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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JEREMIAH S., *Appellant*,

v.

SANNEA B., OWEN B., N.S., X.S., S.S., DEPARTMENT OF CHILD
SAFETY, *Appellees*.

No. 1 CA-JV 17-0123
FILED 7-27-2017

Appeal from the Superior Court in Maricopa County
No. JS517631
The Honorable David J. Palmer, Judge

AFFIRMED

COUNSEL

Vierling Law Offices, Phoenix
By Thomas A. Vierling
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Dawn R. Williams
Counsel for Appellees

MEMORANDUM DECISION

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

H O W E, Judge:

¶1 Jeremiah S. (“Father”) appeals the juvenile court’s order terminating his parental rights to his minor children. He argues that the juvenile court erred by finding that termination would be in the children’s best interests. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In December 2014, Sannea B. and Owen B. (the “Grandparents”) were granted emergency temporary appointment as the guardians for N.S. and X.S. At that time, Father was serving a two-year prison sentence. In May 2015, the children’s mother (“Mother”)¹ objected to the temporary guardianship. That same day, the Grandparents petitioned to terminate Mother’s and Father’s parental rights to the children on the grounds of abandonment and substance abuse. The court continued the temporary guardianship until it conducted a guardianship hearing in August 2015. A month later, the court terminated the temporary guardianship.

¶3 Because the court’s termination of the temporary guardianship meant that the children would be returned to Mother, and with the termination of parental rights petition still pending, the Grandparents moved for immediate custody of the children and petitioned for dependency. The Grandparents alleged that the children were dependent based on instability, homelessness, substance abuse, and neglect. The juvenile court granted the immediate custody motion and ordered that the Department of Child Safety (the “Department”) be named as a party in the dependency proceedings. Later that month, Father completed his two-year prison sentence.

¹ The juvenile court also terminated Mother’s parental rights, but she is not a party to this appeal.

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¶4 As a party to the dependency proceedings, the Department offered Father reunification services. The Department referred Father to Terros for a substance abuse assessment and to TASC for drug testing. In October 2015, Father tested positive for methamphetamine. At his Terros assessment, however, Father had failed to disclose his positive drug test and stated that he had not used drugs since 2008. As such, Terros did not recommend that Father participate in any further substance abuse treatment. Shortly thereafter, TASC canceled Father's referral after he continually failed to comply with the testing requirements.

¶5 The following month, Father failed to appear without good cause at a pretrial conference and the juvenile court found N.S. and X.S. dependent. Over the next several months, Father was incarcerated in Texas and failed or refused to participate in reunification services. During that time, Father failed to appear at a court hearing and the juvenile court ordered that his parental rights to N.S. and X.S. be severed. Father requested that the severance order be set aside because his absence was due to his incarceration in Texas. The juvenile court set aside its severance order and provided Father with a Form III notice, which explained that refusing to participate in services could result in termination of parental rights.

¶6 In July 2016, Mother gave birth to her and Father's third child, S.S., who was born substance-exposed to amphetamine. The Department petitioned for dependency and took S.S. into custody. The Department then placed S.S. with N.S. and X.S. at the Grandparent's home. At a subsequent pretrial conference, Father submitted the issue of S.S.'s dependency to the court, which found S.S. dependent. After the juvenile court found S.S. dependent, the Grandparents amended their termination petition to add S.S. and to also add the out-of-home placement grounds for termination under A.R.S. § 8-533(B)(8).

¶7 During this time, the Department again referred Father to TASC for drug testing. Father submitted to one drug test, which was positive for methamphetamine, amphetamine, and a marijuana metabolite. Due in part to Father's positive drug test, the juvenile court ordered that visitation between Father and the children be stopped until Father provided one clean drug test. Father failed, however, to test at any time before the January 2017 severance trial.

¶8 At the January 2017 severance trial, the case manager testified that Father had not participated in any visitation with the children since the court ordered him to provide one clean drug test. Father acknowledged that all he needed to do to resume visits was submit one clean drug test but

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stated that he did not test because “[he] was being stupid and stubborn and bullheaded.” The case manager also stated that Father refused to successfully participate in any service that the Department provided to him.

¶9 The case manager further testified that the children were adoptable and that the Grandparents were willing to adopt. She stated that the Grandparents have met all the children’s needs, the Grandparents have raised the children throughout their lives, the children looked to the Grandparents for their care and nurturing, and the children were secure living with the Grandparents. The case manager opined that the children would benefit from severance because “they would receive stability and permanency in a loving home free of criminal activity and substance abuse.”

¶10 The juvenile court terminated Father’s parental rights under the statutory grounds of abandonment, substance abuse, nine and 15 months out-of-home placement for N.S. and X.S., and six months out-of-home placement for S.S. The court found that Father had minimal contact with the children for most of their lives, particularly after the court suspended visitation in August 2016. The court then found that terminating Father’s parental rights would be in the children’s best interests. The court reasoned that termination would further the plan of adoption and provide the children with a safe, permanent, and stable drug-free environment capable of addressing all their needs. Father timely appealed.

DISCUSSION

¶11 Father does not challenge the existence of the statutory grounds for termination. He contends only that the juvenile court erred by finding that termination of his parental rights was in his children’s best interests. “Whether severance is in the child’s best interests is a question of fact for the juvenile court to determine” and we view the evidence in favor of supporting the juvenile court’s findings. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 282 ¶ 13 (App. 2002). Because sufficient evidence supports the finding that termination was in the children’s best interests, the juvenile court did not err.

¶12 As pertinent here, to terminate parental rights, the juvenile court must find by a preponderance of the evidence that termination would be in the child’s best interests. Ariz. R.P. Juv. Ct. 66(C). Termination of parental rights is in a child’s best interests if the child will benefit from the termination or will be harmed if the relationship continues. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4 ¶ 16 (2016). The juvenile court “must assess the

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relevant facts in determining on a case-by-case basis whether a preponderance of the evidence supports a best-interests finding.” *Id.* at ¶ 13. Some of the factors to consider in determining whether termination is in the child’s best interests include whether: (1) an adoptive placement is immediately available; (2) the existing placement is meeting the needs of the child; and (3) the child is adoptable. *Raymond F. v. Ariz. Dep’t of Econ. Sec.*, 224 Ariz. 373, 379 ¶ 30 (App. 2010).

¶13 Here, the juvenile court found that severance would be in the children’s best interests because it would further the plan of adoption and provide the children with a safe, permanent, and stable home. The court further found that the Grandparents would be able to appropriately provide for all the children’s needs. The record supports this finding. The Grandparents have nurtured and cared for the children for most of their lives. The case manager testified that the Grandparents were meeting all the children’s needs, the children were adoptable, and the Grandparents planned to adopt the children should parental rights be terminated. She further stated that the children were safe and secure living with the Grandparents. Finally, N.S. and X.S. have lived with the Grandparents full-time since December 2014 and S.S. has been in the Grandparents’ custody her entire life. As such, terminating Father’s parental rights would provide the children with permanency and stability.

¶14 Father counters that termination of his parental rights would not be in the children’s best interests because he has a relationship with them that is worth saving. Father contends that the juvenile court failed to give sufficient weight to the fact that “the children and [he] have a number of years to have a normal relationship together.” But Father is essentially asking that this court reweigh the evidence presented at trial. Because the record supports the juvenile court’s best interests finding, we reject Father’s request to reweigh the evidence. *See Jesus M.*, 203 Ariz. at 282–83 ¶ 16 (“[W]e believe little would be gained by our further ‘rehashing the trial court’s correct ruling’ in our decision.”). Thus, the court did not err by finding that termination was in the children’s best interests.

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CONCLUSION

¶15 For the foregoing reasons, we affirm.



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