IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

MICHAEL S.,
Appellant,

v.

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

KASEY S.,
Appellant,

v.

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

Nos. 2 CA-JV 2017-0049 and 2 CA-JV 2017-0050 (Consolidated)
Filed August 2, 2017

Appeal from the Superior Court in Graham County
No. JD20150010
The Honorable D. Corey Sanders, Judge Pro Tempore

AFFIRMED

COUNSEL

Harriette P. Levitt, Tucson
Counsel for Appellant Michael S.

E.M. Hale Law, Show Low
By Elizabeth M. Hale
Counsel for Appellant Kasey S.

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 Kelly[1] concurred.

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

¶1 Appellants Michael S. and Kasey S. challenge the juvenile court's order of February 14, 2017, terminating their parental rights to their children, A.S. and T.S., born February 2005 and August 2007, based on their inability to remedy the

[1]The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

circumstances causing the children to remain in a court-ordered, out-of-home placement for longer than fifteen months.[2] *See* A.R.S. § 8-533(B)(8)(a), (c). On appeal, Michael and Kasey challenge the sufficiency of the evidence to sustain the statutory grounds for severance or to establish that terminating their parental rights was in the children'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 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 Michael and Kasey were arrested for sale of methamphetamine in April 2015 and the children were taken into the custody of the Department of Child Safety (DCS) and placed with their paternal grandmother in the family home. The children were adjudicated dependent in June 2015.

¶4 Michael was in jail until July, and returned to jail in October. He was released in December 2015, but failed to report for a prison sentence in January 2016. He was arrested again in April 2016, and is currently in prison with a maximum release date in December 2017. Kasey was also in jail during the winter of 2015. Upon her release from jail in January 2016, she entered a Salvation Army program, but she left it and another facility she had entered

[2] A third child, K.W., born December 2000, has entered a guardianship with her paternal grandparents and is not a party to this appeal.

before being returned to jail in June 2016. She was sentenced to prison with a maximum release date in September 2017.

¶5 Both parents received services including visitation, domestic violence classes, parenting classes, individual and group counseling, and random drug testing. Kasey did not participate in services during July and August of 2015 and the provider discontinued services due to lack of engagement. At a severance hearing in January 2017, she admitted not having complied in the earlier months of the dependency, but asserted she had received services during her time with Salvation Army, had taken some classes while in jail and prison, and had remained sober. The family's case manager testified Kasey had demonstrated a pattern of being arrested and released and had failed to complete services, despite some participation. The caseworker also testified she was unaware of Kasey having participated in services while incarcerated.

¶6 Michael also failed to participate in services when he was not incarcerated, failing to complete intake with a provider, to follow through with obtaining services through the Veterans Administration, or to complete required drug testing. He testified at the severance hearing, however, that he had taken parenting, anger management, domestic violence, and drug rehabilitation classes in prison. The case manager testified that Michael demonstrated the same pattern of arrest and release as Kasey and that even after his release he would still need to engage in services and obtain housing.

¶7 In September 2016, the juvenile court changed the case plan to severance and adoption and DCS filed a motion to terminate the parents' parental rights on two grounds: that the children had been in court-ordered, out-of-home care for more than nine months and that the children had been in such care for more than fifteen months. After the January 2017 severance hearing, the court concluded DCS had established both time-in-care grounds and shown that severance was in the children's best interests. The court relied primarily on both parents' inability to complete drug rehabilitation or to comply with their case plans outside of prison and the fact that they would need additional time to demonstrate an ability to parent the children safely after their release.

¶8 To establish termination is warranted pursuant to § 8-533(B)(8)(a) and (c), DCS must show that the children "ha[d] been in an out-of-home placement for" nine or fifteen months per court order and that, if nine months, "the parent has substantially neglected or wilfully refused to remedy the circumstances that cause the child[ren]" to be in the placement or that, if fifteen months, "the parent has been unable to remedy the circumstances that cause the child[ren] to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future." DCS must also have "made a diligent effort to provide appropriate reunification services." § 8-533(B)(8).

¶9 Both parents contend broadly on appeal that DCS failed to provide diligent efforts toward reunification and that the juvenile court abused its discretion in determining DCS had established the statutory grounds for severance. They have, however, waived a claim that DCS failed to provide appropriate services because they did not object to the services provided or to the court's repeated findings that DCS was providing reasonable services at the many hearings held over the nearly two-years of the dependency.[3] *See*

[3] Michael argues he could not have objected to a lack of services before the severance hearing because it was at that point that he contends the caseworker testified that the services in prison were insufficient because they were not provided by DCS. But the caseworker did not so testify, rather she indicated that Michael would need additional services upon his release and that some services had not been completed, likely because they could not be, or were not to her knowledge, completed in prison, for example inpatient drug rehabilitation and random drug testing. She also testified she was unaware of Michael having participated in individual or group counseling. In any event, before his prison term began in April 2016, DCS had been offering services and at no time did Michael participate in or object to the sufficiency of the services. Additionally, the record before us, which does not include the closing arguments of counsel, does not show that Michael expressly

Shawanee S. v. Ariz. Dep't of Econ. Sec., 234 Ariz. 174, ¶ 16, 319 P.3d 236, 241 (App. 2014).

¶10 In challenging the juvenile court's finding they had been unable to remedy the circumstances causing their children to remain in out-of-home care for more than nine and fifteen months, the parents rely on favorable testimony about their progress in certain aspects of their case plan, but do not address the contrary evidence cited by the court and detailed above. They particularly discount evidence that even upon their release, a substantial period of time will be required in order for them to establish that they can safely parent and can maintain sobriety and comply with a case plan outside of prison. We do not reweigh the evidence, *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002), and will defer to the court's resolution of conflicting inferences, which are supported by the record before us, *In re Pima Cty, Adoption of B-6355 & H-533*, 118 Ariz. 111, 115, 575 P.2d 310, 314 (1978).

¶11 Michael also challenges the juvenile court's conclusion that severance was in the children's best interests. But this argument too amounts to a request to reweigh the evidence presented to the court. *See Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207. Evidence at the severance hearing established that the children's foster placement was willing to adopt them and that they would benefit from a stable, structured home and permanency after spending nearly two years in dependency, with both parents still facing incarceration for at least another five months. Despite evidence of the children's love for their parents, we cannot say the trial court abused its discretion in determining severance was in the children's best interests.

¶12 For these reasons, we affirm the juvenile court's orders severing Michael and Kasey's parental rights.

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objected at the severance hearing to the reasonableness of the services provided to him.