IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

LUIS M., *Appellant*,

v.

ARIZONA DEPARTMENT OF ECONOMIC SECURITY, E.M., *Appellees*.

No. 1 CA-JV 13-0070
FILED 11-5-2013

Appeal from the Superior Court in Maricopa County
No. JD20489
The Honorable Aimee L. Anderson, Judge

AFFIRMED

COUNSEL

Maricopa County Public Advocate, Phoenix
By Suzanne Sanchez

Counsel for Appellant

Daniel Saint, III, Attorney at Law, Phoenix
By Daniel Saint, III

Guardian Ad Litem for Child E.M.

MEMORANDUM DECISION

Presiding Judge Peter B. Swann delivered the decision of the Court, in which Judge Patricia K. Norris and Judge Andrew W. Gould joined.

S W A N N, Judge:

¶1 Luis M. ("Father") appeals from the juvenile court's order terminating his parental rights to E.M. ("Daughter").[1] Because reasonable evidence supports the order, we affirm.

FACTS[2] AND PROCEDURAL HISTORY

¶2 Father and Amanda T. ("Mother") are the biological parents of Daughter, born in June 2009, and J.M. ("Son"), born in August 2010. Son died on October 6, 2010, from acute diphenhydramine and doxylamine intoxication, which are compounds found in over-the-counter allergy and cold medications. How two-month-old Son came to ingest the medication remains undetermined, but the record reflects the following.

¶3 On October 4, 2010, Mother took Son to a pediatrician for scheduled vaccinations. The next day Son developed a high fever and Mother called the pediatrician for advice. Mother initially told police that she had given Son children's Motrin as the pediatrician recommended. The pediatrician, however, told police that he would not have advised giving an infant any fever medication at such a young age. When police later interviewed Mother again, she maintained that the pediatrician had advised her *not* to give Son medicine for his fever and that she had *not* given him any medication. Father was present during Mother's call to the pediatrician, but did not comprehend the advice because he does not understand English.

---

[1] The caption has been amended to safeguard the identity of the juvenile pursuant to Administrative Order 2013-0001.

[2] We view the evidence in the light most favorable to affirming the juvenile court's order. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶4 On October 6, Father left home for work in the morning and returned at approximately 5:30-6:00 p.m. He told police that he left for another job at 7:00 p.m. and returned sometime after 8:00 p.m., but later testified that he left for the second job at 6:00 p.m. and returned at approximately 7:00-7:30 p.m. At some point after returning from his second job, Father checked on Son and discovered that Son had stopped breathing. Father testified that Mother immediately called relatives for help, who in turn called 9-1-1. Dispatch received the 9-1-1 call at 9:04 p.m., but the record provides neither a detailed nor consistent account of what happened between Father's return home and 9:04 p.m. Son was pronounced dead on scene at 9:17 p.m.

¶5 Son's autopsy, completed in March 2011, revealed that he had died from acute diphenhydramine and doxylamine intoxication. As a result, the Arizona Department of Economic Security ("DES") took custody of Daughter in June 2011. Father thereafter participated in every service that Child Protective Services ("CPS") offered him, but refused to accept CPS's offer to reunite with Daughter on the condition that he raise her without Mother. CPS never allowed unsupervised visitation with Daughter, and demanded that Father demonstrate some recognition of how Son died before it would agree to reunification.

¶6 In July 2011, DES filed a dependency petition as to Daughter, alleging that Son died from a medication overdose while in Mother and Father's care. The juvenile court found Daughter dependent as to Father and Mother, and ordered a case plan of family reunification with a concurrent case plan of severance and adoption.

¶7 In January 2012, Father's psychological evaluation concluded that he would be able to parent Daughter as long as CPS provided additional services and Mother's evaluation returned a similar prognosis. During the evaluation, Father did not explicitly dispute the autopsy report findings, but maintained that Son died from vaccine inoculations and possible urinary tract problems. At trial, Father's psychologist acknowledged that when a parent is unable to accept medical findings, it might impact his or her ability to parent other children. The psychologist further asserted that it was incumbent upon Father to recognize the cause of Son's death.

¶8 In May 2012, Daughter's guardian ad litem ("GAL") moved to terminate Father and Mother's parental relationship with Daughter, alleging that their abuse and neglect caused Son's death. Mother did not contest the motion and is not a party to this appeal. At trial, Father

testified that he had reviewed the autopsy report with Mother, who understands English, but no one else. Father claimed that he did not understand whether Son actually died from an overdose, but conceded that it was the reason DES removed Daughter from the home. Father further acknowledged that he and Mother were Son's only caretakers, and that Son was too young to ingest medication on his own. Nevertheless, Father repeatedly denied giving him any medication and denied any knowledge that Mother did. He also repudiated the logical conclusion that Mother must have administered the overdose if he had not. Based on the unexplained circumstances surrounding Son's death, the CPS case manager testified that terminating the parental rights was in Daughter's best interests.

¶9 The juvenile court found that the GAL had proven grounds for termination under A.R.S. § 8-533(B)(2) and that termination was in Daughter's best interests. Father timely appeals.[3]

STANDARD OF REVIEW

¶10 Because the juvenile court is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings, we accept the juvenile court's findings of fact unless no reasonable evidence supports them. *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 234, ¶ 13, 256 P.3d 628, 631 (App. 2011). We will not reverse a termination order unless it is clearly erroneous. *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997).

DISCUSSION

¶11 To terminate parental rights, a court must first find by clear and convincing evidence the existence of at least one statutory ground for termination. *See* A.R.S. § 8–533(B); Ariz. R.P. Juv. Ct. 66(C). Clear and convincing evidence is that which makes the alleged facts highly probable or reasonably certain. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 93, ¶ 2, 210 P.3d 1263, 1264 (App. 2009). The court must also find by a preponderance of the evidence that termination is in the best interests of

[3] DES did not file an answering brief on appeal, advising this court that Daughter's "guardian ad litem filed the underlying severance motion in this case. . . . [and] [t]he Department thereafter only minimally participated at the severance hearing."

the child. A.R.S. § 8–533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110 P.3d 1013, 1022 (2005).

¶12 Here, Father does not challenge the juvenile court's best-interests findings. He contends only that the GAL did not adequately prove the statutory ground for termination that the court found. We therefore limit our review to that issue.

¶13 The parent-child relationship can be terminated when a "parent has neglected or wilfully abused a child." A.R.S. § 8-533(B)(2). The statute defines abuse to include "serious physical or emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child." *Id.* "[P]arents who abuse or neglect their children, or who permit another person to abuse or neglect their children, can have their parental rights to their other children terminated even though there is no evidence that the other children were abused or neglected." *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 79, ¶ 14, 117 P.3d 795, 798 (App. 2005). When termination is based on abuse or neglect of another child, an adequate nexus must be established between the abuse or neglect of the other child and the risk of future abuse to a different child. *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, 283, ¶ 1, 257 P.3d 1162, 1163 (App. 2011).

¶14 In this case, the precise chain of events that led to Son's death remains undetermined. Regardless, we hold that clear and convincing evidence supported termination under A.R.S. § 8-533(B)(2). Father and Mother were Son's only caretakers and Father acknowledged that Son was too young to ingest medication on his own. Yet Father denied administering any medicine and denied any knowledge that Mother did. He also refused to acknowledge the strong likelihood that Mother must have given Son the medication that caused his death. Because Father was unable or unwilling to recognize the circumstances surrounding the death of his Son, Father created an inference that he would be unable or unwilling to protect his remaining child from harm.

¶15 Son's autopsy report clearly stated that Son died from acute diphenhydramine and doxylamine intoxication. Father reviewed the autopsy report with Mother's assistance and testified that he knew that it prompted CPS to remove Daughter from his care, yet at the termination hearing was unable to acknowledge Son's actual cause of death. Expert testimony supported the contention that Father's inability to accept medical findings could impact his ability safely to parent Daughter. On this record, we cannot say termination was based on insufficient evidence

or that the court abused its discretion in concluding termination was warranted under A.R.S. § 8-533(B)(2).

¶16 Although termination was appropriate under A.R.S. § 8-533(B)(2), the manner in which the court decided termination warrants comment even though Father did not address this issue on appeal. By statute and rule, the juvenile court is directed to make findings of fact in support of its termination order. A.R.S. § 8-538(A); Ariz. R.P. Juv. Ct. 66(F)(2)(a). The juvenile court did not do so here. First, neither at the conclusion of the termination hearing nor in its December 10, 2012 minute entry in which it advised the parties of its decision did the court make any findings.[4] Second, although the court directed the GAL to submit proposed findings of fact "consistent with the evidence" presented during the hearing, the findings of facts the GAL submitted, which the court accepted without change, did little more than quote A.R.S. § 8-533(B)(2) and reference Son's cause of death.

¶17 We recognize that termination proceedings are fact-intensive, and the workload of the juvenile court is heavy. But the court is required to make findings of fact, and such findings are of critical importance when the juvenile court is being asked to decide disputed issues, assess credibility, and terminate a right recognized as being "fundamental." *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248, ¶ 11, 995 P.2d 682, 684 (2000).

CONCLUSION

¶18 For the foregoing reasons, we affirm..

[4] We note the minute entry referred to the "reasons stated on the record in open court," but the hearing transcripts contain no "reasons stated on the record."