IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

LONNIE T., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, V.T., *Appellees*.

No. 1 CA-JV 17-0098
FILED 8-3-2017

Appeal from the Superior Court in Maricopa County
No. JD22952
The Honorable Connie Contes, Judge

AFFIRMED

COUNSEL

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

Arizona Attorney General's Office, Tucson
By Dawn Rachelle Williams
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge Michael J. Brown and Judge Randall M. Howe joined.

M c M U R D I E, Judge:

¶1 Lonnie T. ("Father") appeals from a superior court order terminating his parental rights to V.T. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Father is the biological parent of V.T., born in January 2014. In June 2014, the Department of Child Safety ("DCS") filed a petition alleging V.T. dependent based on information that V.T. had tested positive for marijuana at birth; Father was unable to provide basic necessities for V.T.; and Father had failed to maintain a normal parental relationship with V.T. The superior court adjudicated V.T. dependent in August 2014 and DCS took temporary custody of V.T. in September 2014 after locating her at her paternal grandmother's house.

¶3 Father participated in family reunification services including substance-abuse testing and treatment, individual and family therapy, parent-aide services, supervised visitation, and a psychological evaluation with Dr. Al Silberman. Dr. Silberman diagnosed Father with post-traumatic stress disorder and a personality disorder with antisocial traits. Intellectual testing also revealed Father had below-average intellectual functioning.

¶4 In July 2016, DCS moved to sever Father's parental rights to V.T. on the grounds of more than 15 months' time in out-of-home care and mental illness pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(8)(c) and (B)(3). The superior court conducted a severance hearing in December 2016, and in February 2017 found DCS had proven, by clear and convincing evidence, grounds for termination of Father's parental rights to V.T. pursuant to both § 8-533(B)(8)(c) and (B)(3). The superior court also found by a preponderance of the evidence that termination was in the best interests of the child. Father timely appealed and we have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution;

A.R.S. § 8-235(A); and Arizona Rule of Procedure for the Juvenile Court 103(A).[1]

DISCUSSION

¶5 Father argues DCS failed to meet its statutory burden to prove with sufficient evidence Father failed: (1) to remedy the circumstances which caused V.T. to remain in an out-of-home placement for 15 months and the substantial likelihood Father will be incapable of exercising proper and effective parental care and control in the near future; and (2) to discharge his parental responsibilities because of a mental deficiency and because there were reasonable grounds to believe the condition would continue for a prolonged, indeterminate period.

¶6 The right to custody of one's child is fundamental, but it is not absolute. *Michael J. v. ADES*, 196 Ariz. 246, 248, ¶¶ 11–12 (2000). To support termination of parental rights, one or more of the statutory grounds for termination must be proven by clear and convincing evidence. A.R.S. § 8-537(B); *Shawanee S. v. ADES*, 234 Ariz. 174, 176–77, ¶ 9 (App. 2014). The court must also find, by a preponderance of the evidence, that severance is in the child's best interests. *Id.* at 177, ¶ 9.[2]

¶7 We view the evidence in the light most favorable to sustaining the superior court's findings. *Christina G. v. ADES*, 227 Ariz. 231, 234, ¶ 13 (App. 2011). As the trier of fact, the superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *ADES v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004). We will accept the superior court's findings of fact "unless no reasonable evidence supports those findings." *Jesus M. v. ADES*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

¶8 To justify termination of parental rights under § 8-533(B)(8)(c), DCS must prove "the child has been in an out-of-home placement for a cumulative total period of fifteen months or longer . . . 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

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[1] We cite to the current version of applicable statutes and rules when no revision material to this case has occurred.

[2] Father does not challenge the superior court's best-interests finding; therefore, we do not address it.

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). DCS is also required to make a diligent effort toward reunification and to provide appropriate reunification services before severance. *Mary Lou C. v. ADES*, 207 Ariz. 43, 49, ¶ 15 (App. 2004).[3]

¶9 Father contends there is insufficient evidence in the record to demonstrate his inability to exercise proper and effective parental care and control presently, or in the near future. Specifically, Father argues his psychological test scores showing he has a low verbal IQ, standing alone, are not sufficient to prove his inability to effectively exercise parental care. However, Dr. Silberman's findings regarding Father's low verbal IQ are not the only evidence the superior court considered when finding Father had failed to remedy the circumstances leading to V.T. being placed in out-of-home care.

¶10 The superior court found Father "failed to make the behavioral changes necessary to independently parent [V.T.]." Evidence in the record supporting this finding included Father's failure to complete parent-aide services successfully, failure to complete family therapy with V.T., and his failure to be able to have unsupervised visits with V.T. in over two years. Parent-aide services were closed out unsuccessfully because Father was "unable to provide and meet the child's needs." Father was unable to meet three of the four goals set by his parent aide, including "demonstrat[ing] age appropriate parenting skills . . . and understanding of child development," "identify[ing] appropriate caregivers for his daughter," and "demonstrat[ing] what a safe living environment is."

¶11 Dr. Silberman concluded Father also has post-traumatic stress disorder and a personality disorder with antisocial behavior, both of which would limit Father's ability to meet the needs of V.T. and both of which would not improve over time, even with services. Accordingly, reasonable evidence supported the superior court's conclusion that Father would be incapable of exercising proper and effective parental care and control in the

[3] Father does not challenge DCS's efforts to provide appropriate reunification services; therefore, we do not address those efforts.

near future. *See Jesus M.*, 203 Ariz. at 280, ¶ 4 ("[W]e will affirm a severance order unless it is clearly erroneous.").[4]

CONCLUSION

¶12 For the foregoing reasons, we affirm.

AMY M. WOOD • Clerk of the Court
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[4] Because sufficient evidence exists to support the superior court's finding under § 8-533(B)(8)(c), we do not address Father's argument regarding § 8-533(B)(3). *See Jesus M.*, 203 Ariz. at 280, ¶ 3 ("If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.").