IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

CRAIG B., *Appellant*,

v.

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

No. 1 CA-JV 16-0458
FILED 5-18-2017

Appeal from the Superior Court in Maricopa County
No. JD21189
The Honorable Jeanne M. Garcia, Judge

AFFIRMED

COUNSEL

John L. Popilek, P.C., Phoenix
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Amber E. Pershon
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Paul J. McMurdie joined.

T H O M P S O N, Judge:

¶1 Craig B. (father) appeals from the juvenile court's order terminating his parental rights to his son, C.G. For the following reasons, we affirm the decision of the juvenile court.

FACTUAL AND PROCEDURAL HISTORY

¶2 C.G. was born in March 2014. Both C.G. and his mother[1] tested positive for marijuana at the time of his birth. DCS put C.G. in foster care and filed a dependency petition after father admitted he also abused marijuana and told DCS that he could not care for C.G. because his housing situation was unstable.

¶3 In April 2014, the juvenile court found that C.G. was a dependent child. DCS put services into place for father including substance abuse testing and treatment, parent-aide services, visitation, a psychological evaluation, and transportation. Father's participation with services was inconsistent, and he was unable to obtain stable employment or housing over the course of the dependency.

¶4 In July 2015, DCS filed a motion to terminate father's parental rights pursuant to Arizona Revised Statutes (A.R.S.) section 8-533(B)(3) (2016) (mental illness), A.R.S. § 8-533(B)(8)(b) (child under three/six months' time in care), A.R.S. § (B)(8)(a) (nine months' time in care), and A.R.S. § (B)(8)(c) (fifteen months' time in care). In April 2016, the juvenile court ordered father to submit a hair follicle test because he had been inconsistent with urinalysis testing, but father failed to do so.

¶5 Father did not appear for the severance trial in August 2016. (I. 119). After trial, the juvenile court severed father's parental rights based

---

[1] Mother's parental rights were also severed; she is not a party to this appeal.

only on the fifteen months' time in care ground. Father timely appealed. (I. 123). We have jurisdiction pursuant to A.R.S. §§ 8-235(A) (2014), 12-120.21(A)(1) (2016), and 12-2101(A)(1) (2016).[2]

DISCUSSION

¶6 Father raises two issues on appeal: 1) whether the juvenile court abused its discretion by permitting a DCS case manager to give an expert opinion about father's mental health, and 2) whether the juvenile court erred by finding that DCS made diligent efforts to provide him with reunification services.

A. The Case Manager's Testimony

¶7 We review the juvenile court's decision to admit or exclude evidence for a clear abuse of discretion and will not reverse in the absence of resulting prejudice. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, 82-83, ¶ 19, 107 P.3d 923, 928-29 (App. 2005).

¶8 At trial, father's attorney objected when the state's attorney asked DCS case manager Mandy Robling whether she thought father's mental illness would continue for a prolonged, indeterminate period:

> [Ms. Overholt]: Do you think Father's mental illness will continue for a prolonged, indeterminate period?
>
> [Ms. Robling]: Yes.
>
> Mr. Ramiro-Shanahan: Objection; that calls for the witness to speculate.
>
> . . .
>
> Ms. Overholt: Your Honor, this is something we ask the case managers to opine on regularly based on the pattern of participation in services and their apparent mental functioning, to make that recommendation of whether it appears likely the child . . . will be able to be placed with Father. So we're asking you to allow the

[2] We cite the current version of the applicable statute unless revisions material to this decision have occurred since the events in question.

> question to be answered, and you can assign it what weight you think it deserves.
>
> The Court: Al right. Any further argument from you, [Mr. Ramiro-Shanahan] . . .:
>
> Mr. Ramiro-Shanahan: [J]ust to make a record, I don't believe this witness is qualified to render an opinion regarding Father's mental health and whether his issues will continue for a prolonged, indeterminate period of time. That would be testimony that would typically come from an expert witness, a psychological [sic] or a psychiatrist.
>
> The Court: I think I need the question to be restated. . . .
>
> Ms. Overholt: I think I was trying to ask whether the Father's mental illness and lack of participation in the services led to an opinion that the condition will continue for a prolonged indeterminate period.
>
> . . .
>
> The Court: Okay. I am going to overrule the objection and allow the answer.
>
> [Ms. Robling]: Yes. Based on the history I do believe that his mental health is impeding his ability to parent the child and will continue for a chronic indeterminate period of time.

¶9 Father argues that Ms. Robling's testimony that his mental health impeded his ability to parent and would continue for a prolonged, indeterminate period violated Arizona Rule of Evidence 702 because the case manager was not competent to give an expert opinion concerning his mental health.

¶10 Ms. Robling testified that she had fifteen years of experience as a specialist with DCS, she had a bachelor's degree in family relationships and human development from Arizona State University, and had completed six months of "Core training" in addition to her years of on-the-

job training. Even if the juvenile court erred by admitting the complained-of testimony, any error was harmless. *See Alice M. v. Dep't of Child Safety,* 237 Ariz. 70, 73, ¶ 12, 345 P.3d 125, 128 (App. 2015) (juvenile court's error in admitting evidence was harmless because the record showed that even without the evidence, sufficient evidence was presented to terminate mother's parental rights). In this case, the juvenile court declined to grant severance on the basis of mental illness. Instead, the court granted severance on the fifteen months' time in care ground, which required DCS to establish that father had "been unable to remedy the circumstances that caused [C.G.] to be in an out-of-home placement and there [was] a substantial likelihood that [father would] not be capable of exercising proper and effective parental care and control in the near future." A.R.S. § 8-533(B)(8)(c). The court found "services have been . . . offered, and [father] has participated in some services but I agree . . . that Father has had a long time to do what he needs to do to reunify with [C.G.], and he has not been able to do so in that 15 or more month time period . . .I also find that there's a substantial likelihood that [father] is not going to be capable of exercising proper care for [C.G.] in the near future."

¶11 C.G. was found to be dependent as to father because father had unresolved substance abuse issues and because his housing situation was unstable and he could not care for C.G. At the severance trial more than two years after C.G. was placed in an out-of-home placement, father still had failed to obtain stable housing and employment, and he had not demonstrated sobriety by consistently submitting negative urinalysis tests. Father was inconsistent with visitation and his parent aid referral was closed out unsuccessfully. Thus, sufficient evidence supported the juvenile court's severance order, even without the alleged improper testimony.

B. Reunification Services

¶12 "We will not disturb the juvenile court's order severing parental rights unless its factual findings are clearly erroneous, that is, unless there is no reasonable evidence to support them." *Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, 377, ¶ 2, 982 P.2d 1290, 1291 (App. 1998) (citations omitted). We view the facts in the light most favorable to sustaining the juvenile court's ruling. *Lashonda M.*, 210 Ariz. at 82, ¶ 13, 107 P.3d at 928. We do not reweigh the evidence, because "[t]he juvenile court, as the trier of fact in a termination proceeding, is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002) (citation omitted). The juvenile court may terminate a parent-child relationship if DCS proves by

clear and convincing evidence at least one of the statutory grounds set forth in A.R.S. § 8-533(B). *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000). The court must also find by a preponderance of the evidence that severance is in the child's best interests.[3] *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22, 110 P.3d 1013, 1018 (2005).

¶13 Father does not dispute that C.G. was in an out-of-home placement pursuant to court order for more than fifteen months. He argues that DCS failed to provide him with appropriate reunification services, however. The statute provides, in relevant part:

> **B.** Evidence sufficient to justify the termination of the parent-child relationship shall include any one of the following, and in considering any of the following grounds, the court shall also consider the best interests of the child:
>
> . . .
>
> 8. That the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency, that the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services and that one of the following circumstances exists:
>
> . . .
>
> (c) The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order . . ., the parent has been unable to remedy the circumstances that cause the child 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.

[3] Father does not appeal from the juvenile court's best interests finding.

A.R.S. § 8-533(B)(8)(c). DCS is required to provide a parent "with the time and opportunity to participate in programs designed to help [the parent] become an effective parent." *Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). It "is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *Id.*

¶14 Father argues that DCS "did little" to provide him with reunification services, delayed putting into place a psychological evaluation, and ended his visitation with C.G. a month before trial. The record shows that DCS referred father to TASC and TERROS for drug testing and treatment, and offered him transportation and parent aide services. In 2014, DCS asked father to get a psychological evaluation using his insurance, but he did not do so. Subsequently, in March 2015 DCS referred father for a psychological evaluation and one was set up for him in July 2015, but he failed to complete the evaluation. Father had visitation with C.G. over the course of the dependency. The case manager testified that about a month before trial the referral for the provider who supervised father's visitation ended, she had to make a new referral for a new case aide, and the new case aide was assigned the day before trial.

¶15 The services offered by DCS were appropriate and father offers no explanation for his failure to complete a psychological evaluation when DCS requested him to do so in 2014 and again in 2015 after DCS set one up for him. Because reasonable evidence supported the juvenile court's finding that DCS made a diligent effort to provide father with appropriate reunification services, we affirm the finding.

CONCLUSION

¶16 For the foregoing reasons, we affirm the decision of the

juvenile court severing father's parental rights.

AMY M. WOOD • Clerk of the Court
FILED: AA