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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JOHN P., *Appellant*,

v.

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

No. 1 CA-JV 17-0165
FILED 11-21-2017

Appeal from the Superior Court in Mohave County
No. S8015JD201600003
The Honorable Richard Weiss, Judge

AFFIRMED

COUNSEL

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

The Arizona Attorney General's Office, Mesa
By Ashlee N. Hoffmann
Counsel for Appellee

MEMORANDUM DECISION

Judge Randall M. Howe delivered the decision of the Court, in which Presiding Judge James P. Beene and Judge Kent E. Cattani joined.

H O W E, Judge:

¶1 John P. (“Father”) appeals the juvenile court’s order terminating his parental rights to C.P. on the grounds of neglect under A.R.S. § 8-533(B)(2), chronic substance abuse under A.R.S. § 8-533(B)(3), and time in an out-of-home placement for six months under A.R.S. § 8-533(B)(8)(b). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Father has been abusing drugs, including methamphetamine, for about 30 years. He started using methamphetamine at age 16, and he described his history and pattern of use as “heavy daily.” Similarly, he started using cannabis at age 13, and he acknowledged using it “daily for pain.” In July 2014, Father was diagnosed with amphetamine and cannabis dependence and attempted to receive substance-abuse treatment at Mohave Mental Health Clinic (“MMH”). But he was discharged from the clinic a month later in August 2014 for lack of contact.

¶3 In January 2016, the Department of Child Safety received a hotline report that Amber K. (“Mother”)¹ had given birth to a substance-exposed newborn, C.P. Both Mother and C.P. tested positive for methamphetamine at the time of birth. Mother and Father were homeless and had bad hygiene when they arrived at the hospital, and neither parent had stable income or employment. The Department removed C.P. from the parents’ care because Mother and C.P. tested positive for methamphetamine, concerns about the parents’ mental health were present, and the parents lacked stable housing and income to provide for C.P.’s basic needs.

¶4 Thereafter, the Department petitioned for dependency alleging that Father abused substances, was unable to provide for C.P.’s

¹ Mother entered a No-Contest Plea resulting in the termination of her parental rights and is not a party to this appeal.

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basic needs, and did not protect C.P. from Mother's substance abuse. Moreover, the petition alleged that Father's substance abuse had led to housing and income instability, which consequently prevented him from being able to appropriately parent and meet C.P.'s needs. In March 2016, Father failed to appear at the pretrial conference, and the juvenile court entered a default against him. Thereafter, the court found C.P. dependent.

¶5 The Department provided Father with numerous services to reunify him with C.P., including substance-abuse treatment, substance-abuse testing, inpatient rehabilitation, a psychological evaluation, mental health counseling, parenting classes, and supervised visitation. Father's participation was poor, however, and he did not comply with his case plan. Father enrolled in inpatient rehabilitation, but he attended only one day. He submitted to only 30% of the required drug tests, and of the tests taken, the majority returned positive for methamphetamine. Additionally, Father spent about \$20 per day on methamphetamine, yet did not provide wipes or diapers for visits with C.P. Father's MMH counselor noted that Father had been unable to remain clean and sober, had "used [substances] despite negative consequences" and "lost housing and employment due to [substance] use." Father also had participated minimally in his parenting classes and mental health counseling, and he did not attend his psychological evaluation.

¶6 Additionally, parent aides asked Father to leave his visits with C.P. multiple times due to his behavior. His behavior included failing to follow the parent aide's instructions, leaving "on and off" during visits, attempting to overfeed C.P. despite a case manager informing him of C.P.'s strict diet that a physician prescribed, using profanity towards the parent aides, and falling asleep during visits. On one occasion Father threatened to "hunt down" a parent aide if C.P. was not returned to him. Because of his behavior, the Department appointed a new parent-aide agency, and the new agency noted that Father tended to be late for visits as well as leave early. Father also displayed erratic behavior when interacting with C.P. For instance, in May 2016, Father told the crying four-month-old C.P. that he would "not tolerate these tantrums. You will stop these. You will not throw a fit to get what you want." He then refused to follow the parent aide's suggestion to pick up C.P. and soothe him. Due to Father's behavior, the juvenile court suspended Father's visits in June 2016.

¶7 In September 2016, the juvenile court changed the case plan to severance and adoption on the Department's request, and the Department moved to terminate Father's parental rights on the grounds of neglect, chronic substance abuse, and six months' out-of-home placement.

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The Department also alleged that termination of Father's parental rights was in C.P.'s best interests because it would further the plan of adoption and provide C.P. with permanency and stability. It further alleged that C.P. was adoptable, in an adoptive placement meeting his needs, and another placement could be located if needed. Father's visits were reinstated in October 2016, but he still exhibited erratic behavior. For instance, parent-aide services noted that he had behaved improperly eight times within the last six months and still had trouble staying awake during visits.

¶8 In March 2017, the juvenile court held a contested termination hearing. At the hearing, the case manager testified that the Department's concerns at the time of removal included Father's substance abuse, his lack of stable income and housing, and his mental health. The case manager stated that Father had not mitigated the Department's concerns because he still abused substances and engaged in little to no parenting classes and mental health counseling. She further testified that Father could not meet C.P.'s daily needs due to his lack of stable income and housing and his substance abuse. Moreover, she stated that C.P. was still at risk for future neglect and could not safely return to Father's care. The case manager also testified that Father did not comply with the case plan, did not complete any portions of the plan, and had not changed his behavior. While the case manager acknowledged that Father demonstrated the ability to be sober for a period, such as the last month before the termination hearing, she informed the court that substance abuse was like a "rollercoaster" for Father and that his substance abuse would likely continue. She also stated that Father had informed her that he had employment, but she had never received any proof.

¶9 The juvenile court found that Father had a chronic history of substance abuse, his substance abuse continued during the dependency, the substance abuse affected his judgment and parenting, and reasonable grounds existed to believe that the condition would continue for a prolonged, indeterminate period. The court also found that Father had neglected C.P. by not providing him with a nurturing environment. Additionally, the court found that C.P. was less than three years old, had been in the Department's custody for over 13 months, the Department had made diligent efforts for reunification, and Father had substantially neglected or willfully refused to remedy the circumstances that caused C.P. to be in an out-of-home placement. The court found that terminating Father's parental rights was in C.P.'s best interests because he was adoptable, and termination would allow him to grow up in a nurturing environment. Father timely appealed.

DISCUSSION

¶10 Father argues that insufficient evidence supports the juvenile court's order terminating his parental rights on any of the three grounds. We review a juvenile court's termination order for an abuse of discretion. *E.R. v. Dep't of Child Safety*, 237 Ariz. 56, 58 ¶ 9 (App. 2015). "The 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 (App. 2002). We accept the juvenile court's factual findings unless no reasonable evidence supports them and will affirm a termination order unless it is clearly erroneous. *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, 508 ¶ 1 (App. 2008). Furthermore, we will affirm a termination order if any statutory ground is proved and termination is in the child's best interests. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 376 ¶ 14 (App. 2010). Because sufficient evidence supports the juvenile court's order terminating Father's parental rights for chronic substance abuse and termination is in C.P.'s best interests, no abuse of discretion occurred.

¶11 To terminate parental rights, the juvenile court must find by clear and convincing evidence the existence of at least one statutory ground for termination and find by a preponderance of the evidence that termination is in the child's best interests. *Jennifer S. v. Dep't of Child Safety*, 240 Ariz. 282, 286 ¶ 15 (App. 2016). As pertinent here, the juvenile court may terminate parental rights when: (1) the parent has a history of chronic substance abuse, (2) the parent is unable to discharge his 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.

¶12 Sufficient evidence supports the juvenile court's chronic substance abuse finding. Father first began using methamphetamine when he was 16 years old. He continued to use methamphetamine throughout most of the dependency, tested positive multiple times, and failed to take about 70% of his drug tests. The case manager also testified that Father had not made any progress in mitigating his substance abuse nor completed a substance-abuse program. Father counters that his negative test results starting in February 2017 were sufficient to show that he could discharge his parental responsibilities and that his substance abuse would not be an issue in the future. Father's drug history, however, shows that any period of sobriety would likely be short-lived, especially considering that he has

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been using methamphetamine for about 30 years and has been diagnosed as dependent.

¶13 Additionally, sufficient evidence supports the court's finding that Father could not discharge his parental responsibilities. Father's substance abuse negatively affected his judgment and his ability to parent, which is evident from his inappropriate behavior with C.P. Such behavior included falling asleep during visits, refusing to follow the parent-aide's instructions, and making unreasonable demands upon a four-month-old C.P. to stop crying before he would pick him up. Furthermore, Father had chosen to purchase methamphetamine over purchasing materials for visits with C.P. and had chosen his drug habit over stable housing and employment.

¶14 Last, reasonable grounds existed to believe that Father's substance abuse would continue for a prolonged and indeterminate period. In determining whether Father's chronic substance abuse would continue for an indeterminate period, the juvenile court may consider prior substance abuse. *See Jennifer S.*, 240 Ariz. at 287 ¶ 20. This evidence includes "the length and frequency of [Father]'s substance abuse, the types of substances abused, behaviors associated with the substance abuse, prior efforts to maintain sobriety, and prior relapses." *Id.* Here, Father started abusing methamphetamine and cannabis as a teenager, and he has continued to abuse these substances decades later. The Department provided Father with substance-abuse services, but he failed to complete substance-abuse treatment. Although Father attempted to remain sober at times, he consistently reverted to abusing substances after brief stints of sobriety. Accordingly, sufficient evidence supports the juvenile court's order terminating Father's parental rights to C.P. on the ground of chronic substance abuse, and we need not address the other grounds.

¶15 Although Father does not challenge the juvenile court's best interests finding, the record shows that termination of Father's parental rights was in C.P.'s best interests. 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. *Shawnee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, 179 ¶ 20 (App. 2014). In determining whether the child will benefit from termination, relevant factors to consider include whether the current placement is meeting the child's needs, an adoption plan is in place, and if the child is adoptable. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 3-4 ¶ 12 (2016).

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¶16 Here, the record supports the juvenile court's finding that termination was in C.P.'s best interests. C.P. was with an adoptive placement that met his needs, and C.P. was adoptable. Therefore, the termination of Father's parental rights was in C.P.'s best interests.

CONCLUSION

¶17 For the foregoing reasons, we affirm.



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