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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ROY C., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and MONROE C., Appellees.	2 CA-JV 2008-0110 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17294700

Honorable Karen S. Adam, Judge Pro Tempore

AFFIRMED

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P E L A N D E R, Chief Judge.

¶1 Roy C., father of Monroe C., born in December 2006, appeals from the juvenile court's order terminating his parental rights to Monroe based on the length of time Monroe had spent in a court-ordered, out-of-home placement. *See* A.R.S. § 8-533(B)(8)(b).[1] Roy argues the court "erred when it found that the father was required to fulfill obligations which were not on his case plan," specifically, when the court considered that he had not ended his relationship with Monroe's mother, Erin Z. Additionally, he argues he was a fit parent, as evidenced by the fact that other children were permitted to live in his home, and termination was not in Monroe's best interests. For the reasons set forth below, we affirm.

¶2 A juvenile court may terminate a parent's rights only if it finds by clear and convincing evidence that a statutory ground for severance exists and finds by a preponderance of the evidence that severance is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *see Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). On review, we "accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). In order to terminate Roy's parental rights pursuant to § 8-533(B)(8)(b), the court was required to find that Roy had been unable to remedy the circumstances that had caused Monroe to remain in an out-of-home placement for a cumulative period of fifteen months or longer and

[1]Now renumbered as A.R.S. § 8-533(B)(8)(c). 2008 Ariz. Sess. Laws, ch. 198, § 2. In this decision, we refer to the statute as numbered when the motion for termination was filed in April 2008.

that there is a substantial likelihood Roy would not be able to parent adequately in the near future.

¶3 We view the evidence in the light most favorable to upholding the juvenile court's ruling. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). Roy and Erin, whose marriage had ended in 1998, were each married to other individuals when Monroe was born in 2006.[2] Beginning in January 2007, after Monroe had been removed from Erin's custody and placed with Erin's mother, Roy and his current wife permitted Erin to live with them in their trailer along with the children from their marriage and the wife's child from a previous relationship.[3] Also in January 2007, the Arizona Department of Economic Security (ADES) filed a dependency petition as to then one-month-old Monroe, alleging as to Roy that his trailer "had a very strong odor of cigarette[s]. The carpet was covered . . . with miscellaneous items. There were coins, paper clips, little pieces of paper, little rocks. . . . There were dishes piled in the sink. The bathroom was very small, very cluttered, and the toilet was very dirty." In February 2007, Roy admitted the allegations in an amended dependency petition, and the juvenile court adjudicated Monroe dependent as to him.

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[2]Erin subsequently relinquished her parental rights to Monroe and is not a party to this appeal.

[3]While Erin was living with Roy and his wife, Erin and Roy conceived another child who was born in November 2007. That child is the subject of a separate dependency proceeding. Erin also has two older children who are in the maternal grandmother's care.

¶4 ADES provided various services to Roy in furtherance of the initial case plan goal of reunification. Some of those services required Roy to attend scheduled, supervised visits with Monroe; to complete a psychological evaluation and follow any recommendations of the evaluator; to participate in individual and family therapy; to participate in Family Drug Court; and to maintain adequate legal income to support Monroe and provide a safe and stable residence for him. At the permanency hearing in April 2008, after finding that Roy and Erin "remain non-compliant with the case plan, that the plan has been in effect for more than 15 months and that there has not been substantial progress," the juvenile court changed the case plan goal from reunification to severance and adoption. That same month, ADES filed a motion to terminate the parents' rights, alleging as to Roy "[m]ental illness/history of chronic substance abuse" pursuant to § 8-533(B)(3) and length of time in care pursuant to § 8-533(B)(8)(b). Following a four-day contested severance hearing, the court terminated Roy's parental rights pursuant to § 8-533(B)(8)(b) based on Monroe's having been out of the home for fifteen months or longer.[4]

¶5 Roy argues the juvenile court should not have considered his ongoing relationship with Erin as a failure to comply with his case plan when the plan did not specifically require that he stop seeing her. *See Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, ¶ 35, 152 P.3d 1209, 1215 (App. 2007) (parent must be given notice of

[4]On the second day of trial, the juvenile court granted ADES's request to withdraw the mental illness/substance abuse ground.

circumstance upon which severance may be based). Although the case plan may not have expressly required Roy to end his relationship with Erin, the evidence presented at the severance hearing established that he had been repeatedly told to stop seeing her if he wanted to regain custody of Monroe. And, as noted above, the case plan required Roy to complete a psychological evaluation, follow the recommendations of the evaluator, and maintain a safe and stable residence. The record reflects that Roy failed to comply with these requirements as long as he maintained an ongoing relationship or co-residence with Erin.

¶6 Child Protective Services (CPS) investigator Alexis Montiel-Kirkendall testified that she had told Roy she would not place Monroe with him if Erin was living with him. CPS case manager Shirley Sorensen also testified that, although the case plan did not specifically order Roy and Erin to stop seeing one another, she had continuously told them to do so, a fact that was disclosed to the juvenile court through her reports. Therapist Jean Wortman testified that one of her goals in working with Roy was to help him clarify his relationship with Erin and "set boundaries" with her and that Wortman had advised Roy it was "important not to continue to have contact" with Erin. Wortman testified about a December 2007 domestic violence incident between Roy and Erin, and CPS case manager Amanda Cannon testified about another such incident between them that occurred in April 2008, a fact Roy confirmed at trial. Roy and Erin ultimately obtained restraining orders against each other.

¶7 In addition, psychologist Ralph Wetmore, who evaluated Roy in 2007, testified that he had recommended Monroe not be placed with Roy as long as Roy maintained a relationship with Erin and that permitting Erin and Monroe to live in Roy's trailer posed a safety risk in light of Erin's use of illegal drugs. Wetmore had recommended, inter alia, that the "living situation between Roy and his wife and [Erin] should be clarified and stabilized" before Monroe be permitted to live with Roy. Again, Roy violated the case plan by failing to follow that recommendation and to provide a safe and stable residence for Monroe.

¶8 Even assuming, arguendo, that the juvenile court improperly relied on Roy's failure to comply with a requirement not set forth in the case plan, it is clear from the court's ruling that it would have terminated his parental rights in any event. In its ruling, the court listed Roy's failure to accomplish the following goals of his case plan: resolve issues in his relationships with his wife and Erin, regularly attend supervised and scheduled visits with Monroe, resolve issues regarding conditions in the home and problems with his parenting style, return for counseling in May 2008, obtain and maintain stable housing and income, and provide verification of income.

¶9 Despite Roy's argument that he participated in the services offered under the case plan, the record shows he did not, in fact, satisfy the case plan's requirements or remedy the circumstances that had caused Monroe's out-of-home placement. Most notably, he had not bonded with Monroe, had not consistently attended scheduled visits, had not benefitted from counseling and parenting instruction, and had failed to secure stable housing and verify

consistent income. Wortman testified that, because Roy had made "no changes" as a result of their therapy sessions, she had terminated future sessions with him. Based on Cannon's observations that Roy had been unable "to put Monroe ahead of himself or other people in his life" or "to know what a child's needs are . . . [or] how to interact with the child" and on his having failed to maintain a safe home for Monroe or to verify his income, she concluded that Roy was "not able to properly parent Monroe now or in the near future." Cannon explained, "[J]ust because you go to a class does not mean that you've learned from it, and if you didn't learn from it, then that case plan task is not complete."

¶10 Roy also contends the termination ruling was inadequate because the juvenile court failed to expressly state "there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future." *See* § 8-533(B)(8)(b). But he does not cite any authority requiring any express finding. And, although Roy is correct that the court's ruling does not contain the specific statutory language, the court nonetheless found "by clear and convincing evidence that the allegations in the motion for termination of parental rights ha[d] been proven as to the father." Thus, the language Roy complains is missing from the court's ruling was present in the motion for termination, the allegations of which the court expressly found proven in terminating Roy's parental rights.

¶11 Roy next argues that, because three other children were permitted to remain in his home, "he has made a prima facie rebuttal of the conclusion that he is unfit to parent"

Monroe. However, those children are not the subject of this proceeding, and their circumstances are not relevant to this appeal. In addition, Roy and Erin are not the mutual parents of any of those children. *Cf. Kimu P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 39, ¶ 12, 178 P.3d 511, 514 (App. 2008) (evidence regarding child born during severance proceeding not relevant to determination whether severance was in best interests of older siblings).

¶12 Finally, Roy argues that, because he "substantially complied with the case plan" and because the court allowed him to continue parenting his other children, the record does not support a finding that termination was in Monroe's best interests. To sustain such a finding, ADES was required to establish that Monroe would either benefit from the severance or be harmed if the parental relationship continued. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004).

¶13 Monroe was placed with his maternal grandmother in January 2007, shortly after he was born. He has remained in that placement throughout the dependency proceeding.[5] Cannon testified that Monroe has a "very loving and bonded relationship" with the maternal grandmother and her husband, who are willing to adopt him, and that, even if they do not adopt Monroe, he is an adoptable child. *See Audra T. v. Ariz. Dep't of Econ.*

[5]To the extent Roy suggests he was prevented from visiting Monroe because he was placed with a relative in another state, the record does not support that claim. Nor does the record support his claim he had been denied visits with Monroe since June 2007. Accordingly, to the extent his otherwise unsupported argument that ADES failed to provide him with appropriate services relies on these factors, we reject that claim. To the extent Roy also suggests a failure to provide him with adequate services affected the court's best interests ruling, we reject that contention as well.

Sec., 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998) (juvenile court could consider whether current adoptive plan existed, whether child is adoptable, or whether existing placement is meeting his needs). Cannon also testified that termination of both parents' rights was in Monroe's best interests, permitting him to be "adopted into a family that is stable [and] has the ability to provide him . . . with what a child needs." The record supports the court's conclusion that terminating Roy's parental rights to Monroe was in Monroe's best interests.

¶14 Having reviewed the entire record, we have found abundant evidence to support the juvenile court's order terminating Roy's parental rights to Monroe. Therefore, we affirm that order.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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PHILIP G. ESPINOSA, Judge