

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

RAMEEN C.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, K.C. AND S.C.,
Appellees.

No. 2 CA-JV 2015-0132
Filed October 13, 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NOT FOR PUBLICATION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. JD201400057
The Honorable Henry G. Gooday Jr., Judge

AFFIRMED

COUNSEL

Rosemary Gordon Pánuco
Counsel for Appellant

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

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Howard and Judge Brammer¹ concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Rameen C. appeals from the juvenile court's order terminating his parental rights to his son K., born December 2003, and his daughter S., born July 2007, on the grounds of chronic substance abuse and time-in-care. *See* A.R.S. § 8-533(B)(3), (8)(a). Rameen's sole argument on appeal is that the court erred in finding the Department of Child Safety (DCS)² "had made reasonable efforts to provide [him] with rehabilitative services." We affirm.

¶2 "[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] court's decision." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009). The children's maternal

¹The Hon. J. William Brammer, Jr., a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

²Effective May 29, 2014, the Arizona legislature repealed the statutory authorization for Child Protective Services (CPS) and for the administration by the Arizona Department of Economic Security (ADES) of child welfare and placement services under title 8 and transferred powers, duties, and purposes previously assigned to those entities to the newly established DCS. *See* 2014 Ariz. Sess. Laws 2d Spec. Sess., ch. 1, §§ 6, 20, 54. For simplicity, our references to DCS in this decision encompass both ADES and the former CPS.

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grandmother filed a private dependency petition in 2014 alleging both parents were neglecting the children due to their substance abuse issues, noting that the children had been in her care since April 2013. The juvenile court ordered DCS to investigate and granted temporary custody to the grandmother. As a result of that investigation, DCS moved to substitute as petitioner and, after the court granted that motion, filed an amended dependency petition. The court adjudicated the children dependent as to both parents in April and May 2014.

¶3 In February 2015, DCS requested the case plan be changed to severance and adoption based on Rameen's failure to participate in services including substance abuse treatment and visitation, his testing positive for methamphetamine, cocaine, alcohol, and codeine, as well as his arrest for driving under the influence (DUI), and subsequent incarceration for failing to appear for court in his DUI case. The juvenile court granted that motion, and DCS filed a petition to terminate both parents' rights, alleging as to Rameen that termination was warranted on substance abuse and time-in-care grounds. Following a contested severance hearing, the court granted the motion, finding DCS had proven both grounds and that termination was in the children's best interests.³

¶4 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 finds by a preponderance of the evidence that termination is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). "[W]e will affirm a termination order that is supported by reasonable evidence." *Jordan C.*, 223 Ariz. 86, ¶ 18, 219 P.3d at 303. That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof.

³ The juvenile court also ordered the termination of the parental rights of the children's mother, who had consented to the children's adoption and agreed not to contest the alleged termination grounds. She is not a party to this appeal.

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See Denise R. v. Ariz. Dep't of Econ. Sec., 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶5 And, in order to terminate a parent's rights on substance abuse or time-in-care grounds, DCS must have "made a diligent effort to provide appropriate reunification services." § 8-533(B)(8); *Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, ¶ 12, 123 P.3d 186, 189 (App. 2005). To provide sufficient services, DCS must offer parents "the time and opportunity to participate in programs designed to help [them] become . . . effective parent[s]." *In re Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). However, DCS is not required to provide every conceivable service, and a parent's failure or refusal to participate in the services offered or recommended by ADES does not foreclose termination of the parent's rights. *Id.* Additionally, DCS need not undertake futile rehabilitative measures, but only those that offer a reasonable possibility of success. *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 1, 971 P.2d 1046, 1048 (App. 1999).

¶6 Rameen argues DCS failed to provide sufficient services because he did not have time to participate in the services offered, including visitation, due to his employment and probation obligations, and because he was unable to drive as a result of his license suspension stemming from his DUI convictions. But, DCS attempted to aid Rameen with transportation issues by providing him with bus passes to use for visitation and drug testing. And, Rameen does not claim any of the services were unnecessary for him to overcome his substance abuse issues or improve his ability to parent his children. Nor does he identify any services DCS should have offered him but did not.

¶7 Rameen also asserts that "the most detrimental thing was [his] perception that his case manager was trying to ensure that he fail to meet the requirements" of his case plan. He has not explained, however, the legal relevance of his perception of his case manager, or how it caused him to fail to participate in services.

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¶8 Finally, Rameen contends that DCS failed to give him adequate opportunity to participate in the case plan because he “was never given the chance to participate in services before DCS decided to change the plan to severance and adoption.” But Rameen failed to participate meaningfully in services for months before DCS asked to change the case plan. Although he was incarcerated for part of that time, he has cited no authority suggesting that DCS should be forced to delay seeking a permanent placement for dependent children because their parent cannot avoid incarceration. And, in any event, the record shows Rameen failed to engage in services even when he was not incarcerated.

¶9 Rameen has not identified any error in the juvenile court’s determination that DCS diligently provided appropriate reunification services. We therefore affirm the court’s order terminating Rameen’s parental rights to K. and S.