

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THOMAS W.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND F.W.,
Appellees.

No. 2 CA-JV 2014-0118
Filed February 19, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD177445
The Honorable Jennifer P. Langford, Judge Pro Tempore

AFFIRMED

COUNSEL

Emily Danies
Counsel for Appellant

THOMAS W. v. DCS
Decision of the Court

Mark Brnovich, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Vásquez authored the decision of the Court, in which Presiding Judge Kelly and Judge Howard concurred.

VÁSQUEZ, Judge:

¶1 Thomas W. appeals from the juvenile court's September 2014 order terminating his parental rights to his daughter, F.W., who was then sixteen months old. As the sole issue he raises on appeal, he challenges the sufficiency of the evidence to establish that termination of his parental rights was in F.W.'s best interests. We conclude the court's best interests finding was supported by the record and affirm the termination order.

Background

¶2 We view the evidence in the light most favorable to sustaining the juvenile court's order. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). When F.W. was born in April 2013, her urine tested positive for opiates and amphetamine, and her mother, Jessica L., admitted to hospital staff that she had used heroin daily during her pregnancy.¹ F.W. suffered from severe withdrawal symptoms and remained in a newborn intensive care unit for six weeks, but neither Thomas nor Jessica visited her or inquired about her well-being during that time. When F.W. was released from the hospital, the Department of Child Safety

¹Jessica's parental rights to F.W. were also terminated by the juvenile court's September 2014 ruling. She is not a party to this appeal.

THOMAS W. v. DCS
Decision of the Court

(DCS)² took temporary custody of her, placed her in a foster home, and filed a dependency petition. She was found dependent as to Thomas in September 2013, after he failed to appear at a dependency hearing. In February 2014, DCS filed a motion to terminate parental rights.

¶3 After a contested hearing, the juvenile court granted DCS's motion, finding the length of Thomas's felony prison sentence would deprive F.W. of a normal home for a period of years.³ See A.R.S. § 8-533(B)(4). The court also found termination of his parental rights was in F.W.'s best interests. This appeal followed.

Discussion

¶4 To terminate parental rights, a juvenile court must find the existence of at least one enumerated, statutory ground for termination and "shall also consider the best interests of the child." § 8-533(B). Thus, the "best interests of the child are a necessary . . . condition for an order of termination"; accordingly, a termination order "must include a finding as to how the child would benefit from a severance or be harmed by the continuation of the relationship." *In re Maricopa Cnty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990) (emphasis omitted).

¶5 Although a statutory ground for termination must be proven by clear and convincing evidence, A.R.S. § 8-537(B), only a preponderance of the evidence is required to establish that termination is in a child's best interests, *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

²DCS has been substituted for the Arizona Department of Economic Security (ADES) in this matter. See 2014 Ariz. Sess. Laws 2d Spec. Sess., ch. 1, §§ 6, 20, 54; Ariz. R. Civ. App. P. 27; Ariz. R. P. Juv. Ct. 103(G). For simplicity, references to DCS encompass both ADES and Child Protective Services, formerly a division of ADES.

³Thomas does not challenge the juvenile court's findings related to this statutory ground for termination.

THOMAS W. v. DCS
Decision of the Court

that no reasonable person could find the essential elements proven by the applicable evidentiary standard. *See Denise R.*, 221 Ariz. 92, ¶¶ 9-10, 210 P.3d at 1265-66.

¶6 In this case, the juvenile court found “it is in [F.W.]’s best interest to have [Thomas]’s parental rights terminated to allow permanency for [her],” citing evidence that F.W. has been in the same “stable and loving” foster home since her release from the hospital in June 2013, that her foster parents attend to her special needs,⁴ and that they are willing to serve as her permanent placement. The court commended Thomas’s self-improvement efforts during his incarceration, but it found “[F.W.] is a young, adoptable child [who] deserves permanency now” – while Thomas would “not be available as placement for a period of years (considering his release date and the additional time [required to] show[] full compliance with the case plan).”

¶7 Without citing legal authority, Thomas appears to argue “that [F.W.]’s simply being adoptable with foster parents” is insufficient to show termination is in her best interests; he asserts this factor “does not take into account the psychological reality of being deprived of her biological father who loves her and wants to be her parent, and [her] paternal grandmother who wants to [serve as F.W.]’s placement and adopt F.[W.]”⁵ Thomas asks that we “vacate the termination, re-institute services and begin visits” and also “consider relative placement with the paternal grandmother.”

¶8 Notwithstanding Thomas’s conclusory assertions, the juvenile court’s best interests finding is consistent with Arizona law and supported by reasonable evidence. *See, e.g., Mary Lou C. v. Ariz.*

⁴F.W. has experienced some developmental delays and has received physical, speech, and occupational therapies during the course of this proceeding.

⁵Thomas’s mother, F.W.’s paternal grandmother, had applied for consideration as a kinship placement for F.W. but reportedly “was not able to pass the necessary background checks” to qualify as a placement.

THOMAS W. v. DCS
Decision of the Court

Dep't of Econ. Sec., 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004) (evidence of current adoptive plan “or even that the child is adoptable” sufficient to support best interests finding in termination order; finding also supported by evidence that “existing placement is meeting the needs of the child”). Moreover, as this court has explained, a juvenile court does not “weigh alternative placement possibilities to determine which might be better” when considering whether termination of parental rights is in a child’s best interests. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998). Rather, a court’s finding of best interests “is separate from and preliminary to its determination of placement after severance.” *Antonio M. v. Ariz. Dep't of Econ. Sec.*, 222 Ariz. 369, ¶ 2, 214 P.3d 1010, 1011-12 (App. 2009).

¶9 Thomas does not dispute the evidence the juvenile court cited in support of its best interests finding. In stating that he and Jessica “want the paternal grandmother to have placement and adopt F.[W.],” he simply asks that we reweigh the evidence – on an issue not properly before us – more strongly in his favor. But this court does not reweigh the evidence on review, and we will accept the juvenile court’s findings if they are supported by sufficient evidence. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

Disposition

¶10 For the reasons stated in the juvenile court’s ruling, the record fully supports a finding that termination of Thomas’s parental rights is in F.W.’s best interests. Accordingly, we affirm the termination order.