

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND 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.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JOSEPH C.,)	
)	
Appellant,)	2 CA-JV 2009-0041
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ARIZONA DEPARTMENT OF)	Rule 28, Rules of Civil
ECONOMIC SECURITY, ADAM C.,)	Appellate Procedure
ISAAC C., and MICHAEL C.,)	
)	
Appellees.)	
)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17918300

Honorable Leslie B. Miller, Judge

AFFIRMED

Jacqueline Rohr

Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Pennie J. Wamboldt

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

V Á S Q U E Z, Judge.

¶1 Joseph C. appeals from the juvenile court’s order of April 8, 2009, terminating his parental rights to his children—Michael, Isaac, and Adam—on grounds of neglect, *see*

A.R.S. § 8-533(B)(2), and Joseph’s inability to rectify the circumstances that caused the children to remain in a court-ordered, foster placement for a cumulative period of fifteen months or longer, with no substantial likelihood by the time of the contested termination hearing that Joseph would be able to parent effectively in the near future, *see* § 8-533(B)(8)(c).¹ Joseph challenges the sufficiency of the evidence to sustain either statutory ground or to establish that terminating his parental rights was in the children’s best interests. We affirm.

¶2 Before it may terminate a parent’s rights, a juvenile court must find by clear and convincing evidence the existence of at least one statutory ground for severance, and it must find by a preponderance of the evidence that terminating the parent’s rights is in 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).

¶3 On appeal, we view the evidence in the light most favorable to sustaining the juvenile court’s ruling, *Lashonda M. v. Ariz. Dep’t of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 928 (App. 2005), and we accept the court’s findings of fact as long as substantial evidence exists to support them. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶ 4, 210 P.3d 1263, 1264 (App. 2009). We will affirm the court’s ruling “‘unless we must say as a matter of law that no one could reasonably find the evidence [supporting statutory

¹The motion for termination also alleged chronic substance abuse as a ground for termination pursuant to § 8-533(B)(3). The juvenile court’s ruling is silent with respect to that allegation.

grounds for termination] to be clear and convincing.” *Id.* at ¶ 10, quoting *Murillo v. Hernandez*, 79 Ariz. 1, 9, 281 P.2d 786, 791 (1955).

¶4 Because the pertinent facts are set forth in considerable detail in the juvenile court’s minute entry ruling, we need not repeat them here. In summary, Michael, Isaac, and Adam were removed from their parents’ custody for an eleven-day period in August 2006 based on unsanitary and unsuitable conditions in the family home, a five-year history of other reports to Child Protective Services (CPS) alleging abuse and neglect of the children, and the parents’ refusal to cooperate with services CPS had previously offered them.² The Arizona Department of Economic Security (ADES) filed a dependency petition on August 10, 2006. CPS returned the children to their parents’ custody on August 18 and referred the family for a variety of in-home services including individual and family counseling and parenting-skills training.

¶5 The children were adjudicated dependent by stipulation in October 2006,³ and the provision of in-home services continued “through February 2007. At that time, the

²The juvenile court simultaneously severed the parental rights of the children’s mother, Sarah. She has filed a separate appeal from the termination order.

³The adjudication was predicated on Joseph’s admission to the following allegations in an amended dependency petition. When a CPS investigator went to the family home in August 2006 accompanied by a police officer, the officer reported finding the children’s bedroom “unlivable, with cat feces, cat litter, and clothing strewn throughout,” and finding the kitchen full of dirty pots, pans, and dishes with very little food in the refrigerator. The parents had been the subject of several CPS investigations since 2002, “cannot keep a safe, sanitary, and appropriate home for the children,” and “have been unwilling to cooperate with CPS.” Further, Joseph admitted that he is mentally ill, has a case manager through CODAC Behavioral Health Services, “exhibits unstable behaviors,” and had on occasion prevented his children’s access to the bathroom by locking interior doors in the family home.

workers assigned to the family felt that the family had made progress and were no longer requiring intensive intervention.” On September 27, 2007, however, after receiving a report that the mother had hit one of the children and they were afraid to go home from school, CPS again removed all three children and placed them in foster care.

¶6 Although CPS continued to offer the parents extensive services aimed at rehabilitating and reunifying the family, Joseph remained almost entirely noncompliant with his case plan tasks. After a permanency hearing in December 2008, the juvenile court changed the permanent case plan goal from reunification to severance and adoption. When the motion to terminate Joseph’s parental rights was filed in December 2008, ten-year-old Michael, eight-year-old Isaac, and six-year-old Adam had been living continuously in a foster placement for almost fifteen months.

¶7 Joseph contends there was not clear and convincing evidence to support the termination of his rights under either of the statutory grounds the juvenile court found proven. We may affirm the court’s order if we find the evidence sufficient to sustain either ground and need not consider arguments pertaining to any other grounds. *See Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶¶ 12, 27, 995 P.2d 682, 685, 687 (2000). Here, we need not address Joseph’s contention that the evidence was insufficient to establish he had neglected the children for purposes of § 8-533(B)(2) and A.R.S. § 8-201(21) because we find ample evidence supported the court’s termination of his parental rights pursuant to § 8-533(B)(8)(c).

¶8 To justify severance under § 8-533(B)(8)(c), ADES was required to prove that it had “made a diligent effort to provide appropriate reunification services,” § 8-533(B)(8), and that the children

ha[d] been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order . . . , the parent has been unable to remedy the circumstances that cause the child[ren] to be in an out-of-home placement and 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.

§ 8-533(B)(8)(c). Joseph challenges the sufficiency of the evidence with respect to only one of those components, contending there was “no evidence to support the supposition” that he was substantially unlikely to be able to provide proper and effective parenting “in the near future.”

¶9 As ADES notes, CPS had received a number of earlier reports alleging the parents’ abuse and neglect of the children dating back as far as 2001, and CPS had offered the family day care for the children and other assistance as a result of those reports. Despite the length of time the dependency action had been pending, between August 2006 and March 2009 Joseph had resisted participating in many of the reunification services that were offered him and had made no demonstrable improvement in his ability to parent.

¶10 After a family psychological evaluation performed in June 2008, Drs. Michael German and Edward Lovejoy concluded that both parents had “shortcomings and weaknesses that they will be unable to overcome in terms of being able to parent the children.” The psychologists wrote:

Most importantly, Joe and Sarah are remarkably defensive and unwilling to accept even a minimum of responsibility for the problems in their family. They go to excess in blaming everyone but themselves Without accepting and owning responsibility for their flaws, we don't see how these two people can make any extent of change and improvement.

. . . .

Any chance that these parents could make the necessary changes that would enable them to take care of the children is neutralized by their extreme defensiveness, refusal to listen to anyone, and almost absolute blaming of others.

As a result, the psychologists concluded, and Dr. German testified, that “the prognosis for these two parents [i]s extremely bleak.”

¶11 Although the psychologists' report stopped short of employing the verbatim language of the statute, their conclusions supply clear and convincing evidence to support the juvenile court's finding that there was no “substantial likelihood” that Joseph would be “capable of exercising proper and effective parental care and control in the near future.” § 8-533(B)(8)(c). We therefore reject Joseph's assertion that there was insufficient evidence to justify the termination of his parental rights based on that ground.

¶12 Joseph's second, rather cursory contention is that ADES did not prove, and the juvenile court did not properly and explicitly find, that terminating his rights was in the children's best interests. He notes that the children expressed a desire to be reunited with their parents and claims “[n]o harm was identified [from] the continuation of the parent[-]child relationship and no benefit was identified for the minors as a result of granting the state's motion.” *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 334, ¶ 6, 100 P.3d

943, 945 (App. 2004) (“To establish that terminating . . . parental rights was in the children’s best interests, ADES was required to show that the [children] would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship.”).

¶13 Evidence that continuing the relationship with their parents would be harmful to the children included the testimony of Dr. German that the oldest child, Michael, had become “parentified” as the result of his parents’ inadequacy or ineffectiveness; that Isaac, the middle child, was unusually aggressive; and that the children appeared to mimic their parents’ behavior and attitudes, becoming angry, defensive, hostile, and aggressive after contact with their parents. As German testified, “the parents’ contact with the children upset the children and cause[d] them to behave in a way that is disruptive to their setting,” whether that setting was a therapy session or their foster home placement.

¶14 Rachel Barcelo, the family’s ongoing case manager, testified that, approximately a year before the contested termination hearing, all visitation had been stopped, based in part on the opinion of the children’s therapist that the visits were having a negative effect on the children’s behavior and that even therapeutic visits were not in the children’s best interests. In addition, Barcelo testified that the children are adoptable, that returning them to their parents would be unsafe, and that terminating both parents’ rights was in the children’s best interests. In short, the record belies Joseph’s claim that there was insufficient evidence to permit the juvenile court’s finding that terminating his rights was in the best interests of the children.

¶15 Because the evidence was sufficient to support the termination of Joseph's parental rights pursuant to § 8-533(B)(8)(c) based on the length of the children's out-of-home placement, we do not consider his arguments pertaining to the alternative ground of neglect pursuant to § 8-533(B)(2). *See Michael J.*, 196 Ariz. 246, ¶¶ 12, 27, 995 P.2d at 685, 687. And, because substantial evidence also supported the juvenile court's finding that severance was in the best interests of the children, we affirm its order of April 8, 2009, terminating Joseph's parental rights to Michael, Isaac, and Adam.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge