

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

AUG 15 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

| | | |
|--------------------------------|---|----------------------------|
| ROJELIO B. JR., |) | 2 CA-JV 2013-0030 |
| |) | DEPARTMENT A |
| Appellant, |) | |
| |) | <u>MEMORANDUM DECISION</u> |
| v. |) | Not for Publication |
| |) | Rule 28, Rules of Civil |
| ARIZONA DEPARTMENT OF ECONOMIC |) | Appellate Procedure |
| SECURITY and AMAYA B., |) | |
| |) | |
| Appellees. |) | |
| _____ |) | |

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100JD200700111R

Honorable Brenda E. Oldham, Judge

AFFIRMED

Kessler Law Offices
By Eric W. Kessler

Mesa
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General
By Cathleen E. Fuller

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

V Á S Q U E Z, Presiding Judge.

¶1 Appellant Rojelio B. Jr. challenges the juvenile court’s order of March 22, 2013, terminating his parental rights to his daughter, Amaya B., born in June 2012, on the ground that Amaya had been in a court-ordered, out-of-home placement for a period of six months or more and Rojelio had been unable to remedy the circumstances causing her to be in such care and was substantially unlikely to be capable of proper parental care in the near future. A.R.S. § 8-533(B)(8)(b).¹ On appeal, Rojelio argues the juvenile court abused its discretion when it found he had “substantially neglected or willfully refused to remedy the circumstances that brought [Amaya] into care,” despite his participation in “substantially similar services through probation.” And he maintains the court further abused its discretion in finding that severance was in Amaya’s best interests.

¶2 Before it may terminate a parent’s rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent’s rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). We will affirm an order terminating parental rights unless we must say as a matter of law that no reasonable person could find those essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). We view the

¹Amaya’s mother’s parental rights were also terminated on the grounds of abandonment, the mother’s inability to discharge her parental responsibilities due to mental illness or drug or alcohol use, and length of time in care. She is not a party to this appeal.

evidence in the light most favorable to upholding the court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008).

¶3 Shortly after her birth, Child Protective Services (CPS), a division of the Arizona Department of Economic Security (ADES), took custody of Amaya because she was born testing positive for methamphetamine and with numerous health problems. Two days later CPS contacted Rojelio, who refused to take a requested drug test. ADES thereafter filed a dependency petition and offered Rojelio reunification services, which he declined. Amaya was adjudicated dependent. ADES continued to offer Rojelio services, including case management, substance abuse assessment, individual counseling, parent aide services, parenting classes, referrals to other community resources and visitation. With the exception of sporadic visitation with Amaya, Rojelio did not participate in those services.

¶4 In December 2012, the case plan was changed to severance and adoption, and ADES filed a petition to terminate Rojelio's parental rights on the ground of length of time in care pursuant to § 8-533(B)(8)(b). After a contested severance hearing, the court terminated Rojelio's parental rights to Amaya.

¶5 In granting the motion to terminate Rojelio's parental rights, the juvenile court prepared a thorough minute entry and separate finding-of-fact order setting out its factual findings and legal conclusions. We have determined that the record contains reasonable evidence to support the court's factual findings with respect to both the statutory ground for termination and Amaya's best interests. *See Denise R.*, 221 Ariz. 92,

¶ 4, 210 P.3d at 1264-65 (factual findings upheld if supported by reasonable evidence); *see also* A.R.S. § 8-531(B)(8)(b). The court’s factual findings, in turn, support its legal conclusion that severing Rojelio’s rights was warranted under § 8-533(B)(8)(b). We therefore adopt the court’s findings of fact and approve its conclusions of law. *See Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 207-08 (App. 2002), quoting *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶6 Rojelio’s arguments on appeal amount to a request that this court reweigh the evidence presented below; this we will not do. *See id.* ¶ 12. Indeed, we reject Rojelio’s contention that the court’s conclusions about his compliance with probation were “unsupported by any interpretation of the evidence.” Although Rojelio’s probation officer testified that he was “compliant” with his probation as of January 2013, he also testified Rojelio was not “even close to completing his required services,” “has a long way to go,” and had not “completed anything in the year he’[d] been on probation.” The probation officer also agreed that Rojelio’s behavior indicated “a lack of stability” and stated he was “uncertain of [Rojelio’s] long-term ability to . . . remain sober.” And on that basis, we reject Rojelio’s argument that the court abused its discretion in finding he had failed to participate in services offered by ADES because he had participated in “substantially similar services accessed” through other agencies while on probation. Because the court’s factual findings are clearly stated and supported by reasonable evidence, we have no basis on which to disturb its conclusion that the state proved the statutory ground and that severance will serve Amaya’s best interests. *See id.* ¶ 16.

¶7 Accordingly, the juvenile court's order terminating Rojelio's parental rights is affirmed.

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

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge