked only for information to contact Mother. Once Appellant contacted Lopez, however, she initiated a dialogue with him and eventually enrolled him in various family reunification services in Mexico, where he was then residing. When Appellant returned to Arizona in March 2010, Lopez also arranged for him to continue reunification services and undergo drug and background checks, all of which he satisfactorily completed, and she arranged visits with his children. After Appellant's return, Mother constantly called Lopez, claiming that Appellant was physically abusing her. Lopez told Appellant in June 2010 that he had to stop all interactions with Mother, but despite that warning and his subsequent enrollment in

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appropriate reunification services and that one of the following circumstances exists:

. . . .

(c) The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order or voluntary placement pursuant to § 8-806, the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

domestic violence counseling, Appellant continued to engage in an abusive relationship with Mother. Ultimately, Lopez testified that: 1) she believed Appellant was dependent on Mother and unable to parent because he had provided only minimal monetary support to his children and continued to be involved with Mother despite orders not to contact her; 2) Mother's and Appellant's relationship was "ongoing" and "volatile" and unlikely to end in the near future; and 3) the children had already been in CPS's care for over two years and such placement would need to continue before Appellant was fit to parent and be reunified with the children.<sup>3</sup> Accordingly, Lopez testified that despite Appellant's participation in various reunification services provided to him, severance of parental rights and adoption of the children by the maternal grandfather with whom the children had already bonded during their placement in his home would be in the children's best interests.

¶15 Mother also testified that she and Appellant had been involved in both an abusive and sexual relationship since Appellant had returned to Arizona and Appellant knew she was still using drugs. She also revealed that she was currently pregnant with another child and believed Appellant was the father. Various police reports were admitted, detailing acts of

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<sup>3</sup> The children were placed in ADES's care on November 7, 2008.

domestic violence perpetrated by Appellant against Mother between May and October 2010 in which police were called to Mother's house. In October 2010, Appellant was arrested outside Mother's home, charged with one count of aggravated assault, and therefore deported to Mexico. The maternal grandfather also testified, stating that he was willing and able to adopt the children and protect them from harmful exposure with Mother.

¶6 Appellant testified and confirmed that he had been successfully completing his reunification services both in Mexico and in Arizona, was still enrolled in such services, and was gainfully employed at the time of trial. He also admitted that, despite CPS's instructions, he had seen Mother after returning to Arizona and might be the father of her unborn baby. He testified further, however, that he primarily continued his relationship with Mother to get information from her and claimed that such interaction was necessary because he distrusted Lopez and felt she was biased. Appellant denied ever assaulting or abusing Mother, claiming that either he acted in self-defense or Mother had set him up to get arrested in order to hinder his efforts toward reunification. Appellant stated that he was willing and able to care for his children and participate in further services to do so, and he wanted to take the children to Mexico with him, where Mother would not be involved in his life. A parental aide who worked with Appellant in Arizona, the

manager of Appellant's reunification services in Mexico, and a character witness also testified on Appellant's behalf.

¶17 On February 25, 2011, the juvenile court issued its ruling terminating Appellant's parental rights to his children. The court found that Appellant had failed to end his relationship with Mother, exhibited "a disregard for the law," failed to "maintain a normal parental relationship" with his children, failed to resolve "issues with substance abuse [and] domestic violence," and "did not demonstrate an ability to protect the children from their Mother." It also found that "ADES has made diligent efforts to provide [reunification] services to the parents." The court concluded that termination was in the children's best interests and awarded ADES legal guardianship and the authority to consent to adoption.

¶18 Appellant filed a timely appeal. We have jurisdiction pursuant to A.R.S. §§ 8-235 (2007) and 12-2101(A)(1) (West 2011).<sup>4</sup>

#### **ANALYSIS**

¶19 Appellant does not challenge the juvenile court's finding that the children spent more than fifteen months in court-ordered placement; rather, he challenges its conclusion that he either failed to remedy the circumstances that caused

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<sup>4</sup> The Arizona Legislature recently renumbered A.R.S. § 12-2101. See 2011 Ariz. Sess. Laws, ch. 304, § 1 (1st Reg. Sess.) (effective July 20, 2011).

such placement and/or will be unable to remedy such circumstances in the future. See A.R.S. § 8-533(B)(8)(c). Appellant argues that the juvenile court's ruling was clearly erroneous and contrary to the evidence presented at trial.<sup>5</sup>

¶10 The right to custody of one's children is fundamental, but it is not absolute. See *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248, ¶¶ 11-12, 995 P.2d 682, 684 (2000). "To justify termination of the parent-child relationship, the trial court must find, 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." *Id.* at 249, ¶ 12, 995 P.2d at 685 (citing A.R.S. § 8-533(B)); see also *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005) (holding that the findings regarding the best interest of the child need only be supported by a preponderance of the evidence). "[T]his court will not reweigh the evidence but will look only to determine if there is evidence to sustain 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) (citations omitted). We will only overturn the court's ruling if "there is no reasonable evidence to support [it]." *Id.*

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<sup>5</sup> Appellant also does not contest the juvenile court's ruling that severance of his parental rights is in the best interests of the children.

¶11 Appellant primarily relies on the abundant testimony presented that he had successfully participated in reunification services in both Mexico and Arizona, and his passage of all drug tests, to support his argument that he has or will soon remedy the circumstances that led to the children's placement. While participation in such services is commendable and undoubtedly supported Appellant's arguments at trial, we do not reweigh the evidence presented at court, but only review the ruling to ensure it was supported by sufficient evidence. See *In re Andrew A.*, 203 Ariz. 585, 587, ¶ 9, 58 P.3d 527, 529 (App. 2002).

¶12 Even considering Appellant's successful participation in all offered reunification services, the record sufficiently supports the juvenile court's conclusion that Appellant had not, and would not have, rectified the situation that led to the children's placement - specifically, he would not finally terminate his abusive relationship with Mother. Despite being advised repeatedly to avoid all contact with Mother upon returning to Arizona, Appellant continued to contact her throughout the entirety of his stay. Further, the renewed relationship was one marked by domestic violence culminating in Appellant's eventual arrest and deportation. Although Appellant testified that he never abused Mother and did not intend to pursue a relationship with her in Mexico, the juvenile court was



free to rely on all of the evidence ADES presented to the contrary in rendering its decision. See *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002) (noting that the juvenile court is in the best position to consider all evidence, "observe the parties," and "judge the credibility of the witnesses"). Appellant points to nothing in the record to suggest that the juvenile court did not properly consider his testimony and that of his witnesses in reaching its decision. The court's ruling was thorough and reasonably supported by the evidence, and it contained "detailed findings of fact and conclusions of law" sufficient to support the ruling. *Id.* at ¶ 5.

¶13 Appellant also argues that Mother was an unreliable witness, whose testimony was motivated by a desire to have the maternal grandfather adopt the children. As discussed above, we do not reweigh the evidence, and the juvenile court is responsible for judging the credibility of the witnesses. Further, there is nothing in the record outside of Appellant's uncorroborated testimony that the maternal grandfather would not provide a safe atmosphere for the children and/or would "return them to [Mother]" should the adoption proceed as planned. Accordingly, we find that the juvenile court's ruling was reasonably supported by the evidence presented at trial and, therefore, was not clearly erroneous.

**CONCLUSION**

¶14 For the aforementioned reasons, we affirm the juvenile court's order terminating Appellant's parental rights to the two children.

\_\_\_\_\_/S/\_\_\_\_\_  
LAWRENCE F. WINTHROP, Chief Judge

CONCURRING:

\_\_\_\_\_/S/\_\_\_\_\_  
MICHAEL J. BROWN, Judge

\_\_\_\_\_/S/\_\_\_\_\_  
PETER B. SWANN, Judge