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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JOHNATHON A., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY,
A.A., C.A., B.O., *Appellees*.

No. 1 CA-JV 17-0047
FILED 7-27-2017

Appeal from the Superior Court in Maricopa County
No. JD528688
The Honorable Karen L. O'Connor, Judge

AFFIRMED

COUNSEL

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

Arizona Attorney General's Office, Mesa
By Amanda L. Adams
Counsel for Appellee

MEMORANDUM DECISION

Judge Randall M. Howe delivered the decision of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Jennifer B. Campbell joined.

H O W E, Judge:

¶1 Johnathon A.¹ (“Father”) appeals the juvenile court’s order terminating his rights to his three minor children, A.A., C.A., and B.O. on the grounds of chronic substance abuse under A.R.S. § 8-533 (B)(3) and nine months in out-of-home placement under A.R.S. § 8-533(B)(8)(a). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In early 2015, the Department of Child Safety (“Department”) received two reports that Father, A.A., C.A., and the children’s mother (“Mother”)² were living in an unsafe old camper behind someone’s home. The report also stated that Father and Mother, who were unemployed, were abusing drugs and alcohol, and had incidents of domestic violence. When the Department’s investigator followed up and visited the home, it confirmed that the living conditions were unsafe, finding the camper’s windows broken and the children’s toys next to the garbage can and covered in bugs. Inside the camper, the investigator smelled a strong, foul odor and found dirty clothing piled to the ceiling and shards of glass on the floor. The children were also filthy. Father told the investigator that the family recently had moved to a homeless shelter and no longer lived in the camper, but could not identify the shelter by name or location, nor provide either parent’s contact information. When asked about the alleged substance abuse, Father denied it and agreed to submit to a drug test, stating that the results would be negative.

¹ We amend the caption to reflect the correct spelling of Father’s first name. All future pleadings shall use the amended caption.

² The juvenile court also terminated Mother’s parental rights, but she is not a party to this appeal.

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¶3 The Department took temporary custody of both children and placed them in a foster home. The Department also petitioned for dependency of both children as to Father. To achieve reunification, the Department told Father that he needed to address his substance abuse issues and obtain stable employment and housing. To help Father, the Department provided him services including drug testing, substance abuse treatment classes, parent aide services, parenting classes, and a psychological evaluation.

¶4 In the meantime, Mother gave birth to her and Father's third child, B.O., in June 2015. The child was born substance-exposed to oxycodone, so the hospital called the Department. At the hospital, Father admitted to the Department that the week before, he used cocaine to stop vomiting after getting "wasted" on alcohol. The Department consequently took temporary custody of the newborn within a week and placed him in a different foster home than his siblings. As with the other two children, the Department successfully petitioned for B.O.'s dependency as to Father.

¶5 Father participated inconsistently in his services over the next year, missing several of his required drug tests. When he did submit to drug testing, he repeatedly tested positive for prohibited substances, including oxycodone, amphetamine, cocaine, and alcohol. Although the Department requested that Father provide proof of a prescription for the oxycodone, Father never did.

¶6 Father also failed to fully engage with his psychological evaluation, having missed his first two appointments. When he finally attended the evaluation six months after the Department took the children into custody and referred Father for the service, the psychologist recommended that in addition to his other services, Father attend individual counseling. The Department subsequently referred Father for that service as well. However, Father did not report for counseling at any time over the next six months.

¶7 Additionally, Father participated in his substance abuse treatment classes only sporadically. But when he did attend, Father constantly minimized his drug use. Father stated that alcohol was his main substance of use and that he began drinking when he was 18 years old. He admitted that he was convicted of driving under the influence seven years earlier and that alcohol had caused problems for him at work. Father said that he used to "take up to 20 shooters a day" of alcohol, but stated that he "cut way down" in the preceding few months and did not think he had a substance abuse problem. Father also claimed that he used cocaine socially

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and that he began using it and methamphetamine the year before the Department took his children. He later recanted, however, and said he had used cocaine only once or twice in his life. Despite these admissions, the substance abuse treatment provider described Father's participation level as "resistant" each month due to his failure to follow through with appointments, lack of motivation, and "minimal" participation. His sporadic participation led the provider to end services and close his case on two occasions.

¶8 Father told the Department that getting to his multiple services was difficult because he lacked transportation. In response, the Department gave Father an open referral for taxi service in January 2016 – a service that the Department did not often provide to parents. With this open referral, Father needed only to call to set up a pick-up time for transportation to his appointments. Despite now having transportation available to him, however, Father continued to miss some appointments and drug tests. When Father did test in February 2016, he tested positive for alcohol. Shortly thereafter, Father's substance abuse treatment provider offered him vocational training and job-search assistance, but Father declined and continued to miss services and test positive for alcohol. Based on Father's failure to participate in his services, the Department changed the case plan to severance and adoption, and moved to terminate Father's parental rights in June 2016.

¶9 That same month, which was about a year after the Department took temporary custody of all three children, Father began attending his services regularly and submitting negative drug tests. He continued to increase his participation and consistently test negative for any substances over the next few months. However, in December 2016 and January 2017, Father missed five drug tests and other appointments because he was incarcerated on an outstanding warrant for unpaid court fees.

¶10 At the contested January 2017 severance hearing, the Department case manager testified that Father received a total of four referrals to substance abuse treatment over the span of the 20-month dependency. Despite Father's increased participation, in June 2016, the case manager stated that Father was not "fully engaged" until October – approximately three months before the severance hearing. She also testified that she believed that Father's history of substance abuse was chronic and would continue for a prolonged, indeterminate period. She based this opinion on Father's inconsistent participation in his substance abuse treatment classes and testing, as well as his continued minimizing of his abuse. She further stated that Father could not safely parent the children

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while he continued to minimize his drug abuse. Additionally, she stated that although Father's visits with his children went well, all visits were supervised, and unsupervised visitations were never recommended in this case. Finally, the case manager opined that termination of Father's parental rights was in the children's best interests, that each child was doing well in their placement and was adoptable, and that the children's respective placements were willing to adopt them.

¶11 After taking the matter under advisement, the juvenile court terminated Father's parental rights to A.A., C.A., and B.O. on the grounds of chronic substance abuse and nine months in out-of-home care. The court found that Father had not been able to show long-term sobriety since the Department took the children in April 2015 because he failed to consistently participate in services and submit clean drug tests. The court further found that Father was unable to discharge his parental responsibilities due to his chronic substance abuse and that reasonable grounds existed to believe that the abuse would continue for a prolonged and indeterminate period of time. Finally, the court concluded that the Department had made reasonable efforts to provide Father with the appropriate rehabilitative services, but to no avail, and that termination was in the children's best interests. Father timely appealed.

DISCUSSION

¶12 Father argues that insufficient evidence supports the juvenile court's order terminating his parental rights to A.A., C.A., and B.O. We review a juvenile court's order for an abuse of discretion. *E.R. v. Dep't of Child Safety*, 237 Ariz. 56, 58 ¶ 9 (App. 2015). Unless no reasonable evidence supports the juvenile court's factual findings, we accept those findings and will affirm the severance order unless it is clearly erroneous. *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, 508 ¶ 1 (App. 2008). Additionally, we will affirm the juvenile court's order if any one of the statutory grounds is proved and if the termination is in the child's best interests. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 376 ¶ 14 (App. 2000).

1. Statutory Ground for Termination

¶13 Father argues that insufficient evidence supports the juvenile court's order terminating his parental rights to his three minor children on the ground of chronic substance abuse. Although fundamental, a parent's right to care, custody, and control of his child is not absolute. *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 78 ¶ 6 (App. 2005). To terminate parental rights, the juvenile court must find by clear and convincing

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evidence the existence of at least one statutory ground under A.R.S. § 8-533 and by a preponderance of the evidence that termination would serve the children's best interests. A.R.S. § 8-533(B); Ariz. R.P. Juv. Ct. 66(C). The juvenile court must also consider the "availability of reunification services to the parent and the participation of the parent in these services." *Jennifer G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 450, 453 n.3 ¶ 12 (App. 2005). The juvenile court here did not abuse its discretion by terminating Father's parental rights or by finding that termination was in the children's best interests.

¶14 As relevant here, to terminate a parent's rights on the ground of chronic substance abuse, the juvenile court must find that: (1) the parent has a history of chronic substance abuse; (2) the parent is unable to discharge parental responsibilities because of his chronic substance abuse; and (3) reasonable grounds exist to believe that the abuse will continue for a prolonged and indeterminate period. A.R.S. § 8-533(B)(3); *Raymond F.*, 224 Ariz. at 377 ¶ 15.

¶15 The juvenile court did not err by finding each statutory element satisfied. First, the record supports the court's finding that Father has a history of chronic substance abuse. Father began drinking alcohol at the age of eighteen – seven years before the Department took custody of his children. He admitted that he used to consume up to 20 shots a day, that drinking caused him to receive a DUI, and that his alcohol abuse had caused problems at work when he was employed. Father also continued to test positive for alcohol throughout the first 13 months of the dependency. Nevertheless, Father continually minimized his alcohol use. Additionally, Father admitted that he began using cocaine and methamphetamine in 2014 and continued to do so after the Department took custody of his children. Father even admitted that on one occasion he used cocaine to cure symptoms caused by a night of heavy drinking. For the majority of the case, Father resisted rehabilitative services, lacked motivation to complete them, and when he participated at all, he did so only minimally. At the time of the severance hearing, Father had yet to complete his substance abuse treatment. *See Raymond F.*, 224 Ariz. at 379 ¶ 29 ("Father's failure to remedy his drug abuse, despite knowing that the loss of his children was imminent, is evidence that he has not overcome his dependence on drugs."). Although Father's consistent engagement with his services and consistently clean drug tests in the few months before the severance hearing is commendable, it does not demonstrate the sobriety required to either reunify with his children or preclude termination of his parental rights. *See Jennifer S. v. Dep't of Child Safety*, 240 Ariz. 282, 288 ¶ 25 (App. 2016) (finding that the parent's efforts to achieve and maintain sobriety in the months before her severance

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trial did not outweigh her significant history or abuse or consistent inability to be sober throughout the dependency).

¶16 Second, sufficient evidence supports the finding that Father was unable to discharge his parental responsibilities due to his substance abuse. While “parental responsibilities” does not include an exclusive set of factors, *Raymond F.*, 224 Ariz. at 378 ¶ 20, it does include providing the children with food, shelter, education, and ordinary medical care, *Matter of Appeal in Maricopa Cty. Juv. Action No. JS-5209 & No. JS-4963*, 143 Ariz. 178, 185 (App. 1984). Father could not provide any of these necessities to any of his children because they remained in their respective out-of-home placements. Father knew that he needed to demonstrate sobriety and maintain stable employment and housing to reunify with his children, but he did not do so. In fact, Father repeatedly minimized his substance abuse issues and declined the vocational and job-search services that his substance abuse treatment provider offered him, even though he knew he needed to maintain stable income and housing to reunify with his children. Moreover, the case manager testified at the hearing that Father could not properly parent a child while struggling with substance abuse.

¶17 Third, sufficient evidence supports the juvenile court’s finding that reasonable grounds exist to believe that Father’s abuse will continue for a prolonged and indeterminate period. Father was unable to achieve and maintain sobriety for more than a year after the Department took custody of his children. Additionally, Father constantly denied or minimized his substance use. The case manager testified that someone who continuously does so cannot properly remedy his problem. Although Father began to take steps toward sobriety in the months immediately preceding the severance hearing, he has not shown that he can maintain that sobriety. Additionally, Father has not completed his substance abuse treatment class. Because Father has not been able to maintain sobriety for the majority of the dependency, and in light of his inconsistent compliance with drug testing and treatment, reasonable grounds existed to believe that his substance abuse will continue for a prolonged, indeterminate period. *See Raymond F.*, 224 Ariz. at 379 ¶ 29 (providing that a child’s interest in permanency must prevail over the parent’s uncertain battle with drugs).

¶18 Finally, the record also shows that the Department made diligent efforts to provide Father with reunification services and that he failed to make the necessary sobriety changes to allow reunification. The Department gave Father four referrals for substance abuse treatment as well as referrals for drug testing, a psychological evaluation, individual counseling, and parent aide services. When Father communicated that he

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could not attend his required services for a lack of transportation, the Department provided him with an open and free taxi cab service. Despite this help, Father did not fully participate and engage in the reunification services. Thus, the juvenile court did not err by terminating Father's parental rights to A.A., C.A., and B.O. on the ground of chronic substance abuse.

2. The Children's Best Interests

¶19 Although Father does not challenge the juvenile court's best interests finding, the record supports that finding as well. Termination of a parent's rights is in the children's best interests if the children will benefit from the termination or will be harmed if the relationship continues. *Shawnee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, 179 ¶ 20 (App. 2014). In determining the children's best interests, the juvenile court may consider whether the children are adoptable. *Tina T. v. Dep't of Child Safety*, 236 Ariz. 295, 300 ¶ 19 (App. 2014); *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, 288 ¶ 26 (App. 2011). The juvenile court need only find that termination is in the children's best interests by only a preponderance of the evidence. *Kent K. v. Bobby M.*, 210 Ariz. 279, 288 ¶ 41 (2005).

¶20 Here, reasonable evidence supports the juvenile court's finding that terminating Father's parental rights to A.A., C.A., and B.O. was in the children's best interests. A.A. and C.A. have been placed together in their foster home for nearly two years and were doing well. But for a few days at the hospital after his birth, B.O. has spent all of his life with his foster placement. The case manager testified that the children's placements were meeting their needs and were willing to adopt them. She also stated that the children were adoptable. Thus, the juvenile court did not abuse its discretion by finding that termination was in the children's best interests.

CONCLUSION

¶21 For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court
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