IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JEFFREY G., *Appellant*,

v.

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

No. 1 CA-JV 17-0166
FILED 2-22-2018

Appeal from the Superior Court in Mohave County
No. S8015JD201200056
The Honorable Richard Weiss, Judge

AFFIRMED

COUNSEL

Law Offices of Harriette P. Levitt, Tucson
By Harriette P. Levitt
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Amanda Adams
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Jennifer B. Campbell joined.

M c M U R D I E, Judge:

¶1 Jeffrey G. ("Father") appeals the superior court's order terminating his parental rights to A.G. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND[1]

¶2 Father and Chrystal G. ("Mother") are the biological parents of A.G., born in 2007.[2] The Department of Child Safety ("DCS") took temporary custody of A.G. and her brother B.G. in October 2012, after Father was arrested and charged with child abuse.[3] The DCS investigation found B.G. had bruises and lacerations in several places, and Father admitted to hitting B.G. with a belt, striking him on the back of the head, and ordering him to do physical exercise as punishment. DCS filed a dependency petition concerning both children alleging neglect, physical abuse, and substance abuse. A.G. was adjudicated dependent in October 2012.

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[1] 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).

[2] At the time of dependency, Mother had not seen A.G. for several years and Father told A.G. that Mother had passed away. When Mother was located, DCS provided reunification services to her. However, she eventually stopped participating and moved out of state. Mother's parental rights to A.G. were severed after she failed to appear at her termination hearing. Mother is not a party to this appeal.

[3] DCS ultimately withdrew its dependency petition concerning B.G., and reunited B.G. with Father.

¶3 Father pled guilty to misdemeanor child abuse and was placed on supervised probation for one year. Additionally, Father was incarcerated for 30 days ending on April 28, 2013. In December 2013, A.G.'s attorney moved to suspend Father's supervised visitation due to A.G. displaying "aggressive and defiant" behavior after visits with Father and a psychological evaluation of Father that found several factors that "would likely have a significant impact on his ability to parent." After a hearing in August 2014, the superior court denied the motion but changed Father's visitation with A.G. to therapeutic visitation.

¶4 In November 2014, DCS moved to terminate Father's parental rights alleging neglect and 15 months' time in out-of-home care. After a severance hearing in September 2015, the superior court denied the motion and changed the case plan for Father to family reunification. In December 2015, after further visitation with Father, A.G.'s attorney again moved to suspend visitation based on A.G.'s reaction to Father's statement to her that she had "to come live with [him] no matter what," because "it [was] court ordered." In the motion, A.G.'s attorney also argued that A.G.'s counselor still found her to be exhibiting "trauma-related symptoms following contact with [Father]." The superior court held another evidentiary hearing on the issue of visitation, and afterwards granted the motion suspending Father's visitation with A.G.

¶5 In June 2016, DCS again moved to terminate the parent-child relationship between Father and A.G., alleging neglect, abuse, and 15 months' time in out-of-home care. After a contested severance hearing in January 2017, the superior court terminated Father's parental rights on the grounds of abuse and time in out-of-home care.[4] The court found that severance was in A.G.'s best interests. Father timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-235(A), 12-120.21(A)(1), and -2101(A)(1).

[4] After the severance hearing, DCS moved to withdraw the allegation of neglect, and the superior court granted the motion.

DISCUSSION

¶6 Father argues there was insufficient evidence to support the superior court's findings, and that DCS failed to provide reasonable reunification services.[5]

A. Sufficient Evidence Supported the Superior Court's Finding Under A.R.S. § 8-533(B)(8)(c).

¶7 A parent-child relationship may be terminated when a court finds at least one of the statutory grounds for severance and determines that severance is in the child's best interests. A.R.S. § 8-533(B); *Mary Lou C. v. ADES*, 207 Ariz. 43, 47, ¶ 8 (App. 2004). We review a court's severance determination for an abuse of discretion, adopting its findings of fact unless clearly erroneous. *Mary Lou C.*, 207 Ariz. at 47, ¶ 8. A court's disposition will be upheld unless there is no reasonable evidence to sustain it. *Id.* We do not reweigh the evidence on appeal. *Jesus M. v. ADES*, 203 Ariz. 278, 282, ¶ 12 (App. 2002).

¶8 Father claims the evidence presented at the contested severance hearing was insufficient to support the court's findings on either ground. Specifically, Father challenges the superior court's finding on the ground of 15 months' time in out-of-home care by contending there was no evidence showing Father caused A.G.'s emotional trauma which led to her out-of-home care.

¶9 Under A.R.S. § 8-533(B)(8)(c), a parent's rights may be terminated when a child has been placed out of home:

> 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 the parent will not be capable

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[5] At the close of Father's opening brief, he submits "the court committed reversible error in finding that termination of [Father's] parental rights was in A.G.'s best interests." This sentence is not supported by any further argument or facts, and therefore we consider the claim regarding the superior court's best-interests finding waived. *See State v. Moody*, 208 Ariz. 424, 452, ¶ 101, n.9 (2004) (failure to present arguments supported by authority and setting forth a position usually constitutes abandonment and waiver of a claim).

> of exercising proper and effective parental care and control in the near future.

Father does not challenge the amount of time in out-of-home care, the court's finding that he was unable to remedy the circumstances that caused A.G. to be placed in out-of-home care, or the finding that he would not be capable of exercising proper and effective parental care and control in the near future. Instead, Father argues the evidence was insufficient to show he caused A.G. to experience emotional trauma because of previous physical abuse of her brother.

¶10 The evidence presented at the severance hearing supported a finding that Father was the cause of A.G.'s emotional trauma. Dr. Bluth, a psychologist who interviewed A.G., recommended severance based on his findings that A.G. "was experiencing traumatic memories when she was seeing [Father]," and her "fearfulness [was] triggered by contact with [Father]." Dr. Arnold, a child psychologist, also testified at an evidentiary hearing that she believed A.G.'s trauma-related behaviors were triggered by a fear of what had previously happened when she lived with Father.

¶11 Father contends, without citing to a supporting portion of the record, that when A.G. was initially removed from the home she did not report having seen any abuse by her Father and she did not report being abused herself. The record belies Father's argument. An initial psychological assessment of A.G. performed in February 2013 found "evidence of probable emotional abuse." Furthermore, the initial incident report from the Mohave County Sheriff's Office stated that A.G. had seen Father use a belt and jump rope to "spank" B.G., and A.G. said B.G. "got hit even when he was on the ground." The Court Appointed Special Advocate ("CASA") also reported concerns about A.G. "punish[ing] herself excessively on occasion citing her fear of worse punishment if she did not."

¶12 Father also claims A.G.'s aggressive behavior could have been attributed to other factors, including her lack of a permanent placement and "confusion over her status." However, this court will not disturb a superior court's finding based on alternative possibilities in the record. When a superior court's findings are supported by reasonable evidence, we uphold those findings. *Mary Lou C.*, 207 Ariz. at 47, ¶ 8.

¶13 Finally, Father argues the superior court inappropriately relied on its perception that A.G. did not want to be reunified with Father. We disagree with this interpretation of the superior court's findings. Tracking § 8-533(B)(8)(c), the superior court found: (1) A.G. had been in

out-of-home care for 15 months or longer; (2) Father had been unable to remedy the circumstances causing the out-of-home placement; and (3) Father would be unable to exercise "proper and effective parental care and control in the near future because of the severe trauma experienced by [A.G.]." The superior court did not cite to A.G.'s preference in placement at any point in its signed order, and we presume the superior court knew and applied the law correctly. *In re William L.*, 211 Ariz. 236, 238, ¶ 7 (App. 2005). Accordingly, we hold the superior court did not abuse its discretion by finding sufficient evidence supported the termination of Father's parental rights under § 8-533(B)(8)(c).[6]

B. The Superior Court Did Not Err by Suspending Visitation Services.

¶14 Father contends DCS failed to diligently provide reasonable reunification services because he was not provided sufficient visitation with A.G. to allow for reunification.

¶15 DCS has an affirmative duty to make all reasonable efforts to preserve the family relationship by providing parents "the time and opportunity to participate in programs designed to help [them] become an effective parent." *Christina G. v. ADES*, 227 Ariz. 231, 234–35, ¶ 14 (App. 2011). However, DCS is not required to provide every conceivable service, nor is it required to provide services that are futile or have no reasonable prospect of success. *Id.* at 235, ¶ 15; *Mary Ellen C. v. ADES*, 193 Ariz. 185, 186–87, ¶ 1 (App. 1999). Because visitation was suspended by the superior court after a three-day evidentiary hearing, we first review whether that order was an abuse of discretion. If not, because Father failed to subsequently move to reinstate visitation after the order was entered in February 2016, he cannot now argue DCS failed to diligently provide visitation. *See Shawanee S. v. ADES*, 234 Ariz. 174, 179, ¶ 16 (failing to object to DCS's efforts to provide services at the time they are being provided "needlessly injects uncertainty and potential delay into the proceedings, when important rights and interests are at stake and timeliness is critical").

¶16 "Although a parent should be denied the right of visitation only under extraordinary circumstances . . . once that right is at issue, the

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[6] When we have found at least one of the grounds for severance is proven by clear and convincing evidence, we do not need to address claims raised regarding other grounds found by the superior court. *Jesus M.*, 203 Ariz. at 280, ¶ 3.

trial court has broad discretion." *Maricopa County Juv. Action No. JD-5312*, 178 Ariz. 372, 375 (App. 1994) (citation omitted). The superior court can impose restrictions or limitations on visitation if it will endanger the child's physical, mental, or emotional health. *Id.* at 376; *see Michael M. v. ADES*, 202 Ariz. 198, 201, ¶ 11 (App. 2002). When reviewing an order suspending visitation we view the facts in the light most favorable to sustaining the superior court's findings, and if any evidence supports it we must affirm. *JD-5312*, 178 Ariz. at 376.

¶17 There is evidence in the record supporting the superior court's order suspending Father's visitation. A.G.'s child psychologist, Dr. Arnold, testified at the evidentiary hearing on the motion that she saw A.G. for six sessions in 2014 and nine sessions in 2015. During the earlier sessions, Dr. Arnold observed A.G. demonstrating obstructive and aggressive behavior, and determined the maladaptive behavior was because of past trauma surfacing.[7] A.G. was also experiencing nightmares. In 2015, during a five-month period when there were no visits between Father and A.G., Dr. Arnold testified that A.G.'s behavior improved. However, when visits resumed afterwards, A.G.'s behavior regressed. Dr. Arnold testified A.G. was emotionally upset by visits with Father, and showed this inappropriate behavior as a response to past trauma with Father. Furthermore, Dr. Arnold recommended discontinuing A.G.'s visitation with Father because it was a risk to A.G.'s emotional health and development. Accordingly, the superior court did not abuse its discretion by suspending Father's visitation.

CONCLUSION

¶18 The order terminating Father's parental rights, is affirmed.

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

[7] Examples of A.G.'s obstructive behavior provided by Dr. Arnold included hitting others, tantrums, hyperactivity, lifting her shirt and exposing her chest in public, and crawling on the floor and talking like a baby.