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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

DANIEL S., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, I.S., I.S., *Appellees*.

No. 1 CA-JV 16-0448
FILED 4-27-2017

Appeal from the Superior Court in Maricopa County
No. JD528932
The Honorable Karen L. O'Connor, Judge

AFFIRMED

COUNSEL

Vierling Law Offices, Phoenix
By Thomas A. Vierling
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Laura J. Huff
Counsel for Appellee

MEMORANDUM DECISION

Judge Donn Kessler delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Patricia Orozco¹ joined.

K E S S L E R, Judge:

¶1 Daniel S. (“Father”) appeals the juvenile court’s order severing his parental rights. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY²

¶2 Father is the biological father of IS, born October 25, 2012, and IS, born December 22, 2013 (collectively, the “Children”). In July 2014, the Department of Child Safety (“DCS”) received a call alleging neglect due to substance abuse by Father and the Children’s mother (“Mother”).³ Mother and Father were uncooperative in DCS’s investigation, and approximately a year later DCS received another call reporting an infant fatality of another of their children. At the time of the fatality, Father was incarcerated for a drug-related offense. Upon investigation, DCS found the family’s home had impassable walkways, blocked exits due to debris, and no running water or electricity, and Mother admitted she abused illegal substances. She also admitted she and Father had engaged in domestic violence in front of the Children. Mother and Father had not immunized the Children or registered their births, and both Children had untreated hand, foot, and mouth disease. DCS removed the Children from the home in May 2015, while Father was still incarcerated.

¹ The Honorable Patricia A. Orozco, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

² We view the evidence and the reasonable inferences therefrom in the light most favorable to affirming the juvenile court’s order. *Jordan C. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009) (citation omitted).

³ The juvenile court severed Mother’s parental rights in June 2016. Mother is not a party to this appeal.

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¶3 DCS filed a petition alleging the Children were dependent as to Father due to his incarceration, neglect, domestic violence, and substance abuse. Upon Father's release from prison approximately two weeks later, DCS notified Father that he was required to participate in drug testing, drug treatment, a psychological evaluation, individual counseling, and supervised visitation to reunify with the Children. After Father was released from prison in July 2015, however, he was arrested in September 2015 for a drug-related probation violation. He was released again in October 2015 but was subsequently arrested two weeks later for another drug-related charge. Father remained incarcerated for the remainder of the dependency proceedings.

¶4 At the severance hearing, the DCS case manager testified that the Children had been in an out-of-home placement for approximately fifteen months and that Father did not have a substantial relationship with the Children because he had been incarcerated for most of their lives. She stated Father had substantially neglected or willfully refused to remedy the circumstances that brought the Children into care, noting Father had largely failed to participate in DCS services while he was out of prison. She clarified that although Father had participated in substance abuse classes while in prison, a psychological evaluation showed Father would require intensive outpatient services upon his release to demonstrate he could maintain sobriety outside of a controlled setting. The psychological evaluation also gave Father a poor prognosis for being able to demonstrate minimally adequate parenting in the foreseeable future, and the case manager expressed concern with Father's stability due to his incarceration and history of drug use.

¶5 The DCS case manager also testified severance would be in the Children's best interests because it would allow DCS to place the Children in a permanent, safe, stable, and drug-free household. She acknowledged the Children were not in an adoptive placement but stated that they were adoptable. Additionally, Father admitted he would not be released from prison until June 14, 2017, and that he would need six months to a year of rehabilitation after his release to parent the Children. The DCS case manager explained that this meant Father would not be released from prison for over a year after the trial and would not be reunified with the Children for approximately two years.

¶6 The juvenile court found DCS proved the ground of nine months' time in care by clear and convincing evidence. It also found DCS had made diligent efforts to provide appropriate reunification services, but Father had substantially neglected or willfully refused to remedy the

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circumstances that caused the Children to be in the out-of-home placement. It noted that Father did not complete a drug treatment program, demonstrate he could maintain long-term sobriety outside of a controlled facility, or show he could provide a safe, drug-free, violence-free, and livable home for the Children.

¶7 The juvenile court also found DCS proved severance was in the Children's best interests. It reasoned that severance was in the Children's best interests because it would further the plan of adoption and give the Children a drug-free, safe, and permanent home; the current non-adoptive foster placement was meeting their needs; the current placement, although not an adoptive placement, was the least restrictive placement under the circumstances of the case; and the Children were adoptable.

¶8 Father timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 8-235(A) (2016).⁴

DISCUSSION

¶9 Father challenges both the grounds for severance and the juvenile court's best interests finding. We review the record in the light most favorable to sustaining the juvenile court's decision, *Jordan C.*, 223 Ariz. at 93, ¶ 18 (citation omitted), and we will not reverse its order unless no reasonable evidence supports its factual findings, *Ariz. Dep't of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, 549, ¶ 7 (App. 2010) (citation omitted).

¶10 To terminate parental rights, the juvenile court must find at least one of the statutory grounds set out in A.R.S. § 8-533(B) was proven by clear and convincing evidence. A.R.S. § 8-533(B) (2016); *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12 (2000). The court must also find DCS has shown 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).

⁴ We cite to the current version of the relevant statutes unless changes material to this decision have occurred since the events in question.

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I. Grounds for Severance

¶11 Father asserts the juvenile court erred in severing his parental rights because he did not substantially neglect to remedy the circumstances that brought the Children into care.⁵

¶12 Section 8-533(B)(8)(a) allows severance of a parent-child relationship when DCS has made a diligent effort to provide appropriate reunification services and

[t]he child has been in an out-of-home placement for a cumulative total period of nine months or longer pursuant to court order . . . and the parent has substantially neglected or wilfully refused to remedy the circumstances that cause the child to be in an out-of-home placement.

A.R.S. § 8-533(B)(8)(a). Termination is not limited to parents who have completely neglected or willfully refused to remedy the circumstances causing the out-of-home placement. *Maricopa Cty. Juv. Action No. JS-501568*, 177 Ariz. 571, 576 (App. 1994). Only substantial neglect is necessary. A.R.S. § 8-533(B)(8)(a).

¶13 Sufficient evidence supported the juvenile court's finding that Father substantially neglected to remedy the circumstances that brought the Children into care. Father's case plan required his participation in random urinalysis testing, substance abuse treatment, a psychological consultation, individual counseling, and supervised visits with a parent aide, but while outside of prison, Father failed to engage in these services

⁵ Father asserts he was not afforded sufficient time for reunification after his release from prison. We interpret this as a challenge to the juvenile court's reasonable efforts finding, *see Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 186, ¶ 1 (App. 1999) (citations omitted) ("It is well established that [DCS], before acting to terminate parental rights, has an affirmative duty to make all reasonable efforts to preserve the family relationship."), but we do not address it because Father failed to object to the findings in the superior court, *Shawnee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, 179, ¶ 16 (App. 2014) (citations omitted) (holding that when DCS "has been ordered to provide specific services in furtherance of the case plan, and the court finds that [DCS] has made reasonable efforts to provide such services . . . a parent who does not object in the juvenile court is precluded from challenging that finding on appeal.").

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apart from one urinalysis test in August 2015. Father was arrested twice for drug-related charges after his release in July 2015. Although to his credit, Father later participated in substance abuse classes in prison, and a psychological evaluation, the DCS case manager stated Father's history of substance abuse would require intensive outpatient services upon his release to demonstrate he could maintain sobriety outside of a controlled setting. Father also admitted that he would need six months to a year after his release from prison to demonstrate his sobriety. This evidence supports the juvenile court's finding that Father substantially neglected to remedy the circumstances that caused the Children to be in an out-of-home placement.

II. Best Interests

¶14 Father argues the juvenile court erred in finding severance was in the Children's best interests because the Children should have been given an opportunity to have a future relationship with Father. He also notes that the Children are not in an adoptive placement.

¶15 A juvenile court's best interests finding "must include a finding as to how the child would benefit from a severance *or* be harmed by the continuation of the relationship." *Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5 (1990) (citations omitted). The court need not find that an adoption placement has emerged, only that the child is adoptable. *Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 352 (App. 1994) (citations omitted).

¶16 Sufficient evidence supports the court's best interests finding. The DCS case manager testified that severance was in the Children's best interests because it would provide them with permanency and stability. She testified the Children would be harmed by the continuation of the relationship because Father did not have a substantial relationship with the Children, the soonest Father could reunify with the Children would be two years after the termination trial, and the Children could not wait two years for Father. Father also admitted he would need a year after his release from prison to demonstrate his sobriety before parenting the Children. Finally, although the case manager acknowledged that the Children were not in an adoptive placement at the time of trial, she stated they were adoptable. This evidence is sufficient to support the juvenile court's finding that severance was in the Children's best interests.

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CONCLUSION

¶17 For the foregoing reasons, we affirm the juvenile court's order severing Father's parental rights to the Children.



AMY M. WOOD • Clerk of the Court
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