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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

NICHOLAS S., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, N.S., A.S., *Appellees*.

No. 1 CA-JV 15-0394
FILED 5-26-2016

Appeal from the Superior Court in Mohave County
No. L8015JD201307017
The Honorable Douglas Camacho, Judge *Pro Tempore*

AFFIRMED

COUNSEL

The Stavris Law Firm, PLLC, Scottsdale
By Alison Stavris
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Nicholas Chapman-Hushek
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Margaret H. Downie and Judge Donn Kessler joined.

C A T T A N I, Judge:

¶1 Nicholas S. (“Father”) appeals from the superior court’s order severing his parental rights to N.S. and A.S. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Father and Mother are the biological parents of N.S., born in 2007, and A.S., born in 2008.¹ In May 2013, after Mother gave birth to a substance-exposed child who had a different father, the Department of Child Safety (“DCS”) intervened and placed N.S. and A.S. in an in-home dependency with Father, who had recently been released from an eight-month prison sentence for forgery. As conditions of placement, DCS required Father to obtain employment, find stable housing, and keep the children away from Mother and her family. Nevertheless, Father continued to allow Mother and her family access to the children, and he struggled to find DCS-approved housing. Father also neglected to notify DCS of his new address after moving.

¶3 After eventually finding Father and the children (who were with Mother), DCS removed the children and placed them in foster care. At the time of removal, a DCS caseworker noted that the children’s educational and medical needs were not being met, particularly with regard to necessary dental work.

¶4 DCS pursued a reunification plan, again requiring Father to find stable housing for at least a three-month period, obtain employment, and participate in DCS in-home services. Although Father obtained housing with friends for several three-month periods, the housing was not approved by DCS because of concerns regarding the people with whom Father was staying.

¹ Mother’s parental rights have also been severed, but she is not a party to this appeal.

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¶5 A caseworker reported that Father interacted well with the children during supervised visits. But Father cancelled several visits because he had to work, and he failed to show up for other visits.

¶6 Father and Mother continued their relationship, and Mother gave birth to another substance-exposed child. During this time, Father and Mother were both arrested for reciprocal domestic violence, and Father was convicted of a domestic violence offense.

¶7 Throughout the dependency, the children stayed in three different foster homes; after DCS moved for severance and adoption in January 2015, the third foster family became a potential adoptive placement.

¶8 After an evidentiary hearing on October 21, 2015, the superior court found that the children had been in an out-of-home placement for more than fifteen months and that it was unlikely Father would be able to remedy the circumstances that led to the out-of-home placement. The court further found that severance was in the children's best interests and severed Father's parental rights. Father timely appealed, and we have jurisdiction under Arizona Revised Statutes ("A.R.S.") § 8-235.²

DISCUSSION

¶9 Father argues that the superior court erred by finding that there were grounds under A.R.S. § 8-533(B) to sever his parental rights. As relevant here, a parent's rights may be terminated upon a showing—by clear and convincing evidence—that the child has been in an out-of-home placement for at least fifteen months, DCS has made diligent efforts to provide reunification services, the parent has been unable to remedy the circumstances that necessitated the 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." A.R.S. § 8-533(B)(8)(c); *see also Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). The court must further find—by a preponderance of the evidence—that termination is in the child's best interests. A.R.S. § 8-533(B); *Kent K.*, 210 Ariz. at 284, ¶ 22.

¶10 Father does not contest that the children were in an out-of-home placement for more than 15 months and that DCS made diligent efforts to provide reunification services. He argues, however, that DCS did

² Absent material revisions after the relevant date, we cite a statute's current version.

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not establish that he was unable to remedy the circumstances that led to the out-of-home placement or that it was unlikely he could effectively parent the children in the near future. We review the evidence in the light most favorable to upholding the court's ruling, and will reverse only if no reasonable evidence supports the court's factual findings. *See Ariz. Dep't of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, 549, ¶ 7 (App. 2010).

¶11 DCS presented evidence that Father was unable to secure approved housing to provide a stable home for the children. Father moved several times and lived at times with friends who did not provide a safe environment for the children. Father moved into a single-bedroom motel room, and although he indicated he was living alone, he frequently had one or two guests a week, and he continued his relationship with Mother notwithstanding court orders restricting contact with her and notwithstanding her ongoing substance abuse. Based on Father's inability to provide safe, stable housing, and because of his continued relationship with Mother, there was sufficient evidence to support the superior court's finding that Father had not remedied the circumstances that necessitated the out-of-home placement for the children. And Father's inability to remedy those circumstances in over 27 months supported the court's conclusion that he would be unable to do so in the future.³

¶12 Father also argues that the court erred by finding that severance was in the children's best interests. But such a finding can be supported by evidence of a current adoptive plan, or that a child is adoptable. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19 (App. 2004). Here, the foster family indicated a willingness to adopt both children, and severance would further this adoptive plan. Accordingly, reasonable evidence supported the superior court's finding that severance was in the children's best interests.

³ The superior court also found that severance was warranted under A.R.S. § 8-533(B)(8)(a) (nine months' out-of-home placement, coupled with substantial neglect or willful refusal to remedy the circumstances leading to the placement). Because clear and convincing evidence supports the court's finding under § 8-533(B)(8)(c), we need not address Father's arguments contesting the court's additional findings under § 8-533(B)(8)(a). *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3 (App. 2002).

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CONCLUSION

¶13 For the foregoing reasons, we affirm the superior court's order terminating Father's parental rights to N.S. and A.S.



Ruth A. Willingham - Clerk of the Court
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