

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



DIVISION ONE
FILED: 04/10/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

EDWARD B. ,) 1 CA-JV 11-0235
)
Appellant,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G), Ariz. R.P. Juv.
SECURITY, EDWARD B. ,) Ct.; Rule 28, ARCAP)
)
Appellees.)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD20409

The Honorable Aimee L. Anderson, Judge

AFFIRMED

Robert D. Rosanelli, Attorney at Law Phoenix
by Robert D. Rosanelli
Attorney for Appellant

Thomas C. Horne, Attorney General Phoenix
by Michael F. Valenzuela, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

P O R T L E Y, Judge

¶1 Edward B. ("Father") appeals the determination that his son is dependent and the termination of the in-home dependency case plan. For the following reasons, we affirm.

FACTUAL¹ AND PROCEDURAL BACKGROUND

¶12 The Arizona Department of Economic Security's ("DES") Child Protective Services took the newborn into its custody in June 2011 because both he and J.G.² ("Mother") tested positive for methamphetamine. DES filed a dependency petition and alleged that Father, while living with Mother during the pregnancy and being aware of her drug addiction, "neglected his child by failing to protect the child from Mother's substance abuse while pregnant with the child." Father contested the action. The court set a dependency hearing and, at DES's request, placed the child with Father.

¶13 At the hearing, Father testified that he found out about Mother's methamphetamine use shortly after they reconnected in August 2010. He, however, believed that she had stopped using drugs before she learned she was pregnant. She moved in with him two weeks later, but moved out approximately one month before the child was born. They had limited contact until she reappeared two days before the birth. Father testified he was surprised to learn that his son was born substance-exposed, and that he had not had unauthorized contact

¹ "On review of an adjudication of dependency, we view the evidence in the light most favorable to sustaining the juvenile court's findings." *Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, 235, ¶ 21, 119 P.3d 1034, 1038 (App. 2005) (citation omitted).

² Mother has not appealed the dependency ruling.

with Mother since the birth. In addition to working and providing a safe home environment for his son, he had been following the case plan and other instructions from DES.

¶4 The case manager testified that because Father had not disclosed his aliases, DES did not know his complete criminal history when it endorsed the physical custody arrangement.³ Father also did not notify DES about a September 2011 criminal complaint or his subsequent arrest. Nevertheless, DES had no concerns about his parenting skills so long as services remained in place and additional services were added, as necessary. The case manager testified there was nothing Father could have done to protect the unborn child other than to encourage Mother to enter a substance abuse program if he knew she was using drugs. And, although DES was concerned about Father allegedly allowing Mother to have unsupervised visits, the case manager continued to support the in-home dependency "[b]ecause the services that we have had in place are working."⁴

¶5 After considering the testimony and exhibits, the court found that Mother used methamphetamine for the first four

³ Father had only disclosed two of his six prior felony convictions. While the case manager would not have recommended that Father receive physical custody if he had known Father's entire criminal history, he supported continuing the in-home dependency based on Father's parenting abilities and bonding with the child.

⁴ The case manager testified that the child was safe in Father's care so long as DES remained involved.

months of her pregnancy, and that Father: knew about her drug use history; forced her to move out when she was eight months pregnant, which increased the child's risk of drug exposure; and "has a significant history of placing children at risk of abuse and neglect." Consequently, the court found that the child was dependent. The court then set aside the in-home dependency, returned physical custody to DES, and changed the case plan to family reunification concurrent with severance and adoption.

¶16 We have jurisdiction over Father's appeal pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 8-235(A) (West 2012) and 12-2101(B) (West 2012).⁵

DISCUSSION

¶17 Father argues that the court erred when it found that his son was dependent and rescinded the in-home dependency order. We review dependency and placement orders for an abuse of discretion, and will affirm if the court's factual findings are supported by the evidence and not clearly erroneous. *Pima Cnty. Juv. Dependency Action No. 118537*, 185 Ariz. 77, 79, 912

⁵ DES argues that Father's appeal is moot because he did not appeal the subsequent review hearing where the court affirmed the dependency and case plan. We reject the argument. Although an order reaffirming a dependency finding is a final order, *Yavapai Cnty. Juv. Action No. J-8545*, DES does not cite any authority for the proposition that a determination made at a review hearing supersedes the initial adjudication. 140 Ariz. 10, 14, 680 P.2d 146, 150 (1984). Consequently, the appeal is not moot.

P.2d 1306, 1308 (App. 1994) (citations omitted); *Antonio P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 402, 404, ¶ 8, 187 P.3d 1115, 1117 (App. 2008) (citation omitted). We review any legal issue involving statutory interpretation or other question of law de novo. *Ariz. Dep't of Econ. Sec. v. Superior Court (Chavez)*, 186 Ariz. 405, 408, 923 P.2d 871, 874 (App. 1996) (citation omitted).

I. Dependency Finding

¶8 Father argues that the dependency ruling was clearly erroneous because it was not supported by substantial evidence. We disagree.

¶9 The juvenile court is vested with considerable discretion to determine whether dependency is in a child's best interest. See *Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, 235, ¶ 21, 119 P.3d 1034, 1038 (App. 2005) (citations omitted). A "dependent child" is one "whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian or any other person having custody or care of the child." A.R.S. § 8-201(13)(a)(iii) (West 2012).⁶

¶10 Despite Father's belief that Mother did not use drugs after learning she was pregnant, Mother reported that she used drugs during the first four months of her pregnancy and the

⁶ We cite the current version of the applicable statute because no revisions material to this decision have occurred since the hearing and order.

medical evidence indicated that she was about two months pregnant when they learned that she was pregnant. Father knew about her drug abuse history, knew that she had used drugs since they began to see each other, and did not attempt to ensure that she would not continue to use drugs after they discovered she was pregnant. He also placed her in a position which, more than likely, compelled her to return to a drug environment and use drugs; namely, that toward the end of her pregnancy, he decided that her other children could no longer visit with her at his sister's house, where they were staying. As a result of his decision, she left until just days before giving birth and, in the meantime, exposed their unborn child to methamphetamine.

¶11 Furthermore, although the case manager was sympathetic, he testified he was unsure whether Father could adequately care for his son without DES's involvement. He also noted that Father was not candid with DES about the extent of his criminal history, which included acts of domestic violence. The court considered all of the evidence and was "in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4, 100 P.3d 943, 945 (App. 2004) (citation omitted). The court determined that DES had proven its case by a preponderance of the evidence. *See Pima Cnty. Juv. Dependency Action No. 118537*,

185 Ariz. at 79, 912 P.2d at 1308 (citation omitted). Because we defer to the court's factual findings, we do not find that the dependency finding was an abuse of discretion. See *Oscar O.*, 209 Ariz. at 334, ¶ 4, 100 P.3d at 945 (citation omitted).

II. Placement Order

¶12 Father next argues that the court erred when it rescinded the in-home dependency order. We disagree.

¶13 The court set aside the order because Father had withheld alias information that prevented DES from discovering the full extent of his criminal history, and had not disclosed the 2011 criminal complaint or his subsequent arrest.⁷ The court also considered evidence that he had allowed his sister to have weekend visits with the newborn without DES authorization. As a result, sufficient evidence supported the court's decision to remove the child from Father's custody. See *Antonio P.*, 218 Ariz. at 404, ¶ 8, 187 P.3d at 1117 (citation omitted) (juvenile court has substantial discretion to determine best placement for dependent child); *Maricopa Cnty. Juv. Action No. JD-6236*, 178 Ariz. 449, 451, 874 P.2d 1006, 1008 (App. 1994) (citation omitted) (same); see also A.R.S. § 8-845(A)(6) (West 2012) (court may award dependent child "[t]o an appropriate public or

⁷ Contrary to his argument that the court improperly considered the pending charges, the court specifically said that it was "not concerned about criminal charges that he may be facing."

private agency licensed to care for children"). We find no error.

CONCLUSION

¶14 Based on the foregoing, the dependency and placement orders of the juvenile court are affirmed.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

ANN A. SCOTT TIMMER, Judge

/s/

ANDREW W. GOULD, Judge