

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

MATTHEW B., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, K.B., *Appellees*.

No. 1 CA-JV 17-0249
FILED 1-23-2018

Appeal from the Superior Court in Maricopa County
No. JD12539
The Honorable Nicolas B. Hoskins, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Law Office of H. Clark Jones, LLC, Mesa
By H. Clark Jones
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Amber E. Pershon
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

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

C A T T A N I, Judge:

¶1 Matthew B. (“Father”) appeals from the superior court’s order terminating his parental rights as to his daughter K.B. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Father’s daughter K.B. was born in April 2008.¹ The Department of Child Safety (“DCS”) took K.B. into care in December 2014 due to Father’s substance abuse and neglect in an unsafe home, and the superior court found her to be dependent. Despite some initial missteps, by early 2016 Father had secured employment and appropriate housing and had been participating fully and successfully in reunification services including drug testing and treatment, parenting classes, parent aide, supervised visitation, and a bonding assessment. By April 2016, Father had shown 10 months of sobriety and appeared to be ready to transition to unsupervised visitation on the way to reunification.

¶3 K.B., however, had some struggles over that time. Although she enjoyed visits with Father, she would act out or shut down for a day afterward. And at least by August 2015, K.B. was displaying age-inappropriate sexualized behaviors, which she said she had learned while living with Father. She began trauma therapy that month.

¶4 In May 2016, as soon as K.B. reached an eligible age, K.B.’s therapist administered a trauma screening test that showed critical concern in several areas involving sexual distress. When the therapist inquired further, K.B. disclosed that she had been sexually abused when living with Father. She initially did not name any specific perpetrators, but at the end of May she told her therapist that Father, Mother, and other adults had

¹ K.B.’s biological mother Lori J. (“Mother”) chose not to contest the allegations of the severance motion, and the court terminated her parental rights. She is not a party to this appeal.

MATTHEW B. v. DCS, K.B.
Decision of the Court

touched her inappropriately. In a forensic interview the next month, K.B. described three different incidents when Father touched her genital and breast areas, both over and under her clothes.

¶5 Even though Father uniformly denied the allegation of abuse, the course of the dependency changed dramatically after K.B.'s disclosures. On DCS's motion, the superior court suspended visitation, finding that visits with Father "would seriously endanger [K.B.'s] mental and emotional health." DCS offered Father a psychosexual evaluation, but Father declined to participate on advice of counsel. Just months after K.B.'s disclosures, DCS moved to terminate Father's parental rights on grounds of abuse. *See* Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(2).

¶6 At the contested termination adjudication hearing, Father maintained his innocence and further suggested that K.B.'s foster parents, who wanted to adopt K.B., had coached her to falsely disclose sexual abuse and thus derail reunification with Father. The superior court found Father's denial not credible and his coaching theory unpersuasive. Finding that Father had abused K.B. and that severance would be in her best interests, the court terminated Father's parental rights.

¶7 Father timely appealed, and we have jurisdiction under A.R.S. § 8-235(A).

DISCUSSION

¶8 The superior court may terminate the parent-child relationship if clear and convincing evidence establishes at least one statutory ground for severance, and a preponderance of the evidence shows severance to be in the child's best interests. A.R.S. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005). We review the severance ruling for an abuse of discretion, deferring to the superior court's credibility determinations and factual findings. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004); *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002).

¶9 One statutory ground for severance is if "the parent has . . . wilfully abused a child." A.R.S. § 8-533(B)(2). Abuse includes sexual abuse, molestation, and sexual conduct with the child. A.R.S. § 8-201(2)(a); *see also* A.R.S. §§ 13-1404, -1405, -1410.

¶10 Father argues the superior court erred by finding that he had abused K.B. He asserts that the foster parents coached K.B. to disclose abuse to further their own adoption plans (and frustrate Father's successful

MATTHEW B. v. DCS, K.B.
Decision of the Court

participation in reunification services). Although Father notes that the abuse allegations did not surface until after reunification began to seem more likely, K.B.'s disclosures were the culmination of months of therapy for sexualized behaviors that had begun before Father's successful efforts to remedy the original concerns spurring DCS involvement. And while Father relies on the therapist's note that K.B.'s responses to the trauma screening test were hyperresponsive and consistent with a "need to appear especially symptomatic," he omits the alternative explanation that hyperresponsiveness could be due to an "overall/constant state of being overwhelmed by traumatic stress" as well as the therapist's assessment that K.B.'s responses provided "reliable results within the validity limits."

¶11 Father highlights his own denials and Mother's statements that he was innocent of abuse, but DCS presented contrary evidence, and the superior court found his denials not credible. We defer to the court's credibility assessments and will not reweigh evidence on appeal. *See Jesus M.*, 203 Ariz. at 280, 282, ¶¶ 4, 12. Accordingly, the superior court did not abuse its discretion by finding grounds for termination based on abuse.

¶12 Father also argues that the court erred by finding termination to be in K.B.'s best interests. Termination is in a child's best interests if the child would benefit from severance or if a continued relationship with the parent would harm the child. *Mary Lou C.*, 207 Ariz. at 50, ¶ 19. Evidence of a current adoptive plan or that the child is adoptable may support a best interests finding, as may evidence that the existing placement is meeting the child's needs. *Id.*; *Jesus M.*, 203 Ariz. at 282, ¶ 14.

¶13 Father contends that, given his strong bond with K.B., the court erred by finding best interests based solely on the potential for adoption. But insulation from the risk of future abuse provided an additional benefit from severance on which the superior court relied. And although Father notes K.B.'s therapist's recommendation at the hearing on suspending visitation that parent-child contact should be reassessed after a few months, eight months had passed between that hearing and the termination adjudication hearing, and by the time of termination, K.B.'s therapist opined that restarting contact would be detrimental to K.B.'s recovery. Accordingly, the court did not abuse its discretion by finding termination to be in K.B.'s best interests.

MATTHEW B. v. DCS, K.B.
Decision of the Court

CONCLUSION

¶14 The severance order is affirmed.



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