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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ANDRE U., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY,
A.U., I.U., *Appellees*.

No. 1 CA-JV 17-0367
FILED 2-1-2018

Appeal from the Superior Court in Maricopa County
No. JD 7250
The Honorable Cari A. Harrison, Judge

AFFIRMED

COUNSEL

Maricopa County Legal Defender's Office, Phoenix
By Kathryn E. Harris
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Cathleen E. Fuller
Counsel for Appellee, Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Michael J. Brown delivered the decision of the Court, in which Judges Maria Elena Cruz and Judge Patricia A. Orozco¹ joined.

B R O W N, Judge:

¶1 Andre U. (“Father”) appeals the superior court’s order terminating his parental rights to A.U., born in 2007, and I.U., born in 2008 (collectively “children”). For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 In September 2015, the Department of Child Safety (“DCS”) filed a dependency petition alleging Father and Mother neglected their children and that they were unable to provide proper and effective parental care and control.² A couple months before DCS filed the dependency petition, I.U. had been living with Father for about two years, but at the time the petition was filed, she was living with Stephanie L. (“Mother”) because Father was having health issues.³ A.U. had primarily been living with his adult sister because Mother’s presence was sporadic. Taking the children into temporary custody, DCS placed A.U. in out-of-home care and I.U. with Father. The children presumably remained in these placements after the court determined the children were dependent. However, a few months after the dependency determination, I.U. was placed in out-of-home care when DCS, responding to a report that Father was neglecting I.U., found that the home in which he lived was “unkempt,” he violated the

¹ The Honorable Patricia A. Orozco, retired Judge of the Arizona Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

² Father and Mother have been involved with DCS for older children who are not part of this appeal. In July 2014, Father’s parental rights to one of those children were terminated on grounds of abandonment.

³ Mother is not a party to this appeal. Thus, the remaining facts and background focus on Father.

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safety plan, and I.U. had missed school to take care of Father, who suffers from various health issues related to his diabetes.

¶3 DCS sought to reunify the children with Father, offering him urinalysis and hair follicle drug tests, visitation, family counseling, a psychological evaluation, and parent aide. Transportation was also provided because of his health issues. After Father failed to successfully complete some of the services, DCS moved to change the case plan to severance and adoption, which the court granted over Father's objection. DCS then moved to terminate Father's parental rights to the children on the grounds of nine months' and fifteen months' time-in-care.

¶4 In July 2017, the superior court held a contested severance hearing, at which Mother, Father, and Dana Lunan (a DCS child safety specialist assigned to the case) testified. The court subsequently granted DCS's motion to terminate Father's parental rights based on both grounds and finding termination was in the children's best interests. This timely appeal followed.

DISCUSSION

¶5 To terminate parental rights, a court must find by clear and convincing evidence at least one statutory ground articulated in Arizona Revised Statutes ("A.R.S.") section 8-533(B), and must find by a preponderance of the evidence that termination is in the child's best interests. *See Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41 (2005); *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12 (2000). Because the superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts," this court will affirm an order terminating parental rights if reasonable evidence supports it. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009) (citation and internal quotation omitted). If reasonable evidence supports any one of the statutory grounds on which the juvenile court ordered termination, we need not address arguments relating to the other grounds. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 3 (App. 2002).

¶6 Under the fifteen months' time-in-care ground, DCS was required to prove that (1) DCS made diligent efforts to provide appropriate reunification services; (2) the children were in an out-of-home placement for at least fifteen months; (3) Father was unable to remedy the circumstances that caused the children to be in an out-of-home placement; and (4) a substantial likelihood existed that Father would not be capable of

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exercising proper and effective parental care and control in the near future. A.R.S. § 8-533(B)(8)(c). In considering whether DCS proved this ground, the superior court was obligated to “consider the availability of reunification services to the parent and the participation of the parent in these services.” *Id.* § 8-533(D).

¶7 Father argues the superior court erred in finding that DCS made diligent efforts to provide reunification services because it did not reasonably accommodate his disability.⁴ As DCS argues, however, it is undisputed that Father did not object in the superior court to the adequacy of services DCS provided; nor did he request any special accommodation for his disability. Thus, Father is precluded from challenging the court’s diligent efforts finding on appeal. *See Shawanee S. v. Arizona Dep’t of Econ. Sec.*, 234 Ariz. 174, 178-79, ¶ 16 (App. 2014) (holding that a parent is precluded from challenging the superior court’s diligent efforts finding on appeal when the parent does not object below, and explaining that a lack of such an objection “needlessly injects uncertainty and potential delay into the proceedings”).

¶8 Father also argues the superior court erred in finding he “would not be capable [of] exercis[ing] proper and effective parental care and control in the near future.” He points to the court’s findings on his health condition, arguing DCS did not prove his health issues would prevent him from caring for his children. However, in its severance ruling, the court did not find that Father would be incapable of parenting in the near future due to his health issues. Instead, the court explained that “Father has been very inconsistent in participating in services and has not demonstrated behavioral changes necessary to move the case toward reunification even though the case has been open for two years.” The record shows that Father’s serious health challenges created obstacles to family reunification that would not have existed without such challenges. But given the length of time the children were in out-of-home placement, and Father’s inability to complete services that could have been completed regardless of his medical condition, the record supports the court’s finding.

¶9 Father did not complete the reunification services offered by DCS, including parent aide services, urinalysis or hair follicle drug tests, psychological evaluation, and one-on-one parenting sessions. Father admitted as much at the severance hearing. Despite his admitted history of substance abuse, DCS’s repeated requests to complete drug tests, DCS’s

⁴ Due to complications resulting from diabetes, Father’s leg was amputated sometime in August or September 2016.

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provision of transportation, and the court's May 2016 order directing Father to submit to a "rule-out urinalysis test and hair follicle test," Father did not take the requested tests despite DCS's position that such tests were necessary before a psychological consultation would be scheduled. He often canceled visits with the children or was so late the parent aide would leave before he arrived, even after he was given a 15-minute window after the scheduled time in which to arrive. He did not maintain regular contact with DCS, and there were periods of time when the case manager or parent aide could not reach Father so that visits could continue, which is partly why some services were closed out.

¶10 Moreover, Father never contacted Lunan, who was assigned to the case in April 2017, even though she left messages and provided her contact information at a court hearing on the record per a request made by Father's counsel. The evidence suggests Father has not seen the children since Lunan was assigned to the case. The May 2017 DCS report stated that Father's "lack of consistent and direct communication with [DCS]," and his "indifference to participation in services," shows he is unable to "parent these children."

¶11 Further, Father was unable to demonstrate his ability to maintain a safe home. In March 2016, the guardian ad litem requested that visitations between Father and the children be suspended "based on the children's health and safety as it relates to [F]ather's home and health conditions." The guardian ad litem alleged that Father had "untreated gangrene related to his diabetes," I.U. contracted scabies, and A.U. was at risk of contracting scabies. The court granted the request, allowing visits to continue in the community once Father was medically cleared and further suspending visits at Father's home until it was "deemed appropriate." There is no indication in the record that visits resumed at Father's home; instead, they were done at various public places in the community because of safety concerns.

¶12 Father also failed to address DCS's concern that he treats A.U. and I.U. differently, giving more attention and affection to I.U.; A.U. experienced "emotional trauma" because of the favoritism. A.U. also felt rejected by Father, who explained that he and A.U. had "never been that close." Father was also unable to demonstrate his ability to provide financial support for the children. Lunan opined that Father cannot be "safely reunified with the children" because there has been no "consistency" or "long-standing relationship[]" between him and the children. Based on this record, we cannot say the court erred in finding a

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substantial likelihood existed that Father would not be capable of exercising proper and effective parental care and control in the near future.

¶13 Finally, Father argues that the court erred in finding that termination was in the children's best interests because it did not consider "other circumstances" when making its determination. Father argues there is no "evidence that [DCS] made any accommodations or offered services to assist Father with the disability created by his foot amputation," and DCS "neglected to visit Father's home to determine if the issues of concern at the beginning of the case had been resolved." These arguments, however, relate to the statutory grounds for termination, not best interests. Even assuming their relevance, we find no error.

¶14 Termination is in a child's best interests if the child will "derive an affirmative benefit from termination or incur a detriment by continuing in the relationship." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 6 (App. 2004). "In making the determination, the juvenile court may consider evidence that the child is adoptable or that an existing placement is meeting the needs of the child." *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, 288, ¶ 26 (App. 2011).

¶15 Here, the superior court found in part as follows:

The children are placed with a member of the children's extended family, that being the children's maternal aunt. This family placement affords the children with the potential for maintaining relationships with extended family members. Further, the placement is providing the children with a loving and nurturing home environment and the children have been thriving in her care. She intends to proceed to adoption, which shall provide the children with the added benefit of stability and permanency.

The record supports these findings. The children's placement, their maternal aunt, is willing to adopt them and is meeting their needs. The children are happy living with their aunt, they have a great relationship with her, and she provides the children with needed stability. Lunan testified that the children will benefit from termination "by being in a stable home, a stable environment, an environment where they can be kids and grow up to be productive citizens." Therefore, the superior court did not err in finding termination of Father's rights was in the children's best interests.

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CONCLUSION

¶16 For the foregoing reasons, we affirm the superior court's order terminating Father's parental rights to the children.



AMY M. WOOD • Clerk of the Court
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