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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MICHAEL M., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, M.M., A.M., D.M., *Appellees*.

No. 1 CA-JV 16-0262
FILED 1-5-2017

Appeal from the Superior Court in Maricopa County
No. JD17155
The Honorable John R. Ditsworth, Judge

AFFIRMED

COUNSEL

David W. Bell Attorney at Law, Higley
By David W. Bell
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Daniel R. Huff
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Jon W. Thompson joined.

M c M U R D I E, Judge

¶1 Michael M. (“Father”) appeals from the juvenile court’s order terminating his parental rights to, M.M., A.M., and D.M. (“the Children”). For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Father and Yesenia R. (“Mother”) are the biological parents of M.M., A.M., and D.M., born in July 2011, October 2012, and November 2013, respectively.¹ In November 2013, the Department of Child Safety (“DCS”) received a report that Mother gave birth to D.M., a substance exposed infant. Mother admitted she used methamphetamine two days prior to giving birth to D.M. and both tested positive for amphetamines.

¶3 At the time of D.M.’s birth, Father was incarcerated as a result of a domestic-violence incident involving Mother. Both M.M. and A.M. were present when Father “slapped [Mother] around a bit” and had previously been exposed to domestic-violence incidents between Father and Mother. DCS took temporary custody of M.M., A.M., and D.M. in November 2013 upon learning of Mother’s history of drug abuse and the children’s exposure to methamphetamines and domestic violence.

¶4 DCS filed a dependency petition in December 2013 alleging that the children were dependent as to Father due to his incarceration and multiple incidents of domestic violence. Father contested the allegations and requested visitation with the children. The court confirmed the case plan of family reunification concurrent with severance and adoption, and ordered any services that were necessary and reasonable during Father’s incarceration.

¶5 Father was released in July 2014 and was offered a substance-abuse assessment, urinalysis testing, therapeutic visitation,

¹ Mother’s parental rights were severed in February 2016; she is not a party to this appeal.

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parent-aide services, case-management services, transportation, case-aide services, and domestic-violence classes through community resources. Father participated in therapeutic visits, substance-abuse classes, and urinalysis testing. In April 2015, the court changed the case plan to severance and adoption, and DCS later moved to sever Father's parental rights. Father contested these allegations and a contested severance hearing took place in May 2016.

¶6 At the severance hearing, the juvenile court heard testimony from Father, the children's therapist, the children's physical therapist, and the assigned case manager. The court granted DCS's motion, finding it had proven by clear and convincing evidence that "diligent efforts [were] made by the Department to provide appropriate reunification services." The court further found that Father was unable to remedy the circumstances that caused the out-of-home placement, and he was unlikely to exercise "proper and effective parental care and control in the near future." The court also found that termination was in the children's best interests. The court filed a formal order and Father timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution; Arizona Revised Statutes ("A.R.S.") section 8-235(A); and Arizona Rule of Procedure for the Juvenile Court 103(A).²

DISCUSSION

¶7 Father argues the juvenile court erred by granting DCS's motion to sever under A.R.S. § 8-533(B)(8)(c) by ruling that DCS made diligent efforts to reunify Father with the children, and by finding that severance was in the children's best interests.

¶8 To justify termination of Father's parental rights, the juvenile court is required to find the existence of at least one statutory ground by clear and convincing evidence. *Michael J. v. ADES*, 196 Ariz. 246, 249, ¶ 12 (2000). The court must also find by a preponderance of the evidence that termination is in the best interests of the child. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). The juvenile court is in the best position to weigh the evidence, observe the parties, judge the credibility of the witnesses, and make appropriate findings. *Jesus M. v. ADES*, 203 Ariz. 278, 280, ¶ 4 (App. 2002). Therefore, we view the evidence in a severance case in the light most

² Absent material revision after the relevant date, we cite a statute's current version.

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favorable to sustaining the juvenile court's findings. *ADES v. Matthew L.*, 223 Ariz. 547, 549, ¶ 7 (App. 2010).

¶9 DCS has an affirmative duty to make all reasonable efforts to preserve the family relationship. *Christina G. v. ADES*, 227 Ariz. 231, 234–35, ¶ 14 (App. 2011). In doing so, DCS must make reasonable efforts to provide parents the appropriate services, as well as “the time and opportunity to participate in programs designed to help [them] become an effective parent.” *Id.* at 235, ¶ 14 (quoting *Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994)). However, DCS is not required to provide every conceivable service, nor is it required to provide services that are futile or have no reasonable prospect of success. *Id.* at 235, ¶ 15; *Mary Ellen C. v. ADES*, 193 Ariz. 185, 186, ¶ 1 (App. 1999). To justify terminating a parent-child relationship under A.R.S. § 8-533(B)(8)(c), DCS must show that (1) the child has been in out-of-home placement for fifteen months or longer; (2) the parent has been unable to remedy the circumstances causing the child to be in out-of-home placement; and (3) a substantial likelihood existed that the parent would not be able to properly care for the child in the near future.

¶10 Father argues DCS failed to make reasonable efforts to provide appropriate reunification services.³ Specifically, Father argues that DCS failed to make a diligent effort and delayed in providing counseling so that he was unable to enjoy visitation with the children for nine months. Father also argues that he was not apprised of the children's medical appointments, and did not have a parent aide available to him. The juvenile court, however, found that DCS made diligent efforts to provide appropriate reunification services.

¶11 When DCS assumed custody of the children in November 2013, Father was incarcerated. DCS recommended Father take advantage of any service available to him while incarcerated in order to reach the goal of family reunification. Upon Father's release in July 2014, the court ordered Father to participate in substance abuse and assessment at TERROS; urinalysis testing at TASC; therapeutic visitation; and domestic-violence courses through community resources. However, Father did not make

³ Father does not challenge the fifteen months out-of-home placement or that he has failed to remedy the circumstances that caused the child to be in the placement. A.R.S. § 8-533(B)(8)(c). Father only argues that DCS failed to provide appropriate services under A.R.S. § 8-533(B)(8).

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contact with DCS until September 2014. Father did participate in individual counseling from November 2014 to August 2015.

¶12 DCS also offered parent-aide services. Father completed his initial parent-aide intake in November 2014. The parent aide had a difficult time contacting Father to set up meetings. Two meetings were scheduled in November 2014 and Father missed both. Although Father was approved for parent-aide services, the service was closed because therapeutic visits had to take place before he could visit with the children, and Father did not complete the intake. Therapeutic visitation was available in April 2015 and was completed in August 2015. After completing therapeutic visitation, Father met with a psychologist, who recommended that Father move forward with supervised visitation. Father began supervised visitation in November 2015 and was re-appointed a second parent aide in March 2016.

¶13 Father's DCS caseworker testified at the hearing that Father's participation in various services was sporadic, and some services were closed because of Father's lack of follow-through in coming to scheduled appointments. Although Father initially provided consistently negative urinalysis tests through TASC, the DCS case manager testified at trial that he missed 14 tests total. Father also testified at the severance trial that he "smoke[s] a lot of weed." Despite his domestic-violence counseling sessions, Father continued to deny fault or take any responsibility for the domestic-violence incident that resulted in his incarceration. Father deflected all blame on Mother, stating that "of course he was going to slap [Mother] around a bit," and that the child's medical condition was all Mother's fault, despite his use of methamphetamine with Mother during her pregnancy.

¶14 Father was afforded the opportunity to attend a Child and Family Team meeting to discuss the services the children required and to learn of the children's medical needs. Father was also provided with a list of medical appointments for each child in order to understand their medical needs. The children's physical therapist attempted to accommodate Father by making the appointments at a time when Father was available. Father not only failed to demonstrate an understanding of each of the children's needs, but failed to attend any of the medical appointments or Child and Family Team meetings, despite being apprised of the times and special accommodations being made so he could attend.

¶15 Despite all the efforts to educate Father regarding the children's medical needs, Father was not prepared to care for the children. Father testified that D.M. has "brain palsy and DDD" but did not know

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what specific medical services D.M. needs. Father testified that A.M. had “PTD something” but never attended any services with A.M., and said M.M. had a “face disorder” and attended speech therapy. Father testified that if he regained custody of the children, he would care for them by giving them all of his attention, working part time, and having his mom help him.

¶16 DCS was not required to provide Father with every conceivable service to aid him in reunification with his family. *Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. at 353. The record reflects that DCS did provide Father with the time and opportunity to take the appropriate steps toward reunification and to demonstrate his ability to care for the special needs of the children. Moreover, Father argued a lack of diligent services for the first time at trial. Father had the opportunity to raise the issue as early as September 2014 during a report and review hearing, and he failed to do so. Father’s failure to timely raise the issue prevented DCS from remedying any perceived problems at that time. *See Shawanee S. v. ADES*, 234 Ariz. 174, 177, ¶¶ 13–14 (App. 2014). Failing to object “needlessly injects uncertainty and potential delay into the proceedings, when important rights and interests are at stake and timeliness is critical.” *Id.* at 179, ¶ 16. We therefore conclude that the evidence is sufficient to support the juvenile court’s finding that DCS made a diligent effort to provide reunification services.

¶17 Father also argues that the juvenile court abused its discretion by finding that termination was in the children’s best interests. “[T]he best interests inquiry focuses primarily upon the interest of the child, as distinct from those of the parent.” *Kent K.*, 210 Ariz. at 287, ¶ 37. The children’s interests in obtaining a loving, stable home, or at the very least avoiding a potentially harmful relationship with a parent, deserves as much weight as the interest of the parent in maintaining parental rights. *Id.* To establish that severance of a parent’s rights would be in the children’s best interests, the court must find by a preponderance of the evidence that the child would benefit from termination of the relationship, or the child would be harmed by the continued parental relationship. *James S. v. ADES*, 193 Ariz. 351, 356, ¶ 18 (App. 1998).

¶18 The juvenile court found that the children’s “monumental special needs . . . can only be served after the father is severed out and they are adopted.” Reasonable evidence supports this finding. Father has been unable to maintain steady employment and housing since November 2015. Father lives with the paternal grandmother in a home that is not approved by DCS because of the number of adults in the home that cannot pass background checks.

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¶19 Father has been involved in multiple domestic violence offenses against Mother with the children present, and most recently pled guilty to aggravated assault. Father's testimony evidences a lack of knowledge regarding each of the children's paramount needs. Expert testimony from the child therapist and physical therapist demonstrates the children's need for consistency, reliability, and emotional support. An absence of these qualities would prove detrimental for the children. The record supports the juvenile court's conclusion that it is in the children's best interests to maintain permanency in the foster home until the children are adopted; accordingly, severance was in the best interests of the children.

CONCLUSION

¶20 We affirm the juvenile court's order terminating Father's parental rights.



AMY M. WOOD • Clerk of the Court
FILED: AA