IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

FRANCISCO S.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, F.S., AND B.S.,
Appellees.

No. 2 CA-JV 2015-0001
Filed May 18, 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NOT FOR PUBLICATION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 Pinal County
No. S1100JD201200067
The Honorable Brenda E. Oldham, Judge

AFFIRMED

COUNSEL

Law Firm of Richard Luff, LLC, Tucson
By Richard Luff
Counsel for Appellant

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

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Miller and Judge Espinosa concurred.

E C K E R S T R O M, Chief Judge:

¶1 Appellant Francisco S. challenges the juvenile court's December 2014 order terminating his parental rights to his children, F.S. and B.S., on the ground they had been in court-ordered, out-of-home placement for fifteen months or longer. *See* A.R.S. § 8-533(B)(8)(c). [1] On appeal, Francisco argues termination was inappropriate because the Department of Child Safety (DCS)[2] had "by its own mismanagement, delayed reasonable implementation of its plan of reunification such that the length of time in an out-of-home placement was much longer than fifteen months." For the following reasons, we affirm.

Factual and Procedural Background

¶2 After the children's mother gave birth to a premature baby,[3] DCS made contact with Francisco pursuant to a report she had neglected the baby. He "reported he did not know where [the

[1]The children's mother's parental rights were terminated by default, and she is not a party to this appeal.

[2]DCS is substituted for the Arizona Department of Economic Security (ADES) in this decision. For simplicity, our references to DCS in this decision encompass ADES, which formerly administered child welfare and placement services under title 8, and Child Protective Services, formerly a division of ADES. *See* 2014 Ariz. Sess. Laws 2d Spec. Sess., ch. 1, §§ 6, 20, 54.

[3]This baby was determined not to be Francisco's biological child.

mother] or the children were." In April 2012, at a "Team Decision Making meeting," Francisco admitted to being a methamphetamine and marijuana user. After the meeting, it was determined the parents could not "meet the children's immediate needs" and DCS instituted a safety plan and began an in-home dependency with the mother.[4] Less than a week later, however, the children were removed from the mother's home and placed in foster care; they were adjudicated dependent shortly thereafter.

¶3 DCS began a home study on Francisco's mother and increased visitation. Francisco was incarcerated in May 2012 and released in July. After his release, his participation in services was "very minimal." At an October 2012 review hearing, DCS expressed "concerns" with Francisco's mother's "residency," but in March 2013 she was referred for a home study. At that point she had moved and not provided a new address.

¶4 Francisco committed aggravated driving under the influence of an intoxicant in February 2013 and was incarcerated in March 2013. While incarcerated, he called and wrote letters to the children. He also wrote letters to the DCS case manager, but did not send documentation of any services in which he had participated while incarcerated.

¶5 By April or May, Francisco's mother had moved in with her daughter and a home study was completed. Although the home was approved in May, DCS had concerns about placing the children with Francisco's mother, based on her financial ability to meet the children's needs, her ability to handle the medical needs of the baby, lack of transportation, and overcrowding in the home. Despite concerns about the placement, however, DCS began to transition the children to her care. In October 2013, DCS moved for a change of physical custody, but the children's counsel objected and a placement hearing was set. The hearing was continued a few times, but ultimately vacated.

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[4]At this time Francisco was unemployed and living with his mother.

¶6 In June 2014, Francisco's mother was asked to leave her daughter's home, leaving her without housing or transportation. She had not been visiting the children regularly, and her last visit had been at the beginning of May. Francisco was still incarcerated; his earliest release date was in January 2015.

¶7 In July, the juvenile court ordered the case plan changed to severance and adoption, and DCS filed a motion to terminate Francisco's parental rights on the grounds of the length of his incarceration and the children having been in court-ordered, out-of-home placement for fifteen months or more. The court determined DCS had failed to establish the incarceration ground, but found the length-of-time-in-care ground proven and granted the motion to terminate. This appeal followed.

Discussion

¶8 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 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).

¶9 To prevail on a motion to terminate parental rights under § 8–533(B)(8)(c), DCS was required to prove that the children had been in out-of-home placement for fifteen months or longer pursuant to court order, that DCS had made a diligent effort to provide appropriate reunification services to Francisco, that Francisco had been unable to remedy the circumstances that caused the children to be in out-of-home placement, and that there was a

substantial likelihood Francisco would not be capable of exercising proper and effective parental care and control in the near future. The evidence presented to the juvenile court was sufficient to support its conclusion that DCS had proven the ground for severance.

¶10 At the severance hearing, the DCS case manager testified that when Francisco was released he would need at least another year to establish sobriety and complete services to allow him to be reunified with the children. Although Francisco testified to services he had participated in, or attempted to participate in, while incarcerated, he also admitted he would need time after his release to do more before the children could be placed with him.

¶11 Francisco argues, however, that DCS did not provide him with sufficient services, arguing that "there is no evidence that the DCS worked with the prison to help [him] to get any services while incarcerated" or that his caseworker even knew "what services were available and what progress if any he made." But, as DCS points out, this court has held,

> when the juvenile court record reflects that [DCS] has been ordered to provide specific services in furtherance of the case plan, and the court finds that [DCS] has made reasonable efforts to provide such services . . . a parent who does not object in the juvenile court is precluded from challenging that finding on appeal.

Shawanee S. v. Ariz. Dep't of Econ. Sec., 234 Ariz. 174, ¶ 16, 319 P.3d 236, 241 (App. 2014). Such is the case here.

¶12 Francisco further contends that DCS took too long to complete the home study on his mother and "abandoned that option on a whim." And, he maintains, the "vast majority of the time" that the children were in a court-ordered, out-of-home placement "was due to [DCS's] failure to provide services in a timely manner and to follow up on placement within the family." But, even had the

children been placed with one of Francisco's relatives throughout the dependency and severance proceedings, such a placement would have been a court-ordered, out-of-home placement, and the children would have been in that placement for more than fifteen months, as required for severance. *See* A.R.S. §§ 8-501(8); 8-533(B)(8)(c). And, other than testifying that he had been able to make telephone calls to the children while they were visiting with his mother, Francisco has not explained how the children's placement impacted his ability "to remedy the circumstances that cause[d] the child[ren] to be in an out-of-home placement." § 8-533(B)(8)(c). Nor does the children's placement with non-relatives affect the state's showing that "there is a substantial likelihood that [Francisco] will not be capable of exercising proper and effective parental care and control in the near future"; as noted above, Francisco admitted as much in his testimony. *Id.*

Disposition

¶13 Accordingly, we affirm the juvenile court's order terminating Francisco's parental rights.