IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

SCOTT S.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND S.S.,
Appellees.

No. 2 CA-JV 2016-0206
Filed June 19, 2017

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NOT FOR PUBLICATION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. JD204790
The Honorable Jane Butler, Judge Pro Tempore

AFFIRMED

COUNSEL

Domingo DeGrazia, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

Peter G. Schmerl, P.C., Tucson
By Peter G. Schmerl
Counsel for Minor

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Staring and Judge Miller concurred.

E S P I N O S A, Judge:

¶1 Appellant Scott S. challenges the juvenile court's order of October 2016, terminating his parental rights to his daughter S.S., born September 2014, based on neglect.[1] *See* A.R.S. § 8-533(B)(2). He argues the evidence was insufficient to find neglect or to establish that terminating his parental rights was in the child's best interests.

¶2 Before it may terminate a parent's rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). We will affirm an order terminating parental rights unless we must say as a matter of law that no reasonable person could find those essential elements proven by

---

[1] S.S. also filed a notice of appeal arguing she had received ineffective assistance of counsel and joining her father's request to set aside the termination. The Department of Child Safety filed a motion to strike the brief, arguing we lacked jurisdiction to consider the appeal because S.S. had not filed a notice of appeal. Concluding the brief "purports to assert a separate, independent ground for challenging the order," we concluded we lacked jurisdiction and struck the brief.

the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). We view the evidence in the light most favorable to upholding the court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008).

¶3 The Department of Child Safety (DCS) took custody of S.S. shortly after her birth. At the time, her mother was in an ongoing dependency involving two other children and had used drugs during her pregnancy with S.S. The dependency as to S.S. was dismissed before adjudication, and Scott was awarded primary custody and sole legal-decision-making authority. In March 2015, however, he violated the DCS safety plan by allowing the mother into his home, where her two other children were also placed, without separate supervision. DCS thereafter filed a dependency petition alleging Scott had allowed the mother to have unapproved contact with the children despite her methamphetamine use and contrary to a court order. DCS further alleged Scott faced charges of contributing to the delinquency of a minor and interfering with a judicial proceeding.[2] Scott also tested positive for methamphetamine use. S.S. was adjudicated dependent in April 2015.

¶4 Scott received a number of services including random drug testing, substance-abuse services, a psychological evaluation, individual therapy, parenting education, and visitation. His drug tests were negative, and he was attending classes and visitation. In June 2015, the court determined he was in compliance with his case plan. Thereafter, he continued to be "[s]emi-compliant" with the plan, and his caseworkers noted his continued difficulty in recognizing the mother's substance abuse issues and her impact on S.S., as well as his inability to set "appropriate boundaries" with her.

¶5 In early December 2015 Scott tested positive for methamphetamine, and the mother was again found in his home. Later that month DCS filed a motion to terminate his parental rights. After a contested severance hearing, the juvenile court granted the

[2]The criminal charges against Scott were later dropped.

motion, finding DCS had established neglect but had not proven the grounds of chronic substance abuse or that S.S. had been in court-ordered, out-of-home care for nine months or more.

¶6 To establish the ground of neglect, DCS must show "[t]hat the parent has neglected . . . a child," including "situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child." A.R.S. § 8-533(B)(2). "Neglect" includes "[t]he inability or unwillingness of a parent . . . to provide th[e] child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare" and "[a] determination by a health professional that a newborn infant was exposed prenatally to a drug." A.R.S. § 8-201(25).

¶7 Relying on *Mario G. v. Arizona Department of Economic Security*, Scott argues DCS was required to establish a "constitutional nexus" between the neglect and the risk of future harm. 227 Ariz. 282, 257 P.3d 1162 (App. 2011). But *Mario G.* addressed whether "parental rights may be severed as to a child born after . . . abuse occurs, regardless of whether that child was subjected to any abuse." *Id.* ¶ 1. Nothing in *Mario G.* extends the "nexus" requirement to the situation here, in which the child at issue was the subject of the neglect.

¶8 Scott also contends the juvenile court's finding that severance was in S.S.'s best interest "is not sufficiently supported by the record." He contends that because he completed case plan tasks, severance was not in the child's best interests. His argument, however, amounts to a request for this court to reweigh the evidence presented to the juvenile court, which we will not do. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002).

¶9 In determining whether termination is in a child's best interest a court may consider whether there is an adoptive plan and whether the child's current placement is meeting the child's needs. *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998). In this case Scott's caseworker testified that S.S. had been in care "a while and stability and consistency for the child is very

important." And she testified that S.S.'s current placement was meeting her needs and was willing to adopt her. Thus, viewing the evidence in the light most favorable to upholding the juvenile court's order, *Denise R.*, 221 Ariz. 92, ¶ 10, 210 P.3d at 1266, we cannot say the court abused its discretion in finding severance was in S.S.'s best interest.

¶10 For these reasons, the juvenile court's order terminating Scott's parental rights is affirmed.