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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

LAWRENCE C.)
) No. 1 CA-JV 09-0152
)
 Appellant,) DEPARTMENT E
)
 v.) **MEMORANDUM DECISION**
)
 ARIZONA DEPARTMENT OF ECONOMIC) (Not for Publication -
 SECURITY, SUMNER B.,) 103(G) Ariz.R.P. Juv. Ct.
) Rule 28 ARCAP)
 Appellees.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD506707

The Honorable David K. Udall, Judge

AFFIRMED

Lincoln Green, Jr.
Attorney for Appellant

Phoenix

Terry Goddard, Attorney General
By Amanda Holguin, Assistant Attorney General
Attorney for Arizona Department of Economic Security

Mesa

G E M M I L L, Judge

¶1 Lawrence C. ("Father") appeals the juvenile court's order terminating his parental rights to his minor child, Sumner B. ("S.B."). Finding no error, we affirm.

Facts and Procedural History

¶2 We view the evidence in the light most favorable to upholding the juvenile court's ruling. See *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 250, ¶ 20, 995 P.2d 682, 686 (2000).

¶3 Father and Carolyn B. ("Mother") are the biological parents of S.B., who was born on October 29, 2006.

¶4 On March 12, 2007, Child Protective Services ("CPS") received a report alleging that Mother had been neglecting S.B. A CPS case manager responded to the allegation two days later by visiting Mother and S.B. at Mother's last known address. The responding CPS case manager testified that when she arrived, Father was also at the home. Father reported that he lived in an apartment by himself but that he and Mother were attempting to reconcile their differences.

¶5 Mother and Father told the CPS case manager that they both suffered from mental illness. Mother reported that she suffered from a bipolar disorder, and Father reported that he had been diagnosed with a schizoaffective disorder. They told the case manager that they were receiving mental health services and that they were taking medications to help manage their

mental illnesses. Both Mother and Father agreed to participate in family preservation services.

¶16 A few days after visiting the home, CPS received a report that Mother had checked into to a domestic violence shelter. When a CPS case manager arrived at the shelter to investigate, Mother told the case manager that Father had held her by the neck and broken her ribs. Mother's allegation of physical abuse was never substantiated, however. ADES left S.B. in Mother's care and continued to offer her family preservation services.

¶17 The domestic violence shelter inadvertently disclosed the address where Mother was staying to Father, so Mother was asked to leave and go to a different shelter for her protection. A few days after Mother had checked herself into a different shelter, she placed S.B. in the care of her parents and entered an inpatient detoxification facility.

¶18 The maternal grandparents then filed a private dependency petition on April 20, 2007, alleging that S.B. was a dependent child under Arizona Revised Statutes ("A.R.S.") section 8-201(13) (Supp. 2009).¹ The petition alleged that Mother suffered from mental illness and was abusing drugs and that Father had a history of angry outbursts and violence and

¹ We cite to the current version of all statutes cited in this decision because no substantive changes have been made to those provisions since 2007.

was not taking his prescribed medications. The court subsequently substituted ADES as petitioner. Father denied the allegations in the petition but submitted the issue of dependency to the court. The juvenile court found by a preponderance of the evidence that S.B. was dependent under A.R.S. § 8-201(13).

¶9 The initial plan for the case was to reunify S.B. with Father and Mother. ADES provided Father with several services to help fulfill this plan, including parent-aide services, psychological exams, parenting classes, urinalysis testing, supervised visits with S.B., transportation if necessary, and other services as deemed appropriate.

¶10 On October 8, 2008, the juvenile court held a report and review hearing. Upon motion by ADES, the juvenile court approved a case plan of severance and adoption and ordered ADES to file a motion to terminate Father's parental rights to S.B.

¶11 On October 16, 2008, ADES filed a motion to terminate both Mother and Father's parental rights.² The motion, as amended, alleged that Father was unable to discharge his parental responsibilities due to mental illness and mental deficiency under A.R.S. § 8-533(B)(3) (Supp. 2009) and that S.B.

² Mother did not contest the motion, and on April 23, 2009, the juvenile court entered a signed order terminating her parental rights to S.B. Mother did not appeal from the order and is therefore not a party to this appeal.

has been in an out-of-home placement for fifteen months or longer under A.R.S. § 8-533(B)(8)(c).

¶12 In May, June, and July 2009, the juvenile court held a four-day contested severance hearing. The court received testimony from five CPS employees, two licensed psychologists, a psychiatrist, a substance abuse counselor, S.B.'s maternal grandfather and current foster parent, and a mental health clinic supervisor. As of April 23, 2007, S.B. had been in an out-of-home placement for more than two years.

¶13 Throughout the reunification process and even during the time of the severance hearing, Father had several angry outbursts. For example, in March 2008, Father went to his mental clinic and started yelling at and chasing after his CPS case manager. When the clinic supervisor, L.A.R., intervened and told Father to leave, Father continued to be belligerent and refused to leave. As a result of the incident, Father was no longer allowed to return to the clinic. Father returned to the clinic, however, sometime in the summer of 2008 and began walking around L.A.R.'s car, staring at her. Father then left the clinic premises without any further incident.

¶14 Father returned to the mental health clinic again on June 16, 2009. This time, Father started shouting at the clinic's employees from across the street. When L.A.R. intervened, Father shouted that he was going to sue her and that

he was going to kill her. L.A.R. contacted the police, but Father left before the police could arrive. L.A.R. successfully obtained a restraining order against Father following the incident.

¶15 After a status conference hearing on April 21, 2009, Father began yelling and screaming at the maternal grandfather, A.B., at the courthouse. Case manager, E.L., witnessed the altercation and reported that Father "got in the grandfather's face and pulled his fist back and was going to hit the grandfather."

¶16 CPS arranged for several doctors to conduct evaluations of Father's ability to parent effectively. Dr. G.B. conducted two bonding assessments between Father and S.B. in March 2008 and May 2009. At the outset of the first bonding assessment, Dr. G.B. observed Father arguing loudly with Mother and her parents in the lobby of his office. Dr. G.B. testified that Father became "quite agitated and upset" because the grandparents had referred to S.B. as "Sandy" when they said goodbye. Dr. G.B. opined that Father's outburst was significant because parents are typically on their best behavior when they participate in reunification services. Dr. G.B. opined that Father's schizoaffective disorder prevents him from being able to minimally parent S.B. because "[i]ndividuals with

schizoaffective disorders are extremely sensitive to stress, and it causes them to have these kind of outbursts."

¶17 In July 2007, Dr. S.G. conducted a psychological evaluation of Father. Dr. S.G. diagnosed Father with a mood disorder, not otherwise specified; depression; and a passive-aggressive personality disorder. Dr. S.G. opined that Father did not have a schizoaffective disorder. Dr. S.G. recommended that Father undergo further psychiatric treatment, parenting classes, and supervised visitations with S.B. before she would consider issuing a recommendation that Father was capable of parenting S.B.

¶18 In August 2008 and May 2009, Dr. S.G. conducted updated psychological evaluations of Father. Dr. S.G. opined that during the August 2008 evaluation, Father's mood disorder had worsened. She testified that Father "was more agitated, more frantic, [and] more depressed" than he had been during her first evaluation. Following her third evaluation in May 2009, Dr. S.G. opined that Father "had responded significantly to . . . his own hard work and to the . . . professionals working with him that [she] felt [his mood disorder] was in partial remission."

¶19 When asked whether Father would be able to effectively parent S.B., Dr. S.G. testified that she could not offer her opinion because she had never observed Father interact with S.B.

Dr. S.G. opined that Father "has a ways to go" and that he will "always have the residuals of this personality disorder." Dr. S.G. testified that Father's outburst in Dr. G.B's office was of particular concern to her because "it was so self-sabotaging."

¶120 Dr. R.R. also conducted a psychiatric evaluation of Father on November 16, 2007. Dr. R.R. testified that Father had a "history going back to 1982 of rather serious psychiatric conditions." Father told Dr. R.R. that he has been having psychotic episodes since the early 1980s. Dr. R.R. diagnosed Father with schizoaffective disorder, a history of polysubstance abuse, traits of posttraumatic stress disorder, and a generalized anxiety disorder. Dr. R.R. opined that "more often than not," these conditions are "permanent and irreversible."

¶121 Dr. R.R. testified that Father's inability to control his anger at the courthouse and the mental health clinics concerned him. He testified that "when somebody is at risk of losing their child and has a history of anger and knows that every action that they do is going to be scrutinized, they would generally hold their anger in check." Dr. R.R. opined that S.B. would be at risk both emotionally and physically if left in Father's care. Dr. R.R. further opined that Father's mental illness would continue for a prolonged indeterminate period.

¶122 At the conclusion of the termination hearing, the court took the matter under advisement and later found that ADES

had proven both grounds for termination by clear and convincing evidence. The court also found that termination was in S.B.'s best interest.

¶23 Father timely appealed, and we have jurisdiction pursuant to A.R.S. §§ 8-235(A) (2007) and 12-2101(B) (2003).

Analysis

¶24 A parent's right to care, custody, and control of his child is fundamental, *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 78, ¶ 6, 117 P.3d 795, 797 (App. 2005), but it is not absolute. *Michael J.*, 196 Ariz. at 248, ¶ 12, 995 P.2d at 684. In Arizona, termination of parental rights is governed by A.R.S. § 8-533. *Id.* at 248-249, ¶ 12, 995 P.2d at 684-85. "To justify termination of the parent-child relationship, the trial court must find, by clear and convincing evidence, at least one of the statutory grounds set out in section 8-533." *Id.* at 249, ¶ 12, 995 P.2d at 685. The court must also find by a preponderance of the evidence that the termination of the parent-child relationship is in the best interest of the child.³ *Id.*

¶25 The juvenile court found two statutory grounds for severing Father's parental rights. "If clear and convincing evidence supports any one of the statutory grounds on which the

³ Father does not challenge the court's finding that severance was in the child's best interest, and we therefore do not address that finding.

juvenile court ordered severance, we need not address claims pertaining to the other grounds." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002).

¶126 The juvenile court first found that severance was warranted under § 8-533(B)(3). Under that subsection, parental rights can be terminated when "the parent is unable to discharge parental responsibilities because of mental illness . . . and there are reasonable grounds to believe that the [mental illness] will continue for a prolonged indeterminate period." A.R.S. § 8-533(B)(3).

¶127 Father contends that there is insufficient evidence to support the juvenile court's finding that his mental illness renders him unable to discharge his parental responsibilities. Father argues that despite his occasional emotional outbursts, he is able to effectively discharge his parental responsibilities.

¶128 Despite Father's progress, however, the record demonstrates that Father's mental illnesses made it very difficult for him to control his emotions. For example, on the day of a status conference preceding trial, Father verbally attacked S.B.'s maternal grandfather at the courthouse. According to a CPS case manager who witnessed the altercation, Father came within a few steps of the grandfather and "had his

fist up." The CPS case manager testified that Father was very angry and was "sweating profusely." Father again yelled at S.B.'s maternal grandfather in Dr. G.B.'s office because the grandfather referred to S.B. as "Sandy" when he said goodbye. On June 16, 2009, Father returned to the mental health clinic that he had been banned from, and he threatened to kill the clinic supervisor.

¶29 Dr. R.R. testified that these anger incidents were of concern because they took place under conditions where Father would be expected to be on his best behavior because they involved scrutiny by individuals who had the ability to influence whether he would be reunified with his child. Dr. R.R. testified that he had concerns about Father's ability to parent safely because of Father's inability to control his anger.

¶30 Dr. G.B. opined that Father could not minimally parent S.B. because of his mental illness. Dr. G.B. testified that "[i]ndividuals with schizoaffective disorder are extremely sensitive to stress, and it causes them to have these kinds of outbursts, and the evidence that I was provided indicated that it has continued over the years. And this is a big concern with regard to parenting." Dr. G.B. was concerned that Father would not be able to "control his angry impulses and . . . modulate

his emotions in an effective way to be able to parent a child, particularly a child as young as [S.B.]”

¶31 Dr. S.G. testified that Father’s mental illness would not necessarily prohibit someone from parenting a child. Dr. S.G. also testified that Father has “responded very well to his treatment,” but he needed to make further progress.

¶32 After reviewing the record, we conclude that there was sufficient evidence to support the juvenile court’s finding. 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). The juvenile court, as the trier of fact in a termination 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, 334, ¶ 4, 100 P.3d 943, 945 (App. 2004). We do not review the record on appeal to determine if we would have reached different conclusions if we were the triers of fact. Instead, we review to see if sufficient evidence supports the findings of the juvenile court. The juvenile court did not err in finding by clear and convincing evidence that Father’s mental illness would render him unable to discharge his parental responsibilities.

¶33 Father also contends that there is insufficient evidence to support the juvenile court’s finding that his mental

illness will continue for a prolonged indeterminate period. Father points out that Dr. S.G. conducted three psychological evaluations of him over the course of three years and that after the third evaluation, Dr. S.G. opined that Father "had responded significantly to . . . his own hard work and to the . . . professionals working with him that [she] felt [his mood disorder] was in partial remission." Father argues that Dr. S.G.'s testimony is proof that he can overcome the effects of his mental illness.

¶34 We conclude that sufficient evidence of record supports the juvenile court's finding on this issue. For example, Dr. R.R. testified that Father "has a history going back to 1982 of rather serious psychiatric conditions." Dr. R.R. diagnosed Father with schizoaffective disorder, a history of polysubstance abuse, traits of posttraumatic stress disorder, and a generalized anxiety disorder. Dr. R.R. opined that "more often than not," these conditions are "permanent and irreversible." He opined specifically that Father's mental illness would continue for a prolonged indeterminate period. In addition, Dr. S.G. opined that Father "has a ways to go" and that he will "always have the residuals of this personality disorder." Dr. S.G. further opined that Father may never be able to learn to deal with authority.

¶35 Having concluded that the evidence supports the juvenile court's findings under A.R.S. § 8-533(B)(3), we need not address the other statutory basis for severance. See *Jesus M.*, 203 Ariz. at 280, ¶ 3, 53 P.3d at 205.

Conclusion

¶36 For the foregoing reasons, we affirm the juvenile court's order terminating Father's parental rights to S.B.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
SHELDON H. WEISBERG, Presiding Judge

_____/s/_____
PHILIP HALL, Judge