IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

CHARLES K., *Appellant*,

v.

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

No. 1 CA-JV 17-0383
FILED 4-12-2018

Appeal from the Superior Court in Maricopa County
No. JD15889
The Honorable William L. Brotherton, Judge, *Retired*

AFFIRMED

COUNSEL

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

Arizona Attorney General's Office, Mesa
By Nicholas Chapman-Hushek
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Jon W. Thompson and Judge James P. Beene joined.

S W A N N, Judge:

¶1 Charles K. ("Father") appeals the juvenile court's order terminating his parental rights on the statutory grounds of out-of-home placement for fifteen months under A.R.S. § 8-533(B)(8)(c) and unfitness under (B)(4). Father does not challenge the court's best-interests findings. Because reasonable evidence supports the order terminating Father's parental rights, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Father is the biological parent of C.K., born June 2006. When C.K. was three months old, his biological mother[1] left him with P.W. and C.R., believing that Father would pick him up and care for him. Although Father retrieved C.K., he continued to leave him with P.W. and C.R. for prolonged periods of time. By the time C.K. was four months old, he was residing with P.W. and C.R. full-time. Child Protective Services initiated an investigation in 2007, and the court appointed P.W. and C.R. as C.K.'s temporary guardians. The court-appointed Guardian ad Litem filed a dependency petition in July 2007. The Guardian ad Litem moved to dismiss the petition after Father completed court-ordered substance-abuse assessments and drug testing, and had one unsupervised overnight visit with C.K. with no negative response. The Department of Child Safety did not contest the dismissal, and the court dismissed the action.

¶3 On August 26, 2014, Father was arrested on charges of sexual assault, which took place in close proximity to C.K. while he was sleeping in Father's car. An officer transported C.K. to a child advocacy center, where a children's forensic specialist interviewed him. During the interview, C.K. stated he and his father had been living in the desert for a few weeks, his father feeds him every day, always picks him up from school, helps him with math homework, takes him to restaurants for dinner, and takes him to a friend's house to shower. C.K. also reported that

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[1] C.K.'s biological mother is now deceased.

his father "only smokes a small amount" of medical marijuana and has never offered it to him. C.K. did not discuss any knowledge of the sexual assault.

¶4 Father signed a plea agreement in which he pled guilty to two counts of sexual abuse, both class 5 felonies. In accordance with the plea agreement, the court sentenced Father to 1.5 years' imprisonment on count 1 and ten years' probation on count 2. Father received presentence incarceration credit of 665 days on count 1. A probation term prohibited Father from having contact with minors, including C.K., for ten years, unless authorized by the probation department. However, Father's probation officer stated that the probation department would consider removing the provision prohibiting contact with minors if Father completed sex-offender treatment, which typically takes three years or more. The Department initially placed C.K. in a licensed foster home, and then in a kinship placement with his half-brother's mother. The Department filed a dependency petition, and in March 2015, the court found C.K. dependent as to Father.

¶5 While incarcerated, Father maintained consistent phone calls with C.K., sent gifts and clothes, and exchanged letters with the caseworker concerning C.K.'s progress. Father was released on July 7, 2016. The probation officer and the Department referred Father for services, including sex-offender treatment, drug testing and substance-abuse treatment, a psychological evaluation, parenting classes, and individual counseling.

¶6 Father did not participate in sex-offender treatment in the year after his release. He did participate in drug testing through probation. He also completed his psychological evaluation. But he either canceled or did not attend his parenting classes and individual counseling.

¶7 In March 2017, the court approved a change in the case plan to severance and adoption and the Department moved to terminate Father's parental rights. At trial, the case manager confirmed that it could take years for Father to complete sex-offender treatment, and only upon completion would probation consider modifying the terms preventing Father from having contact with minors. The case manager further testified that because Father's probation was for ten years, it was also "entirely possible" that C.K. would be "aged out" of foster care by the time Father's probation concludes. And the case manager testified that Father's probation officer reported that Father participated in services both in and out of custody, including a psychosexual evaluation, parenting classes, individual counseling, and drug testing. However, Father had not provided the

Department with evidence of his participation or completion of such services, and he testified at trial that he had not started parenting classes or individual counseling.

¶8 At the time of the trial, C.K. was in an adoptive placement, and he stated to the court that he would like the placement to adopt him.

¶9 The court determined that the Department had proven the grounds for termination under § 8-533(B)(8)(c) and (B)(4), and had proven that termination was in C.K.'s best interests. The court terminated Father's rights, and he appeals.

DISCUSSION

¶10 To sever the parent-child relationship, the court must find that one statutory ground under § 8-533 has been met by clear and convincing evidence, and that termination is in the child's best interests by a preponderance of the evidence. *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). We accept the court's findings unless they are not supported by reasonable evidence, and we will affirm the severance order unless it is clearly erroneous. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002). We view the evidence in the light most favorable to upholding the court's determination. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 97, ¶ 20 (App. 2009).

¶11 Father argues that the court erred in finding that under § 8-533(B)(8)(c), he was unable to remedy the circumstances that caused the out-of-home placement and that there is a substantial likelihood that he will be unable to exercise proper and effective parental care in the near future.[2]

¶12 We hold that reasonable evidence supports the juvenile court's order terminating Father's parental rights to C.K.[3] Under A.R.S. § 8-533(B)(8)(c), a court may terminate a parent's parental rights if the child

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[2] Father does not dispute that C.K. was in out-of-home placement for more than fifteen consecutive months and the Department made diligent efforts to provide him with appropriate reunification services.

[3] We need not address whether the evidence also supported termination under A.R.S. § 8-533(B)(4). *See Jesus M.*, 203 Ariz. at 280, ¶ 3 ("If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.").

has been in an out-of-home placement for a cumulative total period of at least fifteen months, the Department has made diligent efforts to provide appropriate reunification services, the parent has been unable to remedy the circumstances causing placement, and there is a substantial likelihood that the parent will not be capable of parenting the child in the near future. Further, "when a party . . . makes only sporadic, aborted attempts to remedy the circumstances that cause a child's out-of-home placement, a trial court is well within its discretion in finding substantial neglect and terminating parental rights on that basis." *In re Maricopa Cty. Juv. Action No. JS-501568*, 177 Ariz. 571, 576 (App. 1994).

¶13 Here, the court found that C.K. had been in out-of-home placement for fifteen months or longer and that the Department had made diligent efforts to provide appropriate reunification services, including individual counseling, parent-aide services, a psychological evaluation, substance-abuse assessment and treatment, and drug testing. Further, the court found that as a term of probation, Father was required to complete sex-offender treatment "which typically takes three years or more" and a term of his probation prohibits him from having "contact with minors, including his own child unless authorized by probation." Based on the foregoing, the court concluded: "There is a substantial likelihood that Father will not be capable of exercising proper and effective parental care and control in the near future."

¶14 Reasonable evidence supports the court's conclusion that Father was unable to remedy the circumstances causing placement and there is a substantial likelihood that he will not be capable of parenting the child in the near future. Father's participation in services is easily characterized as sporadic and aborted. The Department referred Father for several services. Father completed the psychological evaluation. However, he did not provide evidence of his participation in drug testing and substance-abuse treatment, and he testified that he had not started individual counseling or parenting classes. Although Father had been released for a year, he testified that he did not participate in sex-offender treatment, which was a term of his probation.

¶15 Father also argues that the court "incorrectly placed the burden of proof on [him]" to corroborate his testimony. We disagree. Even though the court stated at trial that Father's statements are "self-serving" and that he failed to present "any evidence . . . by any objective person," the court's order indicates that it considered statements by Father's probation officer concerning the conditions of probation, sex-offender treatment, and the potential for modification. We do not reweigh the evidence on review.

See Jesus M., 203 Ariz. at 282, ¶ 12. We also defer to the trial court's assessment of witness credibility because it is in the best position to make that determination. *See id.* at 279, ¶ 4.

¶16 Accordingly, we conclude that reasonable evidence supports the court's determination that Father has been unable to remedy the circumstances causing placement, and that there is a substantial likelihood that he will not be capable of parenting the child in the near future.

CONCLUSION

¶17 For the foregoing reasons, we affirm the juvenile court's termination of Father's parental rights.

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