

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.

FILED BY CLERK
DEC 18 2008
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MICAH D.,)	
)	
Appellant,)	2 CA-JV 2008-0067
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ARIZONA DEPARTMENT OF)	Rule 28, Rules of Civil
ECONOMIC SECURITY,)	Appellate Procedure
SAMANTHA D., and KC D.,)	
)	
Appellees.)	
)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17773100

Honorable Suzanna S. Cuneo, Judge Pro Tempore

AFFIRMED

Nuccio & Shirly, P.C.
By Salvatore Nuccio

Tucson
Attorneys for Appellant

Terry Goddard, Arizona Attorney General
By Claudia Acosta Collings

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

ECKERSTROM, Presiding Judge.

¶1 Micah D., father of Samantha D. and KC D., born in 2003 and 2005, respectively, appeals from the juvenile court’s order terminating his parental rights to his children based on the length of time the children had spent in a court-ordered, out-of-home placement.¹ See A.R.S. § 8-533(B)(8)(b) (now renumbered as A.R.S. § 8-533(B)(8)(c), 2008 Ariz. Sess. Laws, ch. 198, § 2).² Micah argues there was insufficient evidence to support the findings that he was unable to remedy the circumstances that caused the children to remain in an out-of-home placement or that there is a substantial likelihood he will be unable to exercise proper and effective parental care and control in the near future. He also challenges the sufficiency of the evidence to support the finding that termination of his parental rights was in the children’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 any statutory ground for severance exists and if it 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); *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).

¹The juvenile court also terminated the mother’s parental rights to Samantha and KC and to another of her children, Scott. Neither the mother nor Scott are parties to this appeal.

²Because the juvenile court referred to the applicable subsection as (b), rather than (c), we will also do so in this decision.

¶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). In March 2006, then-six-year-old Scott called 911 to report that his mother and Micah were fighting. A Child Protective Services (CPS) investigator accompanied a sheriff's deputy to the home and found drug paraphernalia in addition to the following conditions:

The home was filthy. There [were] dirty dishes, and pots and pans in the sink approximately two feet high. There was broken glass on the floor where the children could have stepped on it or crawled through it cutting themselves. There was rotting food in the sink and on the counter. The refrigerator was moldy and had one gallon of milk in it. No other food was found in the home. All of the rooms were cluttered with clothing, trash, and animal feces that had been tracked all over the house. In one of the bedrooms, it appeared that one of the children had been playing with the feces because it had been thrown on the ceiling. The entire house smelled of animal feces and vomit. This odor was evident as the home was approached from the outside. The home was full of flies.

The children had not been bathed in many days. All of the children smelled of feces and vomit as did the home. The children's clothing was filthy and had not been laundered for an extended period of time. The children's hair was matted, filthy, full of debris and had a very strong foul odor.

The mother and the father stated that they had a dog breeding business with pit bulls and pit bull puppies on their property. There were approximately 12 pit-bull dogs and approximately 10 puppies. The animals were being neglected, having no food or water and they were contained in filthy kennels. There were several dead puppies in the front yard [in] plastic grocery bags.

¶4 Officers arrested Micah on outstanding warrants related to drug charges, arrested the mother for animal cruelty, and removed the children from the parents' custody. The Arizona Department of Economic Security (ADES) filed a dependency petition alleging Micah had been cooking methamphetamine in the home while the children were present. Micah admitted he had been "cleaning" cocaine, he had used cocaine the day the children were removed from the home, and he regularly used marijuana. In May 2006, the parents failed to appear for a settlement conference of which they had been provided notice, and the juvenile court adjudicated the children dependent as to both parents.

¶5 ADES provided various services to both parents in furtherance of the initial case plan goal of reunification. Micah does not appear to dispute the adequacy of these services. At a continued permanency hearing in September 2007, the juvenile court changed the case plan goal from reunification to severance and adoption. ADES filed a motion to terminate both parents' rights in October 2007, alleging as to Micah the statutory grounds of mental illness or a history of chronic substance abuse, pursuant to § 8-533(B)(3), and length of time in care, pursuant to § 8-533(B)(8)(a) and (b). On the final day of a contested severance hearing that spanned seven days between February and June 2008, the court terminated both parents' rights pursuant to § 8-533(B)(8)(b), based on the children's having been out of the home for fifteen months or longer.

¶6 To terminate Micah's parental rights pursuant to § 8-533(B)(8)(b), the juvenile court was required to find that Micah had been unable to remedy the circumstances that caused the children to remain in a court-ordered, out-of-home placement for fifteen months

or longer and that he was substantially unlikely to be able to parent adequately in the near future. The court made these findings, but Micah contends ADES did not provide sufficient evidence to support them, arguing that “[n]othing in the record demonstrates that the parents were still unable to adequately parent the children.”

¶7 Micah did not meaningfully participate in the services offered by ADES until more than one year after the children had been removed from the parents’ custody. Services with Arizona Families First (AFF) were formally terminated in May 2006 because Micah failed to maintain contact with AFF. Between April 2006 and June 2007, Micah either tested positive for drugs or failed to call in or provide urine and hair samples as the case plan required. He tested positive for methamphetamine and marijuana in May and June 2007, respectively.

¶8 Psychologist Lorraine Rollins evaluated Micah in 2006. In her written report, Rollins wrote that Micah could not adequately care for the children unless he made “genuine change through therapy.” She noted that, although Micah stated he wanted to help his children, his actions were inconsistent with his words. She further reported he “seem[ed] inclined to project blame onto others rather than acknowledge his own weaknesses” and that his denial of his problems would impede his “making genuine change.” Rollins testified she was concerned about Micah’s history of substance abuse, including recent charges for driving under the influence of an intoxicant, and that he would need to “show abstinence completely of all substances, including alcohol, on a consistent, ongoing basis” to convince her the children should be returned to him. Rollins viewed the prognosis for Micah’s being

able to care for the children in the foreseeable future as “poor.” Notably, she concluded Micah would be unable to adequately parent the children for a prolonged, indeterminate period of time.

¶9 CPS case manager Suzette Millet reported that, more than a year after the children had been removed and services put in place, the parents still had not complied with the case plan. She wrote: “Despite the completion of services and the negative drops provided since June 2007, the parents continue to put their own spin on why the children came into care, the reasons for the filthy conditions, the reasons for their children’s behaviors and health.” Millet testified at the severance hearing that the parents had begun to visit the children regularly only during the year before the hearing. She also testified the parents had not successfully completed anger management classes, attained stable housing, maintained consistent employment, or complied with the random drug-screening protocol, as the case plan required. Millet concluded that terminating the parents’ rights to the children was the most appropriate direction for the family.

¶10 Substance-abuse counselor Jonathan Kandell testified that Micah had rejected the case plan recommendation that he participate in individual therapy and had told Kandell he “didn’t need to work on those particular issues.” Kandell explained he had not forced Micah to attend therapy because insisting on therapy with an unwilling client is pointless and is “not good practice.” Millet similarly reported that Micah’s therapist had informed her therapy would not be beneficial “due to [Micah’s] low level of motivation.” Micah and the mother also declined to participate in couples’ therapy. In addition, addiction-therapy

counselor David Trowbridge testified that, although Micah had attended and benefitted from forty or fifty group therapy sessions, Trowbridge had nonetheless recommended Micah continue with individual counseling and drug testing because “he ha[d] been spotty with his recovery skills.”

¶11 Although Micah acknowledges that “it may have taken the parents some time to engage in services,” he contends that, because they ultimately did so, the juvenile court should not have terminated their parental rights. The court, however, commented as follows at the end of the severance hearing:

If you read these [CPS] reports all the way to the first permanency report, that’s what they say, denial, denial, denial, denial. CPS needs to meet my terms, I don’t want to meet their terms, over and over and over again. That first year was lost. I agree, light bulbs went on in about a year. That didn’t mean the story was over, that meant the beginning.

¶12 Micah also contends ADES did not present sufficient evidence to support the juvenile court’s finding that severance of his rights was in the children’s best interests; he claims it is “clearly” not in their best interests to grow up in separate homes. ADES was required to establish either that the children would benefit if Micah’s rights were terminated or that continuing the parent-child relationship would be detrimental to them. *See Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004). In making its assessment, the court could consider whether a current adoptive plan existed, whether the children are adoptable, or whether their existing placements are meeting their needs. *Id.*; *Audra T. v. Ariz. Dep’t of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998).

¶13 Millet testified that the children are in prospective adoptive placements in which they are thriving. She testified further that the two families with whom the children had been placed are willing to facilitate sibling visitation. Millet concluded that delaying permanent placement of the children was not in their best interests and explained that they had “expressed some anxiety . . . [about] where they were going.” Phillip Fowler, the court appointed special advocate who had visited the children almost monthly while the dependency was pending, noted the vast improvements the children had shown and testified that Samantha and KC are comfortable in their prospective adoptive home. He opined that termination was in the children’s best interests.

¶14 Micah points to evidence in the record that he maintains is in his favor. He notes the testimony of Gabriella Olea, a visitation facilitator at Casa de Los Niños, who testified she had been working with the parents since October 2007 and the family was one of the “best interactive families” she had ever supervised. But it was for the juvenile court to consider and weigh the evidence presented and resolve any conflicts in that evidence. *See In re Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987) (as fact-finder, juvenile court is in best position to weigh evidence and judge credibility of witnesses). We do not reweigh the evidence on appeal. *See id.*

¶15 The record establishes the juvenile court ordered the parents’ rights terminated at the conclusion of the hearing after carefully considering the evidence presented. The court repeatedly emphasized that, although the parents had made progress in the two years since the dependency began, their failure to engage in the reunification process earlier had

strongly influenced the court’s ruling. *See In re Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 577, 869 P.2d 1224, 1230 (App. 1994) (“Leaving the window of opportunity for remediation open indefinitely is not necessary, nor do we think that it is in the child’s or the parent’s best interests.”). The court characterized denying severance as a “crapshoot”; noted that it had no idea, after two years, if the parents could cope with the stress of raising three children, “despite monumental numbers of services provided” to them; and concluded that the risk to the children in denying severance was too great. In finding termination of Micah’s parental rights was in the children’s best interests, the court noted: “These children are in stable homes. They are in adoptive homes. I believe based on the testimony, everything I heard, there’s a commitment to the sibling contact.” The record supports the court’s factual findings and establishes the court properly exercised its discretion.

¶16 Abundant evidence supports the juvenile court’s order terminating Micah’s parental rights to Samantha and KC. Therefore, we affirm that order.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

PHILIP G. ESPINOSA, Judge

GARYE L. VÁSQUEZ, Judge