IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

KIMBERLY W., EUGENE W., *Appellants*,

v.

DEPARTMENT OF CHILD SAFETY, P.W., *Appellees*.

No. 1 CA-JV 16-0496
FILED 7-11-2017

Appeal from the Superior Court in Maricopa County
No. JD28834
JS18283
The Honorable Nicolas B. Hoskins, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Law Office of H. Clark Jones, Mesa
By Clark Jones
Counsel for Appellant Kimberly W.

The Stavris Law Firm, Scottsdale
By Christopher Stavris
Counsel for Appellant Eugene W.

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

MEMORANDUM DECISION

Chief Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Jon W. Thompson and Judge Randall M. Howe joined.

T H U M M A, Judge:

¶1 Kimberly W. (Mother) and Eugene W. (Father) challenge the superior court's order terminating their parental rights to their biological daughter P.W. based on 15-months time-in-care. Because parents have shown no error, the order is affirmed.

FACTS[1] AND PROCEDURAL HISTORY

¶2 P.W. was born in June 2010. In August 2014, after several reports of domestic violence between Mother and Father, the Department of Child Safety (DCS) took P.W. into care and filed a dependency petition. As amended, the petition alleged neglect due to domestic violence between Mother and Father in the presence of P.W. and other children; failure to protect (as to Mother) and abuse (as to Father) on similar grounds; physical abuse of another child (as to Mother) and failure to protect (as to Father) on similar grounds and neglect based on Father's mental-health and substance abuse issues.

¶3 After motion practice and other proceedings,[2] the court found P.W. dependent as to Father in July 2015 after a contested adjudication and adopted a case plan of family reunification. Father unsuccessfully appealed the dependency finding. *See Eugene W. v. Dep't of Child Safety*, No. 1 CA-JV 15-0249; No. 1 CA-JV 15-0251, 2016 WL 739281 (Ariz. App. Feb. 25, 2016) (Mem. Dec.). The superior court found P.W. dependent as to Mother in May 2016 after a contested adjudication.

[1] This court views the evidence in a light most favorable to sustaining the superior court's findings. *See Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207 ¶ 2 (App. 2008).

[2] Father has, at times, elected to represent himself with the assistance of advisory counsel.

¶4 By December 2015, P.W. had been in care for more than 15 months. At a report and review hearing, after noting P.W. was "overall doing well" but "parents are not participating in services," the court changed the case plan to severance and adoption. DCS filed a motion to terminate Father's parental rights and a petition to terminate Mother's parental rights. As relevant here, DCS sought termination based on 15-months time-in-care and alleged termination was in P.W.'s best interests. *See* Ariz. Rev. Stat. (A.R.S.) § 8-533(8)(c)(2017).[3] After a five-day termination adjudication, the superior court granted DCS' requests to terminate in a 19-page minute entry issued November 2016.

¶5 This court has jurisdiction over Mother's and Father's timely appeals pursuant to Article 6, Section, 9, of the Arizona Constitution, A.R.S. §§ 8-235(A), 12-2101(A) and 12-120.21(A) and Arizona Rules of Procedure for the Juvenile Court 103 and 104.

DISCUSSION

¶6 As applicable here, to terminate parental rights, a court must find by clear and convincing evidence that at least one statutory ground articulated in A.R.S. § 8-533(B) has been proven and must find by a preponderance of the evidence that termination is in the best interests of the child. *See Kent K. v. Bobby M.*, 210 Ariz. 279, 288 ¶ 41 (2005); *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249 ¶ 12 (2000). Because the superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts," this court will affirm an order terminating parental rights as long as it is supported by reasonable evidence. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93 ¶ 18 (App. 2009) (citation omitted).

¶7 Mother and Father argue the superior court erred in finding DCS properly proved the 15-months time-in-care statutory ground.[4] As applicable here, DCS was required to prove, by clear and convincing evidence, that (1) DCS "has made a diligent effort to provide appropriate reunification services;" (2) Mother and Father have "been unable to remedy

[3] Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

[4] Parents do not dispute the best interests finding, or that P.W. had been in an out of home placement for more than 15-months pursuant to court order, meaning those issues are waived. *See Crystal E. v. Dep't of Child Safety*, 241 Ariz. 576, 577-78 ¶ 5 (App. 2017).

the circumstances that cause the child to be in an out-of-home placement;" and (3) "there is a substantial likelihood that [they] . . . will not be capable of exercising proper and effective parental care and control in the near future." A.R.S. § 8-533(8)(c).

¶8 Parents first argue DCS did not make diligent efforts to provide appropriate reunification services, pointing specifically to the claim that DCS failed to offer Father dialectic behavior therapy (DBT) recommended by psychologist Dr. Al Silberman. Dr. Silberman, however, testified that to benefit from DBT, Father would need to acknowledge that he had borderline personality disorder; Father, however, persistently denied having mental health issues**.** The superior court expressly addressed this very issue and, after describing the services offered, concluded that any delay in a referral for DBT "was not material in light of the impediment caused by Father's own denial of any domestic violence problem." Parents have shown no error by the superior court in addressing DBT.

¶9 More broadly, DCS provided substantial evidence that it provided appropriate reunification services to parents over an extended period of time. Among other services, parents were offered "parent aide services, visitation, random rule-out drug testing, and hair follicle testing, substance abuse assessment, mental health assessments and evaluations, parenting classes, counseling services." DCS offered Mother or Father (or both) services from a dozen or more service providers to address numerous behavioral issues including TASC; Terros; Southwest Behavioral; Applied Behavioral Interventions; Price Family Services; COMTRANS parent aide; couples counseling; domestic violence education; parenting classes; psychological services; bonding and best interests assessment and others. On this record, the superior court properly concluded that DCS had made the required "diligent effort to provide appropriate reunification services." A.R.S. § 8-533(11)(b).

¶10 Father argues that he was not provided sufficient "time and opportunity to participate in programs designed to improve" his ability to care for P.W. *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192 ¶ 37 (App. 1999). The record is to the contrary. P.W. had been in care for about 27 months when termination was granted. During that time, Father generally refused to participate in services, and when he did participate, he "omitted information and failed to notify them that he was involved with DCS." Trial evidence shows Father failed to actively engage in services, did not make necessary behavioral changes and continued to maintain that domestic violence never "occurred in his home with his wife," when the evidence (including one of Mother's teeth being knocked out by Father's

punch and his choking her in front of the children) was to the contrary. In addition, when participating in "therapeutic visitation and couples counseling," parents "refused to address and create treatment goals related to DCS safety concerns and would only agree on their own treatment goals." Parents were afforded sufficient time and opportunity to participate in reunification services, but either failed to do so or did not show resulting behavioral changes.

¶11 Finally, parents argue DCS failed to show they will not be able to parent P.W. in the near future, noting evidence suggests there has been no domestic violence in the past two years. Again, the record shows the superior court did not err in finding DCS met its burden of proof.

¶12 Domestic violence was a key reason why P.W. was taken into care. Numerous trial witnesses testified to the couple's history of domestic violence and that the couple had failed to address, or even admit to, domestic violence. For example, clinical social worker Jodi Erickson testified that parents were referred to her to address domestic violence and communication, but that "the only goal [they] agreed to was a communication goal." When she attempted to address domestic violence, the parents "denied there was any domestic violence whatsoever," which concerned Erickson. Dr. Silberman testified that Father "totally denied all the information in the DCS reports and reports in general." Dr. Silberman opined that parents could not make any progress until they admitted that domestic violence was an issue. When asked if the parents "have the ability to parent currently," Dr. Silberman testified that "they don't have the skills to" do so. As a final example, DCS case manager Kristina Harrison testified to a lack of acknowledgment by parents that domestic violence was an issue.

¶13 As parents correctly argue, the superior court received conflicting evidence relevant to the issues they press on appeal. In substance, they argue evidence received by the superior court should have been weighed differently. But this court does not reweigh the evidence on appeal. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282 ¶ 12 (App. 2002) (citing cases). It is for the superior court at trial, not this court on appeal, to weigh and assess conflicting evidence. On this record, parents have not shown that the superior court erred in addressing the conflicting evidence presented.

CONCLUSION

¶14 The superior court's order terminating the parental rights of Mother and Father to P.W. is affirmed.

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