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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

JUL 28 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JAY B.,)	2 CA-JV 2010-0039
)	DEPARTMENT B
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC)	Appellate Procedure
SECURITY and JASON B.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J17943700

Honorable Kathleen A. Quigley, Judge Pro Tempore

AFFIRMED

The Hopkins Law Office, P.C.
By Cedric Martin Hopkins

Tucson
Attorneys for Appellant

Terry Goddard, Arizona Attorney General
By Eric Devany

Phoenix
Attorneys for Appellee Arizona
Department of Economic Security

K E L L Y, Judge.

¶1 Appellant Jay B. challenges the juvenile court’s order of March 3, 2010, terminating his parental rights to his son Jason B., who was then almost sixteen months old. The sole statutory ground alleged for termination was A.R.S. § 8-533(B)(10), which required proof that Jay “has had parental rights to another child terminated within the preceding two years for the same cause and is currently unable to discharge parental responsibilities due to the same cause.” On appeal, Jay challenges the sufficiency of the evidence to sustain the termination order. He also contends the Arizona Department of Economic Security (ADES) did not make diligent efforts to preserve the family because it failed to provide him with appropriate reunification services. We affirm.

¶2 To terminate parental rights, a juvenile court must find the existence of at least one of the statutory grounds for termination enumerated in A.R.S. § 8-533(B) and “shall also consider the best interests of the child.” *Id.* Although statutory grounds for termination must be proven by clear and convincing evidence, only a preponderance of the evidence is required to establish that severance will serve the child’s best interests. *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 the essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶¶ 6, 10, 210 P.3d 1263, 1265-66 (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).

¶3 Jason, born in November 2008, is the third child of Jay and Christianna L., who never married. Jay and Christianna also were parents of Isabella, born in July 2006, and Jay, Jr., who was born in August 2007 with multiple, serious medical issues. The Child Protective Services (CPS) division of ADES began providing the family with intensive in-home services shortly after Isabella's birth. Because of the parents' failure to benefit from those services, however, Isabella was removed from their custody in September 2006 and adjudicated dependent in January 2007. In July 2009, the juvenile court terminated Jay's parental rights to Isabella based on the length of time she had been in a court-ordered, out-of-home placement, during which time Jay had been unable to remedy the conditions that caused her to be in foster care.¹

¶4 Jason lived with his parents for eleven weeks, from birth until January 29, 2009. On that date, Jay took him to the CPS office following the second episode of domestic violence between Jay and Christianna that month. CPS took Jason into protective custody and placed him in foster care. Approximately six months later, in July 2009, the juvenile court terminated Jay's parental rights to Isabella, based on Jay's inability to care for a child adequately or to learn and benefit from instructions on the care of children.

¹Jay, Jr. never lived with his parents, having been taken into custody while he was still hospitalized three months after his birth and later placed in a foster home for medically fragile children. Both Jay and Christianna relinquished their parental rights to him, and Christianna relinquished her rights to Isabella and Jason as well. Christianna reportedly left Jay early in 2009, married someone else, and was expecting another child in November 2009.

¶5 At a permanency hearing the following month, the court concluded that, although Jay was “working the case plan,” he still had not acquired the necessary skills to parent Jason. ADES filed a motion to terminate his rights on August 27, 2009, and the contested termination hearing proceeded in five installments between November 20, 2009, and January 11, 2010.

¶6 Jay argued at the termination hearing that, after Jason’s removal and the end of his “abusive relationship” with Christianna, he had become motivated and had “actually start[ed] accepting services” and making progress. He argued he had made more progress in the preceding six to eight months than in the preceding three years of receiving services, and he maintained he had the necessary skills and ability to take care of Jason.

¶7 In its ruling granting termination, the juvenile court made extensive factual findings in a comprehensive written minute entry. The court commended Jay for his recent, positive strides and progress. But, the court observed, “[t]he fact remains that after three years [Jay] still suffers from the same or similar issues that existed in Isabella’s case and he continues to require significant services and[,] therefore, he is not in a position to safely parent Jason.” Abundant evidence in the record supported that finding.

¶8 On appeal, Jay contends the circumstances are different in Jason’s case than in Isabella’s and claims his rights to Jason were not terminated “for the same cause” that resulted in the severance of his rights to Isabella. But his argument is not persuasive. As used in § 8-533(B)(10), the term “same cause” refers to the factual reasons that led to the

prior termination, not to the statutory ground or grounds that supported the severance. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 11, 83 P.3d 43, 48 (App. 2004).

And the juvenile court's minute entry addresses Jay's contentions directly:

The issues that led to the termination of [Jay]'s rights to Isabella in 2009 are the same issues that exist for Jason—parenting skills, bonding and attachment, domestic violence and anger. [Jay] has been offered the same or similar services for a total of three years for the two dependencies. These services were initially identified to address the concerns that existed when Isabella was removed. After Jason was born the same parenting concerns existed and the services remained unchanged. . . .

[Jay] is unable to parent Jason because he still does not have the parenting skills to independently parent Jason, his son does not have a secure bond with him, he has not made significant progress with individual therapy and he has not addressed his anger issues.

The record fully supports the court's finding that—despite the progress Jay had recently begun to make—he remained unable to parent Jason in 2010 “for the same cause” that had led to Isabella's removal in 2006 and to the termination of Jay's parental rights to her in July 2009.

¶9 Jay's second contention is that ADES failed to make “a good faith effort” to preserve the family, thereby denying him substantive due process. In particular, he faults ADES for not having evaluated Jason's bond with his foster parents in order to assess “Jason's own bonding issues . . . in order to properly evaluate [Jay]'s bond.” As a result, he claims, “the bonding issue was never adequately addressed” for either Jay or Jason. And he complains that ADES provided “dyadic therapy” between Jay and Jason for only two months in July and August 2009, when six to twelve months would have

been necessary for them to form a bond with each other and allow a therapist to evaluate that bond.

¶10 As ADES observes, it was required to provide Jay “with the time and opportunity to participate in programs designed to help [him] become an effective parent.” *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). It is “not required to provide every conceivable service or to ensure that a parent participates in each service it offers.” *Id.* Nor is it obliged to undertake futile rehabilitative measures. *Mary Ellen C. v. Ariz. Dep’t of Econ. Sec.*, 193 Ariz. 185, ¶ 34, 971 P.2d 1046, 1053 (App. 1999).

¶11 As amply documented in the record, Jay was given more than three years of intensive reunification services. At the July 2009 termination hearing for Isabella, the juvenile court characterized as “overwhelming” the “number of services provided” to the family over those three years. In the ruling under review, the court discussed many of those services and noted the results achieved. It also specified the lack of a secure bond between Jay and Jason as just one of several reasons Jay remained unable to parent effectively despite all the rehabilitative services he had received. Given the court’s additional findings that Jay “still does not have the parenting skills to independently parent Jason, . . . has not made significant progress with individual therapy and . . . has not addressed his anger issues,” it seems unlikely that more bonding therapy would have changed the outcome of the case. The record abundantly supports the court’s finding that ADES had made “diligent and repeated efforts” to reunify and preserve this family by providing appropriate services.

¶12 Finally, Jay contends the juvenile court’s finding that severance was in Jason’s best interests was not supported by a preponderance of the evidence. He argues he has participated in services and has made progress, and he disputes the court’s finding that “it is not in Jason’s best interest to wait for a year to see if a secure bond can be established” between father and son, based again on his claim that the bonding “issue . . . was mishandled by the service providers in this case.”

¶13 A juvenile court may find that terminating parental rights will serve the best interests of the child if a preponderance of the evidence establishes the child will benefit from severing the relationship or be harmed by its continuance. *See In re Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 5, 804 P.2d 730, 734 (1990) (best interests served if terminating parent’s rights will confer benefit on child); *Maricopa County No. JS-501904*, 180 Ariz. at 352, 884 P.2d at 238 (freeing child for adoption can be benefit resulting from severance). In assessing best interests, the court may consider whether the child’s present placement is meeting the child’s needs, *In re Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 107, 876 P.2d 1137, 1142 (1994); whether the child is adoptable, *Maricopa County No. JS-501904*, 180 Ariz. at 352, 884 P.2d at 238; and whether there is an adoptive placement immediately available. *Audra T. v. Ariz. Dep’t of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998).

¶14 Because the juvenile court’s detailed minute entry adequately addresses the issue of Jason’s best interests and because its factual findings are fully supported by the evidence, we need not belabor the issue by repeating or expounding on its findings. *See Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 207-08 (App.

2002). We approve and adopt those findings, which in turn support the court's legal conclusion that Jason's best interests will be served by the termination of Jay's parental rights.

¶15 We affirm the juvenile court's order terminating Jay's parental rights to Jason.

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

CONCURRING:

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

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