

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

FILED BY CLERK

FEB 13 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

RUEBEN T.,)	2 CA-JV 2012-0103
)	DEPARTMENT B
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC)	Appellate Procedure
SECURITY and RUEBEN T. JR.,)	
)	
Appellees.)	
)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J196021

Honorable Suzanna S. Cuneo, Judge Pro Tempore
Honorable K. C. Stanford, Judge

AFFIRMED

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V Á S Q U E Z, Presiding Judge.

¶1 Rueben T. appeals from the juvenile court's order terminating his parental rights to his son, Rueben T. Jr., born in August 2011, based on the ground of neglect or

willful abuse.¹ See A.R.S. § 8-533(B)(2).² He contends the court’s ruling was not sufficiently specific to satisfy Rule 66(F)(2)(a), Ariz. R. P. Juv. Ct., and there was insufficient evidence that Rueben had caused “serious physical or emotional injury” to Rueben Jr.’s half-brother, P., born in August 2005. He asks that we reverse the court’s ruling and remand and reinstate the dependency status of the case. Finding no error, we affirm.

¶2 A juvenile court may terminate a parent’s rights if it finds clear and convincing evidence of one of the statutory grounds for severance and a preponderance of evidence that termination of the parent’s rights is in the children’s best interests. A.R.S. §§ 8-533(A), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). On review, 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, ¶ 4, 53 P.3d 203, 205 (App. 2002). And, we view the facts in the light most favorable to sustaining the court’s order. See *Lashonda M. v. Ariz. Dep’t of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 928 (App. 2005).

¹The juvenile court also terminated the parental rights of Rueben Jr.’s mother, who is not a party to this appeal.

²Section 8-533(B)(2) provides for severance of a parent’s rights if the parent has “neglected or willfully abused a child.” “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.” § 8-533(B)(2).

¶3 In August 2010, when Rueben Jr.'s mother was three months pregnant, her then-boyfriend, Rueben, was arrested for domestic violence assault after admitting to police he had "pushed" the mother, an act the responding police officer believed could have caused potential harm to both the mother and unborn fetus. The following month, Child Protective Services removed P. from the mother's care based on allegations of physical and emotional abuse by the mother and Rueben. At the time of his removal, P. had multiple bruises on his arms, abdomen, and back, and an abrasion on his nose. P. told investigators Rueben had hit him with a hammer; called him a "bitch"; held plastic grocery bags over his head for four-minute time periods; and touched him "where [he goes] to the bathroom."

¶4 Psychologist Dee Winsky evaluated P. in November 2010. Winsky presented the following conclusions in her written report, which was part of the record below: P.'s symptoms "are of a severe degree of anxiety due to the physical and emotional abuse he suffered in the home of his mother"; "[t]he psychological indicators that [P.] demonstrates are consistent with those of a young boy who has been physically and emotionally abused"; P.'s "parents' [mother and Rueben] alcohol and substance use and domestic violence within their relationship has been emotionally abusive to [P.]"; "along with his anxiety, [P.] exhibits low self-esteem, directly attributed to the maltreatment he experienced in his home"; and, "It is believed that all of [P.'s] statements should be considered credible."

¶5 In August 2011, Rueben Jr. was born prematurely and placed in the neonatal intensive care unit "due to withdrawal symptoms"; the mother admitted to

having used heroin while pregnant with him. The following month, the juvenile court terminated the mother's parental rights to P. based on neglect and willful abuse, chronic substance abuse, and length of time in care. *See* § 8-533(B)(2), (3), (8)(a). In its ruling terminating the mother's parental rights to P., the court stated it had "spent a great amount of time reviewing not only the case reports but also the psychological evaluation," and noted that "the crux of this case is that the mother has a chronic substance abuse problem and she remains with an abus[ive] boyfriend [Rueben] who has repeatedly abused [P.], and [P.] came into care due to emotional abuse, physical abuse, and neglect."

¶6 On the same day the juvenile court terminated the mother's parental rights to P., the Arizona Department of Economic Security (ADES) filed a dependency petition alleging Rueben Jr. was dependent as to both mother and Rueben. The following month, ADES sought to terminate Rueben's parental rights pursuant to § 8-533(B)(1), (2), and (6), on the grounds of abandonment, neglect or willful abuse, and failure to a file notice of claim of paternity and asserted that terminating Rueben's parental rights was in Rueben Jr.'s best interests. In the petition, ADES set forth in detail the facts supporting the allegations of P.'s abuse by his mother and Rueben, and asserted Rueben had failed to protect Rueben Jr. from the mother's "ongoing substance abuse during her pregnancy of the child." ADES also summarized Winsky's findings regarding the abuse P. had suffered at the hands of his mother and Rueben. After a combined, contested dependency

and termination hearing held in March and May 2012, the court³ terminated Rueben's parental rights to Rueben Jr. based solely on neglect or willful abuse. The court also found severance in Rueben Jr.'s best interests, a finding Rueben does not challenge on appeal.

¶7 Rueben first claims the juvenile court's under-advisement ruling terminating his parental rights lacked sufficient specific findings of fact to show he had neglected or willfully abused a child, thus asserting the ruling did not comply with Rule 66(F)(2)(a). Rule 66, governing termination adjudication hearings, provides in subsection (F)(2)(a) that the court must "[m]ake specific findings of fact in support of the termination of parental rights." The court's signed ruling here arguably falls short of compliance with Rule 66(F)(2)(a). However, because Rueben did not raise this issue below, when the court could have amplified its findings, he has waived it on appeal. *See Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 21, 153 P.3d 1074, 1081 (App. 2007) (appellate court generally does not consider objection raised for first time on appeal, particularly "as it relates to the alleged lack of detail in the juvenile court's findings"). Moreover, as the court in *Christy* noted, even if the court's findings were insufficient, "any error would have been harmless, and remand not required." *Id.* at n.5.

³Rueben filed a motion for a mistrial and change of judge at the conclusion of the consolidated hearing. The judge who had been presiding over the matter adjudicated Rueben Jr. dependent, granted a mistrial as to the severance, and granted the motion for a change of judge. The parties then stipulated to the admission of the transcripts from the consolidated dependency/severance trial for consideration by a new judge, who ultimately terminated Rueben's parental rights to Rueben Jr., the ruling now before us on appeal.

Because there is more than ample evidence in the record to support the court's findings, we reach the same conclusion here.

¶8 In any event, in support of its legal conclusion that grounds existed to terminate Rueben's parental rights to Rueben Jr., the juvenile court specifically found a risk of harm to Rueben Jr. based on Rueben's "long standing pattern of criminal activity and substance abuse that led to the abuse and neglect of a child in his care[, P]." And, concluding it was "clearly convinced [Rueben's] past cycles of sobriety and relapse will be repeated," the court notably found Rueben "has a propensity for violence to children and adults particularly when under the influence of substances." In so finding, the court clearly articulated its concern that Rueben's past conduct with P. could occur with Rueben Jr. *See Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, ¶ 15, 117 P.3d 795, 799 (App. 2005) (§ 8-533(B)(2) directed at preventing future abuse based on past conduct involving "serious physical or emotional injury"); *see also Ruben M. v. Ariz. Dep't of Econ. Sec.*, 230 Ariz. 236, ¶¶ 25-28, 282 P.3d 437, 442 (App. 2012) (where grounds for court's judgment are simple and straightforward, summary findings based on ultimate facts sufficient to satisfy Rule 66(F)(2)(a)).

¶9 Rueben next argues the state "did not show by clear and convincing evidence that he had caused serious physical injury to a child." Section 8-533(B)(2) permits termination of parental rights to a child born after the abuse of a different child, provided an adequate nexus exists between the parent's prior conduct and the risk of future abuse, a theory Rueben implicitly acknowledges. *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, ¶¶ 1, 19-20, 257 P.3d 1162, 1163, 1166-67 (App. 2011). Rueben

maintains, however, that in the absence of evidence he had murdered P. or caused him “to be seriously injured, disfigured or mentally impaired,” there was not clear and convincing proof he had abused P. *See Linda V.*, 211 Ariz. at 80, 117 P.3d at 799.

¶10 Notably, the juvenile court relied on P.’s allegations of abuse by Rueben and the opinion of a qualified psychologist in finding that “[P.] was diagnosed as suffering from physical and emotional abuse by the mother and [Rueben]. He also suffered extreme anxiety and low self-esteem as a result of an unstable home life and cruel mistreatment.” Additionally, Winsky found P.’s allegations to be credible, a finding we infer the court also made. We also infer the court took judicial notice of the findings made by the judge who had terminated the mother’s parental rights to P., that the mother had remained “with an abus[ive] boyfriend [Rueben] who ha[d] repeatedly abused [P.], and [P.] came into care due to emotional abuse, physical abuse, and neglect.” And, the factual allegations in ADES’s motion to terminate the mother’s parental rights to P., allegations specifically adopted by the judge in that matter, provided a detailed description of Rueben’s treatment of P. Moreover, the police officer who had investigated the December 2010 allegations involving P. and Rueben testified at Rueben Jr.’s hearing that Rueben had told him he had disciplined P. by spanking him, and that “he hit his ass hard. He left red marks and shit.”

¶11 In asking us to disregard the juvenile court’s findings based on all of this evidence, Rueben essentially asks us to reweigh the evidence, which we will not do. *See Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶¶ 4, 14, 100 P.3d 943, 945, 947 (App. 2004) (juvenile court “in the best position to weigh the evidence, observe the

parties, judge the credibility of witnesses, and resolve disputed facts”). Reasonable evidence supports the court’s finding that Rueben willfully abused a child, namely P., placing Rueben Jr. at risk for such abuse, and warranting termination pursuant to § 8-533(B)(2).

¶12 For all of these reasons, we affirm the juvenile court’s termination of Rueben’s parental rights to Rueben Jr.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge