IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

BRYANT F.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND I.F.,
Appellees.

No. 2 CA-JV 2014-0098
Filed December 5, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Civ. App. P. 28(c); Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD204578
The Honorable Susan A. Kettlewell, Judge Pro Tempore

AFFIRMED

COUNSEL

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Counsel for Appellant

Thomas C. Horne, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

Law Office of John C. Gilmore, Jr., P.C., Tucson
By John C. Gilmore, Jr.
Counsel for Appellees Angelique B. and Lydia K., Foster Parents

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MEMORANDUM DECISION

Presiding Judge Kelly authored the decision of the Court, in which Judge Howard and Judge Vásquez concurred.

K E L L Y, Presiding Judge:

¶1 Bryant F., father of I.F, born in May 2012, appeals from the juvenile court's August 2014 order continuing I.F.'s placement with her foster parents and denying the motion filed by the paternal great aunt to have I.F. placed with her in the state of Vermont. We affirm for the reasons stated below.

¶2 The Department of Child Safety (DCS), formerly the Arizona Department of Economic Security, *see* S.B. 1001, 51st Leg., 2d Spec. Sess. (Ariz. 2014), removed I.F. from the home in April 2013 based on a report of domestic violence during which I.F. was dropped on her head. DCS alleged in the subsequently filed dependency petition that I.F. was a dependent child based on repeated incidents of domestic violence, abuse, neglect, and the parents' substance abuse and mental illness. I.F. was adjudicated dependent as to the mother, Candice H., in August after a contested hearing and as to Bryant in September after he admitted allegations in an amended petition. I.F. was placed with licensed foster parents Angelique B. and Lydia K. in May 2013, where she has remained.

¶3 Bryant and Candace moved to Vermont shortly after I.F. was adjudicated dependent. Bryant's aunt was permitted to intervene in the dependency in March 2014 and filed a motion to

have I.F. placed with her in Vermont. The juvenile court denied that motion after a contested placement hearing. The court acknowledged the placement preferences set forth in A.R.S. § 8-514, specifically subsection (B)(3), which states the preference that a child be placed "[i]n kinship care with another member of the child's extended family, including a person who has a significant relationship with the child." Based on this subsection, the court found that I.F.'s great aunt is a member of I.F.'s extended family, that the foster parents are persons who have significant relationships with I.F., and that both placement options "are in the same placement preference position." But the court also observed that although it must consider the statutory preferences, they are not "mandated." The court noted the great aunt had "made every effort to establish a strong relationship with [the child], [but] those efforts cannot compare to the ongoing care that has been provided by Lydia and Angelique, or the attachment that has developed between them." The court acknowledged the great aunt would be an appropriate placement but found that placing I.F. with the aunt would remove her "from the only lifelong attachment she has—which is to her paternal grandmother." The court concluded it would be in I.F.'s best interest to remain with the foster parents.

¶4 On appeal Bryant asserts the structure of § 8-514(B)(3) reflects the legislature's intent to give family members preference for placement purposes over non-family members. He bases this assertion on the fact that the statute's reference to a member of the child's extended family "precedes persons who have [a] significant relationship with the child." Bryant concedes that, notwithstanding any such preference, a juvenile court need only consider the preferences, which are not mandatory. Nevertheless, he argues the court abused its discretion in finding it in I.F.'s best interest to remain with the foster parents rather than to be placed with her great aunt.

¶5 We review the juvenile court's placement order for an abuse of discretion. *Antonio P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 402, ¶ 8, 187 P.3d 1115, 1117 (App. 2008). The juvenile court is afforded "substantial discretion when placing dependent children because [its] primary consideration in dependency cases is the best

interest of the child." *Id*. We will not reweigh the evidence on appeal; rather, we defer to the juvenile court with respect to any factual findings because, as the trier of fact, it is in the "best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). Thus, we will not disturb the factual findings as long as there is reasonable evidence to support them. We review questions of law such as the interpretation and application of statutes de novo. *In re Aaron M.*, 204 Ariz. 152, ¶ 2, 61 P.3d 34, 35 (App. 2003).

¶6 Bryant asserts summarily that, based on the order of two categories of persons listed in § 8–514(B)(3), the legislature created within that level of placement preferences a secondary preference for extended family members over persons who have a significant relationship with the child. It appears he is raising this particular argument for the first time on appeal. In his written closing argument, Bryant simply asserted the statute states a general preference for placement of children with family members. Therefore, we need not consider this argument. *See Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 21, 153 P.3d 1074, 1081 (App. 2007) (appellate court generally will not consider objections raised for first time on appeal). But even assuming it was raised below, nothing in the structure or plain language of that portion of the statute creates a preference within a preference. *See Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 14, 110 P.3d 1013, 1017 (2005) (plain language of statute best reflection of legislature's intent; when meaning ascertained from plain language, appellate court need not apply principles of construction to determine meaning of statute). Rather, the legislature created a category of preferences on the same level.[1]

[1]Bryant's assertion assumes as true that § 8-514(B)(3) creates two categories of persons: extended family members and other persons who have a significant relationship with a child. We therefore assume, without deciding, that it does so and do not address whether this subsection of the statute creates one category of persons: a kinship placement with a member of a child's extended family who has a significant relationship with the child.

¶7 In any event, even assuming arguendo the juvenile court erred by finding the great aunt and the foster parents were at the same preference level, the court correctly observed that, notwithstanding any preference that might exist, the preferences are not mandatory and a child's best interest is of paramount importance. The court acknowledged this court's decision in *Antonio P.*, 218 Ariz. at 402, ¶ 1, 187 P.3d at 1116, in which we concluded that "the preferences for placement . . . do not mandate placing a child with a person with an acceptable higher preference if the juvenile court finds it in the child's best interest to be placed with someone with a lower preference." The child's best interest essentially trumps any placement preference. As this court noted in *Antonio P.*, "[t]he statute requires only that the court include placement preference in its analysis of what is in the child's best interest." *Id.* ¶ 12.

¶8 Bryant concedes the juvenile court was correct in this regard but argues it abused its discretion in finding it in I.F.'s best interest to be placed with the foster parents rather than the great aunt. He relies on the evidence, some of which the court acknowledged in its ruling, establishing the great aunt was committed to having a relationship with I.F. and would be a good placement for her. Bryant is essentially asking this court to reweigh the evidence. This we will not do, *see Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207; rather, we determine only whether any reasonable evidence supports the court's findings, *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000).

¶9 The juvenile court considered the evidence and made clear it had carefully weighed that evidence in choosing between two good placements for I.F. Based on clearly articulated factors, including the bond that existed not just between the foster parents, with whom I.F. has spent more than half of her life, but the bond between I.F. and her paternal grandmother, the only person she had known throughout her life, the court concluded continued placement with the foster parents was in her best interest. Testimony from caseworkers, a pediatrician, an in-home family support specialist, and others constitute reasonable evidence of the

benefits I.F. had derived from her placement with the foster parents, the detriment to her of being removed from that placement, and the continued benefits of remaining there. *Ariz. Dep't of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, ¶ 10, 225 P.3d 604, 607 (App. 2010) (reviewing court "look[s] to the record to determine whether reasonable evidence supported the juvenile court's order").

¶10 For the reasons stated above, we affirm the juvenile court's order continuing placement of I.F. with her foster parents.