

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK
MAR 25 2008
COURT OF APPEALS
DIVISION TWO

MANUEL M.,)
)
Appellant,) 2 CA-JV 2007-0071
) DEPARTMENT B
)
v.) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF) Appellate Procedure
ECONOMIC SECURITY, LEILA M.,)
and ALAYANA M.,)
)
Appellees.)
_____)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17003500

Honorable Charles S. Sabalos, Judge

AFFIRMED

Joan Spurney Caplan

Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Dawn R. Williams

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

ECKERSTROM, Presiding Judge.

¶1 Appellant Manuel M. appeals from the juvenile court’s order of August 13, 2007, terminating his parental rights to his five-year-old daughter, Leila, and his four-year-old daughter, Alayana. In a contemporaneous published opinion, we separately address Manuel’s arguments regarding the constitutionality and effect of Rule 66(D)(2), Ariz. R. P. Juv. Ct.; in this memorandum decision, we address Manuel’s remaining claim of insufficiency of the evidence. *See* Ariz. R. Sup. Ct. 111(b), (h); *see also* Ariz. R. Civ. App. P. 28(b), (g) (providing for partial publication of decision).

¶2 We will affirm a termination order unless no reasonable evidence supports it and the order is clearly erroneous. *Jennifer B. v. Ariz. Dep’t of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997). We view the evidence in the light most favorable to affirming the juvenile court’s findings, *see In re Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994), and recognize that the juvenile court, as the trier of fact in a severance proceeding, is 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, ¶ 4, 100 P.3d 943, 945 (App. 2004). We do not reweigh the evidence. *See Lashonda M. v. Ariz. Dep’t of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 927 (App. 2005).

¶3 The facts and procedural history of this case may be found in our published opinion, and we will not repeat them here. Manuel argues that his February 2007 arrest for possessing marijuana for sale was the only circumstance that had changed since his daughters

were placed with him in October 2006 and that an arrest, without an adjudication of guilt, provided an insufficient basis to change the case plan's goal from reunification to severance or to terminate his parental rights. But Manuel's arrest was not the only circumstance the court considered.

¶4 Although Manuel had apparently made past strides in his ability to parent his children, he had never been fully compliant with the requirements of his case plan and had failed to participate in services to address his drug-dependence issues. In February 2007, despite the substantial services and time invested in facilitating Manuel's reunification with his daughters, he left his children with an unauthorized caregiver in a home without basic utility services. Regardless of whether he was likely to be convicted of the criminal charges against him, Manuel had, at minimum, placed himself in a position of suspicion; as a result, he faced the same kind of legal issues that had initially prevented him from parenting his daughters almost three years earlier.

¶5 On this record, reasonable evidence supported the juvenile court's conclusions that Manuel had been unable to remedy the cause of his daughters' out-of-home placement and was substantially likely to be unable to parent adequately in the near future. *See* A.R.S. § 8-533(B)(8)(b); *see also In re Maricopa County Juv. Action No. JS-8441*, 175 Ariz. 463, 468, 857 P.2d 1317, 1322 (App. 1993) (circumstances causing out-of-home placement "mean those circumstances existing at the time of the severance" that prevent adequate parenting), *abrogated on other grounds by Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 12, 22,

110 P.3d 1013, 1016, 1018 (2005).¹ Because reasonable evidence in the record supported this ground for termination of Manuel’s parental rights, we need not consider whether ADES established the alternative ground alleged under § 8-533(B)(8)(a). *See In re Pima County Juv. Action No. S-110*, 27 Ariz. App. 553, 554, 556 P.2d 1156, 1157 (1976) (reasonable evidence supporting single statutory ground sufficient to sustain termination order).

Conclusion

¶6 The record contains reasonable evidence to sustain the court’s findings. For that reason, as well as those set forth in our separate opinion, we affirm the juvenile court’s order terminating Manuel’s parental rights.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

PHILIP G. ESPINOSA, Judge

GARYE L. VÁSQUEZ, Judge

¹We agree with ADES that Manuel has mentioned the juvenile court’s best-interests finding only in passing and fails to develop an argument that the finding was erroneous. We therefore do not address this aspect of the juvenile court’s termination order. *See State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989) (“Failure to argue a claim usually constitutes abandonment and waiver of that claim.”).