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



DIVISION ONE  
FILED: 05/10/2012  
RUTH A. WILLINGHAM,  
CLERK  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

DARNELL M., ) No. 1 CA-JV 11-0241  
)  
Appellant, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) 103(G) Ariz. R.P. Juv.  
SECURITY, ODESSO M., DARNELL H., ) Ct.; Rule 28 ARCAP)  
)  
Appellees. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. JD18515

The Honorable Roland J. Steinle, Judge

**AFFIRMED**

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Mesa

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Economic Security

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**D O W N I E**, Judge

¶1 Darnell M. ("Father") appeals from the juvenile court's order terminating his parental rights. For the

following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY<sup>1</sup>**

¶12 D.M., born in August 2006, and O.M., born in December 2007, are Father's biological children. D.M. is severely mentally retarded, and O.M. has severe developmental delays.

¶13 In October 2009, Child Protective Services ("CPS") received a third report regarding the condition of Father's home. A CPS worker investigated and found the home smelled of animal urine, had animal feces on the floor, and cockroaches "crawling on the walls." CPS removed the children and placed them in a foster home.

¶14 ADES offered Father supervised visitation and parent aide services that included instruction about household safety, communication, nutrition, and the children's developmental delays. But Father was not "receptive" to parent aide advice and told a parent aide that he "did not need to be told what to do." During a supervised visit in February 2010, Father "banged his hand on the table" when D.M. refused to follow his direction to sit down, and a case aide observed a video "of two people engaged in sexual intercourse" playing on Father's cell phone.

¶15 In April 2010, Father participated in a psychological

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<sup>1</sup> We view the evidence in the light most favorable to affirming the juvenile court's decision. See *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 250, ¶ 20, 995 P.2d 682, 686 (2000) (citation omitted).

evaluation. Dr. James Thal, a psychologist, diagnosed Father with "Schizophrenia, Paranoid Type By History." Dr. Thal reported that Father's mental disorder "manifested in paranoid thinking and conflicts with many people," and that Father did "not fully appreciate the nature of his children's developmental delays" and "may disregard the safety and quality of the children's home environment." The psychologist concluded that severance and adoption "will likely be necessary." Later that month, the juvenile court found the children dependent as to Father. The initial case plan was for family reunification.

¶16 Father continued to receive case aide and parent aide services. In July 2010, however, Father was unable to "demonstrate[] consistent discipline with the children" and had "difficulty completing a 4 hour supervised visitation at times." A parent aide reported "concern[] over [Father's] apparent lack of motivation to change his discipline" methods. A service provider recommended a second referral for parent aide services and that visits move to "partially unsupervised." CPS, however, continued supervised visits. Father participated but over time case workers reported that Father was not "able to demonstrate consistency in his ability to redirect and discipline his children," did "not seem to understand normal child[hood] development," and appeared "frustrated with his children and their delays."

¶17 In January 2011, parent aide services were closed when Father "successfully completed" all identified objectives. Father participated in a psychiatric evaluation. Dr. Joel Parker, a psychiatrist, diagnosed Father with an unspecified psychotic disorder, but opined that Father would "likely" be able to "demonstrate minimally adequate parenting skills" and meet his children's special needs if he received "continued oversight" and "training."

¶18 In February 2011, the children's guardian *ad litem* moved to terminate Father's parental rights. An amended motion was served in March 2011. It alleged: (1) the children had been in an out-of-home placement for approximately 15 months and Father had been unable to remedy the circumstances that caused the children to come into care; and (2) Father was unable to discharge parental responsibilities due to mental illness. See Arizona Revised Statutes ("A.R.S.") sections 8-533(B)(3), (B)(8)(c). Father contested the allegations, and a trial was set.

¶19 After a two-day trial, the juvenile court terminated Father's parental rights. Father timely appealed. We have jurisdiction pursuant to A.R.S. § 8-235.

#### **DISCUSSION**

¶10 We review the juvenile court's findings of fact for clear error and will reverse only if there is no reasonable

evidence to support them. *Anonymous v. Anonymous*, 25 Ariz. App. 10, 12, 540 P.2d 741, 743 (1975); see also *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8, 83 P.3d 43, 47 (App. 2004) (citations omitted) (because the juvenile court is in the best position to weigh the evidence, judge the credibility of witnesses, and make factual findings, we do not reweigh evidence, but consider only whether substantial evidence supports the ruling).

¶11 Father contends that he has "effectively manage[d] his mental health issues" and asserts the record contained "sufficient evidence" that he would be able to provide "minimally adequate parenting for his children" in spite of those issues. Father also argues ADES failed to make "diligent" efforts to reunify the family.<sup>2</sup>

#### **I. Mental Illness**

¶12 Before severing parental rights, ADES must prove by clear and convincing evidence that at least one statutory ground for severance exists and that it has made reasonable efforts to

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<sup>2</sup> Father also challenges the finding he was unable to remedy the circumstances that caused the children to be in an out-of-home placement for 15 months and would not be able to provide proper parental care in the near future. Because sufficient evidence supports the termination due to mental illness, we need not address additional bases for severance. See *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3, 53 P.3d 203, 205 (App. 2002) (citations omitted) (court need not address additional grounds for termination if one statutory ground supporting severance exists).

preserve the family. Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(8); see also *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶ 33, 971 P.2d 1046, 1053 (citations omitted). Severance is justified when clear and convincing evidence demonstrates a parent is unable to discharge parental responsibilities because of mental illness, and there are reasonable grounds to believe the condition will continue for a prolonged indeterminate period. A.R.S. § 8-533(B)(3).

¶13 The juvenile court found that Father's mental illness rendered him incapable of discharging his parental responsibilities. It further found his condition would continue for a prolonged indeterminate period. The record supports these findings.

¶14 Dr. Thal opined at trial that Father was not capable of providing appropriate care of the children because of his mental illness. He testified Father's mental illness kept him from recognizing that when the children were removed from his care, the home environment represented a threat to their health and well-being. At trial, Father denied that there were dog feces in the apartment or that it "reeked" of animal urine at the time the children were removed. He admitted that the dog was sometimes tied to the coffee table, but asserted the home was appropriate for the children "[f]or what money [he] was receiving."

¶15 Dr. Thal further testified Father's paranoia, distrust of medical professionals, and refusal to take psychiatric medication placed the children at risk. Dr. Thal testified that Father believed the children "were developing normally" in his care and "that they did not have the significant disabilities and delays that were being reported." Based on Father's mental illness and its prolonged and indeterminate duration, Dr. Thal concluded that Father was incapable of providing appropriate care for the children.

¶16 Dr. Parker testified that he changed his opinion regarding his prognosis of Father's ability to parent after he read case aide notes from March 2011 to present<sup>3</sup> and learned about Father's refusal to consent to O.M.'s ear surgery. Dr. Parker further testified that Father's refusal to consent to the ear surgery despite numerous physician recommendations demonstrated that his mental illness distorted his judgment and prevented him from making appropriate parenting decisions. Dr. Parker concluded Father would likely continue to refuse to comply with recommended treatment for himself and the children for the foreseeable future. Dr. Parker opined that Father was "[in]capable of providing appropriate care for his children now

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<sup>3</sup> The ADES worker noted that Father sometimes failed or was slow to intervene with his children, that he made "inappropriate" comments to them, that he picked up O.M. "by one arm," and told the children not to touch the dog because he did not want them to "give the dog a disease."

or in the near future.”

¶17 Based on the record before it, the juvenile court could properly conclude that Father’s mental illness prevented him from discharging his parental responsibilities. We are not persuaded by Father’s claims that his cooperation with mental health providers demonstrates he has effectively managed his mental health issues<sup>4</sup> or that the court’s conclusion must be reversed because it was contrary to earlier reports from Magellan and Dr. Parker. We defer to the juvenile court’s resolution of conflicting inferences and claims if supported by reasonable evidence. *Mary Lou C.*, 207 Ariz. at 47, ¶ 8, 83 P.3d at 47; *Maricopa County Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996) (citation omitted) (this court will not reweigh the evidence but will look only to determine if there is evidence to sustain the court’s ruling). As discussed *supra*, there was ample evidence to support the juvenile court’s determination.<sup>5</sup>

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<sup>4</sup> Father cites no factual authority to support this claim. See ARCAP 13(a)(6). Our own review of the record reveals that Father has repeatedly refused to cooperate with mental health providers. For example, he refused to take medication or seek treatment despite the recommendation of medical professionals. Father also stated he would “sue anyone who tried to make him” take medication and missed several appointments before completing his psychological evaluation.

<sup>5</sup> In addition to finding at least one statutory basis for termination, the court must also find, by a preponderance of the evidence, that severance is in the child’s best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41, 110



## II. Efforts to Reunify the Family

¶18 Father also contends ADES made insufficient reunification efforts. Specifically, he asserts ADES: (1) failed to allow unsupervised visits as suggested by the parent aide; (2) replaced the parent aide with a less qualified case aide; (3) withheld visitation without good cause in February 2011; and (4) gave Dr. Parker "an incomplete version" of events.

¶19 Father cites no factual authority to support these claims. See ARCAP 13(a)(6), (b)(1) (a party's brief must include citations to relevant portions of the record). We could thus treat his arguments as waived. See *State v. Moody*, 208 Ariz. 424, 452, n.9, ¶ 102, 94 P.3d 1119, 1147 n.9 (2004). But even assuming that these arguments are properly before us, the record does not support them.

¶20 In a severance case based on mental illness, ADES must "demonstrate that it has made a reasonable effort to preserve the family." *Mary Ellen C.*, 193 Ariz. at 192, ¶ 33, 971 P.2d at 1053 (citations omitted). Reasonable efforts include providing a parent "with the time and opportunity to participate in programs designed to improve the parent's ability to care for the child." *Id.* at ¶ 37 (citation omitted). ADES, though, need

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P.3d 1013, 1022 (2005). The court made such a finding here, and Father has not challenged it on appeal. See *Schabel v. Deer Valley Unified Sch. Dist. No. 97*, 186 Ariz. 161, 167, 920 P.2d 41, 47 (App. 1996) (citations omitted) (issues not raised in a party's appellate brief are waived).

not provide "every conceivable service" or undertake futile rehabilitative measures. *Id.* at 187, 192, ¶¶ 1, 37, 971 P.2d at 1048, 1053 (citation omitted).

¶21 Father received over 18 months of reunification services, including: parent aide and case aide services, a psychological evaluation, a psychiatric evaluation, Magellan mental health services, and regular supervised visits. Both Dr. Thal and Dr. Parker testified these services were reasonably directed at preserving the family. Dr. Thal also testified that Father made "fundamental" parenting errors despite 18 months of "instruction."

¶22 Although the parent aide recommended unsupervised visits, Dr. Thal opined that the children should not be placed in Father's care because he lacked the ability to meet "the special needs of two severely delayed children." After considering the report, ADES determined unsupervised visits were not appropriate. Father cites no legal authority, and we are aware of none, that requires ADES to follow every parent aide recommendation. ADES replaced the parent aide because Father's referral was closed, and the aide believed additional services were unnecessary because he had completed all the identified parent aide objectives. ADES was not "comfortable allowing the Father to have unsupervised visits." It assigned a case aide to supervise visits. Even assuming the case aide was less

qualified than the parent aide, this does not establish the inadequacy of reunification services.

¶23 Father claims that no visitation was offered in February 2011 and the record is contradictory on this issue. Regardless, even if there was a delay in services during the month of February 2011, this fact alone did not require the juvenile court to conclude the agency had made inadequate reunification efforts. Finally, Father's allegation that CPS gave Dr. Parker incomplete facts because it "did not agree with his prior reports" is wholly speculative and without support in the record.

**CONCLUSION**

¶24 For the foregoing reasons, we affirm the termination of Father's parental rights.

/s/  
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MARGARET H. DOWNIE, Judge

CONCURRING:

/s/  
\_\_\_\_\_  
PATRICIA K. NORRIS, Presiding Judge

/s/  
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MICHAEL J. BROWN, Judge