IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JOSHUA G., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, J.G., *Appellees*.

No. 1 CA-JV 16-0346
FILED 2-28-2017

Appeal from the Superior Court in Maricopa County
Nos. JS17963 and JD22959
The Honorable Kerstin G. LeMaire, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Tucson
By Daniel R. Huff
Counsel for Appellee

Robert D. Rosanelli, Attorney at Law, Phoenix
By Robert D. Rosanelli
Counsel for Appellant

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Donn Kessler joined.

C A T T A N I, Judge:

¶1 Joshua G. ("Father") appeals the superior court's order finding his daughter J.G. to be dependent and contemporaneously terminating his parental rights to J.G. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Father and Sarah H. ("Mother") are the biological parents of J.G., born in November 2014.[1] Father has two other daughters from a previous relationship: A.G., born in 2004, and E.G., born in 2006. Mother has three other children from a previous relationship: K.D., born in 2006, E.D., born in 2007, and R.D., born in 2010.

¶3 Father physically harmed K.D. repeatedly, and eventually told Mother that he hated K.D. and wanted to kill him. K.D. reported that on one occasion during the summer of 2012, Father held him underwater in the swimming pool and punched him in the stomach. Father characterized this as a misunderstanding, stating that he had simply held K.D. back by the leg during a race with the other children.

¶4 Father would "pop" or "spank" the children in the mouth as punishment for lying. While attempting to punish K.D. this way in August 2012, Father missed K.D.'s mouth and instead hit him in the nose. Although Father claimed K.D.'s nose "barely started to bleed," Mother observed "blood spray all over the wall and all over [K.D.'s] shirt," and she recalled that K.D. had two black eyes for a week.

¶5 In September 2012, K.D. suffered an injury to his chin requiring 13 stitches after Father made him stand on one leg in the corner as punishment, then pulled K.D.'s leg out from under him. Father acknowledged disciplining K.D. on this occasion, but denied tripping him. K.D. reported that in October, Father threw him on the bed, covered his face

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[1] Mother's parental rights to J.G. have also been terminated, but she is not a party to this appeal.

with a pillow, and punched him repeatedly in the face; Father claimed K.D. had hit his face on the bedpost while playing in his room.

¶6 In early December 2012, Father again accused K.D. of lying, and when Mother refused to hit K.D. in the face as punishment, Father lifted him by the arms and started shaking him, then tried to bite his nose. Mother tried to protect K.D., but Father kept reaching around her to choke K.D., and punched her in the face during the struggle. The Department of Child Safety ("DCS") removed K.D., E.D., and R.D., from the home following this incident, and Mother's parental rights as to these three children were terminated in early 2014.

¶7 In February 2015, just three months after J.G.'s birth, DCS received a new report that, in the course of punishing his older daughters, Father pulled E.G. up by her hair and scrubbed A.G.'s face with a toothbrush. The report indicated that the daughters feared Father, who had previously slapped A.G. in the face and smashed a crate against the wall above E.G.'s head. DCS removed J.G. and filed dependency and severance petitions. Through a separate family court case, Father was restricted to supervised visitation with the older daughters.

¶8 Father participated in services over the following months, including a psychological evaluation in which he was diagnosed with histrionic personality disorder with obsessive compulsive and narcissistic features. He also completed a 12-week anger management treatment program and a 26-week domestic violence intervention program in summer and fall 2015. Nevertheless, in March 2016, Father assaulted Mother, pulling her from her car by the hair, holding her down and choking her.

¶9 After a six-day evidentiary hearing, the superior court found that Father had willfully abused K.D. (and noted additional acts of physical abuse toward Father's older daughters) and found a nexus between Father's prior abuse of K.D. and a risk of abuse to J.G. based on Father's continued minimization of the prior abuse, his lack of insight into his personality disorder, and J.G.'s young age and inability to protect herself. The court further found that severance would be in J.G.'s best interests, and terminated Father's parental rights. The court later amended its ruling, nunc pro tunc, to adjudicate J.G. dependent as to Father.

¶10 Father timely appealed both the severance and the dependency rulings. We have jurisdiction under Arizona Revised Statutes ("A.R.S.") § 8-235(A).[2]

DISCUSSION

¶11 The superior court may terminate the parent–child relationship if clear and convincing evidence establishes at least one statutory ground for severance, and a preponderance of the evidence shows severance to be in the child's best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). We review the court's severance ruling for an abuse of discretion, deferring to its credibility determinations and factual findings. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004); *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

¶12 Severance is authorized under A.R.S. § 8-533(B)(2) if "the parent has . . . wilfully abused a child," including by causing physical injury. *See also* A.R.S. § 8-201(2). This severance ground may be applied to terminate a parent's rights to a child who has not been abused based on the parent's abuse of a different child. *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 79, ¶ 14 (App. 2005). Severance may be justified even if the child was not yet born when the prior abuse occurred, as long as there exists a sufficient nexus between the prior abuse and the risk of future abuse to the child at issue. *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, 285–86, ¶¶ 16–17 (App. 2011).

¶13 Here, Father argues the superior court lacked an adequate basis to terminate his parental rights based on abuse. He first asserts that, given his outright denial that any abuse occurred, the court lacked sufficient evidence of abuse. But Mother's testimony and the children's prior reports described significant physical abuse, and we defer to the superior court's credibility assessments and its weighing of conflicting evidence. *See Jesus M.*, 203 Ariz. at 280, ¶ 4. Father acknowledges the allegations from Mother and the children, but argues that such evidence is not clear and convincing because he was never arrested or convicted of child abuse. But the underlying abuse, not a resulting criminal conviction, is the basis for severance on this ground, *see* A.R.S. § 8-533(B)(2), and the superior court

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

had ample evidence on which to base its finding that Father had repeatedly physically abused K.D.

¶14 Father further argues that the record does not show any nexus between the prior abuse—some of which occurred over three years before the severance trial—and any future risk to J.G., especially given Father's participation in anger management and domestic violence treatment programs, as well as ongoing individual therapy. But Father attacked Mother in March 2016, *after* he completed the anger management and domestic violence programs, which undermines his assertion that he has successfully addressed his anger and violence issues. Moreover, the psychologist testified that J.G. would be at risk of harm given Father's demonstrated propensity for violence, and that Father's personality disorder—combined with his history of abuse—increased the risk of future violence in stressful situations. And as the superior court observed, there was a more acute risk for a child of J.G.'s young age, who would be unable to protect herself and who might be unable to verbally report abuse. Accordingly, we affirm the superior court's order terminating Father's parental rights to J.G.

¶15 Because we affirm the severance, Father's challenge to the dependency determination is arguably moot. *See Rita J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 512, 515, ¶ 10 (App. 2000) (noting that a severance order would render appeal from a permanency determination "essentially . . . moot"). And we would affirm the dependency ruling in any event because the superior court's finding of abuse warranting severance, which we affirm, suffices to show that J.G. was a dependent based on being in a "home [that was] unfit by reason of abuse . . . by a parent." A.R.S. § 8-201(15)(a)(iii); *see also* A.R.S. § 8-844(C)(1) (preponderance of the evidence standard of proof for dependency); A.R.S. § 8-537(B) (clear and convincing evidence required to prove grounds for termination).

CONCLUSION

¶16 The judgment is affirmed.

AMY M. WOOD • Clerk of the Court
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