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



DIVISION ONE
FILED: 10/27/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

OJULU O.,) No. 1 CA-JV 11-0069
)
Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz. R.P. Juv.
SECURITY, A.J.,) Ct.; Rule 28 ARCAP)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD14702

The Honorable Mark H. Brain, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Michael F. Valenzuela, Assistant Attorney General
Attorneys for Appellees

David W. Bell Mesa
Attorney for Appellant

B R O W N, Judge

¶1 Ojulu O. ("Father") appeals from the juvenile court's order terminating his parental rights to his daughter¹ ("the child").² For the following reasons, we affirm.

BACKGROUND

¶2 Father is the biological father of the child, born in May 2009. At the time of the child's birth, her mother, Dareena J. ("Mother"), had an open dependency case pertaining to her six other children.³ Mother's other children were removed from her care in 2008 because of Mother's drug use and mental health issues, and because there was a history of domestic violence in the home. Mother tested positive for marijuana use four months before the child was born, confirming that she was still using drugs while pregnant with the child. Child Protective Services ("CPS") took the child into its custody two days after her birth.

¶3 A team decision-making meeting was held the following week, where Father stated that he wanted to provide for the child but that he could not care for her because his live-in

¹ On the court's own motion, it is hereby ordered amending the caption for this appeal as reflected in this decision. The above referenced caption shall be used on all documents filed in this appeal.

² The rights of the child's mother were also severed in the same ruling. She is not a party to this appeal.

³ Father is not the father of Mother's other children. Mother's rights were severed as to these children in April 2010.

girlfriend would not allow the baby to come to the home. Father also stated that he believed the child should be placed with Mother. Two days later, the Arizona Department of Economic Security ("ADES") filed a dependency petition alleging that Father was "unwilling to care for the baby" and that Father was "unable to parent due to failure to protect." Father did not contest the dependency, and the court found the child dependent in June 2009.

¶14 The initial case plan was family reunification. CPS requested that Father undergo a psychological evaluation to determine whether he could adequately protect the child from Mother. Dr. Loreen Fox-Shipley met with Father in August 2009 and expressed no concerns at that time regarding Father's ability to protect the child. At a status hearing in September 2009, the court noted that Father was making "excellent efforts" toward reunification with the child. Father had been attending all of his scheduled visits, and the parent aide reports were positive.

¶15 To facilitate progress toward unsupervised home visits, CPS case manager Amanda Rexin inspected Father's apartment in January 2010 and found it suitable. However, Rexin's co-worker found women's toiletry items in the bathroom, raising concerns that Mother was staying at the home. Rexin reported that Father told her that Mother regularly stayed the

night at his home and that she had stayed there the night before the inspection. Rexin also testified at Father's severance hearing that Mother called Father during the inspection and that Mother became upset because Father told her that if the child were permitted to visit him at home, she would not be allowed to come over.

¶16 Rexin reported her concerns regarding Father's relationship with Mother to Dr. Fox-Shipley, who conducted a second consultation with Father in February 2010 with Rexin and a CPS supervisor present. Dr. Fox-Shipley reported that Father "insist[ed] he would be with [Mother] and if the baby was with him that the baby would be safe with him even with [Mother] in the home." Father also stated that Mother does not have any problems parenting. Dr. Fox-Shipley concluded that the child would not be safe left in Father's care unsupervised. Based on this assessment, Father was permitted to have supervised visitation from February 2010 through May 2010, and he attended the majority of these visits.

¶17 In April 2010, Father testified on Mother's behalf at her severance hearing regarding termination of her rights to her other six children. Father testified that she is a "good mom" and that he believed that all of her children should be returned to her care. Father also testified that he and Mother were not

in a romantic relationship at that time, but that they maintained a friendship.

¶18 In an effort to help Father understand the danger that Mother's behaviors pose to the child, ADES referred Father for counseling at Jewish Family and Children Services. Father could have attended counseling as early as June 2010, but initially refused to complete an intake. Father eventually completed an intake session in November 2010 and completed a second session in January 2011.

¶19 In August 2010, the case plan for the child was changed to severance and adoption, and in September 2010, ADES moved to terminate the parent-child relationship between the child and both parents. The motion alleged, pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(8)(c) (Supp. 2010),⁴ the child had been in an out-of-home placement for a total of fifteen months or longer, that Father had been unable to remedy the circumstances that caused the child to be in care, and there was a substantial likelihood that Father will not be capable of exercising proper and effective parental care and control in the near future.

¶10 During a five-day severance hearing, Father acknowledged that Mother had a drug problem, but testified that

⁴ We cite to the current version of the statute when no revisions material to this decision have occurred.

she had done nothing wrong in terms of her parenting and is "a good mother for the kid." Mother and Father both testified that if it were not for CPS's involvement, they would continue to be in a relationship.

¶11 After taking the matter under advisement, the juvenile court issued a detailed ruling severing both Father's and Mother's rights to the child. The court concluded that the alleged statutory ground for severance had been proven by clear and convincing evidence. Based on the evidence presented at trial and Father's "testimony and demeanor," the court found that Father was "still blind to mother's inadequacies and the danger mother poses to the child, so that the child [could not] be safely returned" to him. The court further concluded that it was in the child's best interests to have her parents' rights severed so that she can be adopted. Father timely appealed.

DISCUSSION

¶12 The juvenile court may terminate a parent's rights to his or her child if it finds (1) clear and convincing evidence supporting at least one of the grounds listed in A.R.S. § 8-533(B), and (2) a preponderance of the evidence indicating that severance is in the child's best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005). On appeal, we "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) (stating the juvenile court is in best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make findings of fact).

A. Fifteen Months Out-of-Home Placement

¶13 After determining that ADES has made adequate efforts toward reunification, the juvenile court may terminate a parent-child relationship if: (1) the child has been in out-of-home placement for fifteen months or longer; (2) the parent has been unable to remedy the circumstances causing the child to be in out-of-home placement; and (3) a substantial likelihood exists that the parent would not be able to properly care for the child in the near future. A.R.S. § 8-533(B)(8)(c). Father does not dispute that ADES made diligent efforts to reunify him with the child or that she was in out-of-home placement for more than fifteen months. Instead, Father challenges the sufficiency of the evidence regarding the second and third prongs of § 8-533(B)(8)(c).

¶14 We conclude that the record supports the juvenile court's finding that Father had been unable to remedy the circumstances causing the child to be in care. The dependency petition alleged that Father, despite his knowledge of Mother's

open dependency and mental health issues, believed Mother was able to parent the child and that the child should be placed with Mother. Father reiterated this belief in his February 2010 psychological evaluation where he insisted that Mother had no problems with her parenting ability, and again when he testified at Mother's first severance hearing where he repeatedly stated that Mother was a "good mom" and that the children should be returned to her. At his own severance hearing, Father testified that there were no problems with Mother's ability to parent, despite by then being well-informed of Mother's drug problems and history of CPS involvement. Based on this evidence and Father's defensive demeanor regarding Mother, the court concluded that Father is "still blind to mother's inadequacies and the danger mother poses to the child." Indeed, Father acknowledges on appeal that "[t]he record is clear that [he] did not fully recognize Mother's inadequacies."

¶15 We also find adequate support in the record for the court's conclusion that a substantial likelihood exists that Father will not be able to properly parent the child in the near future. Aside from his acknowledgement that Mother has a "weed" problem, there is no indication that Father made any significant progress in appreciating the potential danger Mother poses to the child. Although Father asserted on multiple occasions that he would not allow Mother to see the child if the court so

ordered, he also stated at trial that he was the most appropriate person to decide whether Mother should have contact with the child. It is also difficult to understand how Father can be believed that he would protect his child from Mother when he does not believe she poses a threat. Dr. Fox-Shipley noted in her February 2010 assessment that "[i]f mother was not able to be safe with [the] child, this father would be unable to see her inappropriate behavior, neither would he be able to protect the child." As the juvenile court appropriately noted, "a fit and appropriate father does not need a Court order to take appropriate steps to protect his child."

¶16 Accordingly, sufficient evidence exists to support the juvenile court's determination that severance of Father's parental rights was justified under A.R.S. § 8-533(B)(8)(c).

B. Best Interests

¶17 To establish that severance of a parent's rights would be in a child's best interests, "the court must find either that the child will benefit from termination of the relationship or that the child would be harmed by continuation of the relationship." *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, 356, ¶ 18, 972 P.2d 684, 689 (App. 1998) (citation omitted). In making the determination, the juvenile court may consider evidence that the child is adoptable or that an existing placement is meeting the needs of the child. *Mary Lou*

C. v. Ariz. Dep't of Econ. Sec., 207 Ariz. 43, 50, ¶ 19, 83 P.3d 43, 50 (App. 2004).

¶18 The court found that severance was in the child's best interests because it would allow for adoption and a stable home where she will be protected from "environments that involve drugs, abuse and neglect." The record supports the court's ruling, indicating that the child has been in the same out-of-home placement since she was two days old, she is bonded with her foster family, and the placement is meeting all of her social, emotional, and medical needs. Also, the child's foster parents have adopted the child's half-sister and have indicated a willingness to adopt the child as well.

¶19 Father does not dispute that the child benefits from her current placement, but argues it is better for the child to be raised by her biological father. Father asserts that the parent aide notes regarding Father's interaction with the child show Father's "ability and willingness to raise his child." While it is true there is evidence showing Father as a loving parent and able to meet many of the child's basic needs, other evidence established he is not able to protect the child from harm. Thus, the juvenile court did not err in finding that severance was in the child's best interests.

CONCLUSION

¶20 For the foregoing reasons, we affirm the juvenile court's order terminating Father's parental rights to the child.

/s/

MICHAEL J. BROWN, Presiding Judge

CONCURRING:

/s/

PATRICIA K. NORRIS, Judge

/s/

PHILIP HALL, Judge