IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

MICHAEL M.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND K.M.,
Appellees.

No. 2 CA-JV 2015-0160
Filed March 1, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD191032
The Honorable Brenden J. Griffin, Judge

AFFIRMED AS MODIFIED

COUNSEL

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By Peter G. Schmerl
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Laura J. Huff, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Miller concurred.

E C K E R S T R O M, Chief Judge:

¶1 Michael M. appeals from the juvenile court's August 2015 order terminating his parental rights to his son K.M., born in July 2012, on the ground that he had been in court-ordered, out-of-home placement for fifteen months or more.[1] *See* A.R.S. § 8-533(B)(8)(c). For the following reasons, we affirm the court's termination order.

Background

¶2 The Department of Child Safety (DCS)[2] took temporary custody of K.M. in January 2014, after his baby brother had been born exposed to methamphetamine and opiates. K.M was adjudicated dependent pursuant to Michael's admission of allegations that he failed to provide him with appropriate

[1] Although the juvenile court's ruling mistakenly refers to Michael by his middle name, it is clear from the record that Michael's parental rights were terminated by that order. By this decision, we correct the court's ruling to clarify that result. *See* A.R.S. § 12-2103(A) (supreme court may modify judgment); *Acuna v. Kroack*, 212 Ariz. 104, ¶ 42, n.15, 128 P.3d 221, 232-33, 232 n.15 (App. 2006) (holding § 12-2103 applicable to intermediate courts of appeal).

[2] DCS is substituted for the Arizona Department of Economic Security (ADES) in this proceeding. For simplicity, our references to DCS encompass both ADES, which formerly administered child welfare and placement services under title 8, and Child Protective Services, formerly a division of ADES. *See* 2014 Ariz. Sess. Laws 2d Spec. Sess., ch. 1, §§ 6, 20, 54.

supervision and allowed K.M.'s mother, Khristol L.,[3] to live in the family home while she abused methamphetamine, which impaired her ability to parent and placed K.M. at risk. In April 2015, DCS filed a motion to terminate Michael's parental rights on the ground that, despite DCS's diligent effort to provide appropriate reunification services, he had failed to remedy the circumstances causing K.M. to be in court-ordered, out-of-home care for more than fifteen months and there was a substantial likelihood he would be unable to exercise proper and effective parental care in the near future. *See* § 8-533(B)(8)(c). After a contested four-day severance trial, the juvenile court issued a detailed under-advisement ruling terminating Michael's parental rights to K.M. This appeal followed.

Discussion

¶3 A juvenile court may terminate a parent's rights if it finds clear and convincing evidence of one of the statutory grounds for severance and finds by a preponderance of the evidence that termination is in the child's best interests. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 22, 41, 110 P.3d 1013, 1018, 1022 (2005). "[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the court's decision, and we will affirm a termination order that is supported by reasonable evidence." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009) (citation omitted). That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

Statutory Ground for Termination

¶4 Among his arguments on appeal, Michael maintains "the testimony of two witnesses" constitutes "sufficient evidence in

[3] Khristol L.'s parental rights to K.M. have also been terminated. She is not a party to this appeal.

the record that [he had] remedied the circumstances causing out-of-home placement" and "could safely parent" K.M. He also challenges the credibility of other witnesses whose testimony supported the juvenile court's contrary conclusions. But he does not suggest the juvenile court's extensive, detailed review of the evidence is inaccurate or unsupported by the record; in essence, he asks instead that we reweigh that evidence, which we will not do. *See Jordan C.*, 223 Ariz. 86, ¶ 18, 219 P.3d at 303 (noting juvenile court, as trier of fact, in best position to weigh evidence, judge credibility of witnesses, and resolve disputed facts).

¶5 Michael also argues, as he did below, that DCS failed to prove it had made a diligent effort to provide appropriate reunification services, as required by § 8-533(B)(8), based on testimony by a former DCS employee that the agency had "not diligently provided co-dependency services" for Michael, whose evaluating psychologist had recommended that he attend a "[h]ealthy [r]elationships/codependency treatment group." But he does not dispute the juvenile court's findings that (1) it was Michael who requested that codependency and healthy-relationship issues be addressed in individual counseling sessions, in order to avoid an additional program requirement; (2) DCS "offered evidence [that] the individual therapy also encompass[ed] the healthy-relationships/co-dependency counseling"; (3) after Michael re-enrolled in counselling to continue addressing these issues, "his attendance [was] inconsistent and infrequent"; or (4) codependency classes would have had no effect on Michael's inability to parent K.M. independently, but would have focused on his failure to protect K.M. from Khristol's substance abuse.

¶6 Ultimately, the juvenile court found "ample evidence" that the individual counseling provided by DCS afforded Michael sufficient opportunity to address his codependency issues, and it concluded DCS had met its "diligent effort burden." In addition, the court found that, in any event, offering a separate codependency group would not "have made a difference" to Michael's inability to parent K.M. independently. The court cited "credibl[e] testi[mony]"—offered by a parent aide, who supervised Michael's visits with K.M. for fifteen months, and a Parent-Child Relationship

Therapist—that Michael's "parenting skills are below minimal," as well as evidence of a substantial likelihood that Michael would be unable to parent effectively in the near future. The court noted the parent aide's report that she had discontinued her "teaching" services after eight months because Michael was "'unable or unwilling to achieve the [behavioral] changes'" required to benefit from the instruction. And the therapist testified that, although Michael appeared to have a "strong desire" to parent K.M., he had exhibited "relatively slow" progress during their eleven sessions and "need[ed] an excessive amount of repetition and coaching in order to be able to use" the parenting skills presented to him.

¶7 On appeal, Michael challenges certain legal determinations found in the juvenile court's ruling. He argues, for example, that the court erred in finding he had waived his argument regarding the codependency services provided by DCS because he did not object to the court's "reasonable efforts" findings until a dependency review conducted on the first day of the termination trial. *Cf. Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, ¶¶ 16-18, 319 P.3d 236, 240-41 (App. 2014) (whether DCS provided sufficient services subject to waiver if not raised before or during termination hearing). He also challenges the court's conclusions that it was permitted to draw a negative inference from Michael's failure to testify about his individual counseling and could disregard, as hearsay, his witness's testimony that Michael said his counselor "had not focused on" healthy-relationship issues during their sessions.

¶8 But as the juvenile court stated in its ruling, it rejected, "for a number of reasons," Michael's argument that DCS "failed to provide him healthy-relationships/co-dependency counseling and that this failure prevents a diligent-effort[] finding." Although Michael challenges the court's resolution of subordinate legal and evidentiary issues of waiver, hearsay, and permissive inferences, none of these determinations, alone or in combination, were essential to the court's ruling that termination was statutorily warranted. "[W]e do not issue advisory opinions or decide unnecessary issues," *Freeport McMoran Corp. v. Langley Eden Farms,*

LLC, 228 Ariz. 474, ¶ 15, 268 P.3d 1131, 1135 (App. 2011), and we decline to do so here.

¶9 As set forth in detail in the court's ruling, the evidence fully supports the court's termination of Michael's parental rights pursuant to § 8-533(B)(8)(c). Because the court's ruling includes "thorough findings of fact and sustainable conclusions of law with respect to both the statutory grounds for severance," and because the court's findings are well-supported by the record, "little would be gained by our further 'rehashing the trial court's correct ruling' in our decision." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 207-08 (App. 2002), *quoting State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

Best Interests

¶10 The juvenile court found termination to be in K.M.'s best interests, noting evidence that he is thriving with his current foster parents, who are willing to adopt him. Michael does not challenge the court's factual findings. Instead, he contends termination would detrimentally affect a "close sibling bond," an issue he suggests a juvenile court "must consider" in determining best interests in a termination proceeding. We recognize that a child's close relationship with his siblings may be relevant to a determination of his best interests in a termination proceeding. *See, e.g.*, *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, ¶ 15, 200 P.3d 1003, 1008 (App. 2008) (evidence that child placed in adoptive home with dependent half-brother, with whom she was "'closely bonded,'" supported termination). But Michael does not cite any legal authority that holds a juvenile court "must consider" such a factor. *Cf. Antonio M. v. Ariz. Dep't of Econ. Sec.*, 222 Ariz. 369, ¶ 2, 214 P.3d 1010, 1012 (App. 2009) (juvenile court "does not 'weigh alternative placement possibilities to determine' if severance is in the child's best interests"), *quoting Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998). Nor does he point to evidence or develop any argument that termination would interfere detrimentally with a close sibling bond or that any such

detriment outweighs the benefit of permanence for K.M.[4] *See Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, n.6, 256 P.3d 628, 631 n.6 (App. 2011) (failure to develop argument on appeal usually results in abandonment and waiver of issue). Ample evidence supports the court's finding regarding K.M.'s best interests. *See Bobby G.*, 219 Ariz. 506, ¶ 15, 200 P.3d at 1008 (best-interests finding sustainable on evidence of current adoptive plan or, alternatively, evidence that child is adoptable and existing placement is meeting child's needs).

Disposition

¶11 For the foregoing reasons, we affirm the juvenile court's order terminating Michael's parental rights to K.M.

[4]The same foster parents currently serve as placement for both K.M. and his one-year-old brother, K.K.M.