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AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

ELEASAR E., *Appellant,*

v.

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

No. 1 CA-JV 17-0416
FILED 3-20-2018

Appeal from the Superior Court in Maricopa County
No. JD19072
The Honorable John R. Ditsworth, Judge (Retired)

AFFIRMED

COUNSEL

David W. Bell Attorney at Law, Higley
By David W. Bell
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By JoAnn Falgout
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge Kenton D. Jones and Judge James B. Morse Jr. joined.

H O W E, Judge:

¶1 Eleasar E. (“Father”) appeals the juvenile court’s order terminating his parental rights to C.F., his daughter. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In April 2010, three months before C.F.’s seventh birthday, the Department of Child Safety removed her from Father’s care and petitioned for dependency after her stepmother, Refugio R. (“Stepmother”), was accused of abusing her. The Department provided Father and Stepmother with parent-aide services, psychological evaluations, counseling, therapeutic visitation, and family reunification team services. They both participated in the services, and the Department dismissed the dependency and returned C.F. to Father’s care in 2011.

¶3 In September 2015, C.F. reported to the police that Stepmother had punched her in the face and when she ran and locked herself in the bathroom, Stepmother had used an axe to cut a hole in the bathroom door. While C.F. was attempting to stop Stepmother from entering the bathroom, she received a three-inch scratch on her arm from the hole in the door. After pulling C.F. out of the bathroom, Stepmother started to punch C.F.’s back numerous times. The police arrested Stepmother, and she was charged with child abuse, aggravated assault with a dangerous instrument, and aggravated assault on a minor.

¶4 Father initially told the Department that he understood the incident’s severity and that he would keep C.F. safe and follow the Department’s recommendations, including not allowing Stepmother back in the home. Subsequently, the Department returned C.F. to Father’s care. After Stepmother was released from jail in October 2015, a case worker told Father that a term of Stepmother’s probation prohibited her and C.F. from being in the same home. In response, Father stated that he could send C.F. to Guatemala with family she did not know or send her to Stepmother’s

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sister in California. Later that month, a case worker received a call stating that Father had renewed C.F.'s passport and was making plans to send her to Guatemala, which would allow Stepmother to return home. The Department then removed C.F. from Father's care and petitioned for dependency.

¶5 The Department initially placed C.F. in a group home, in which she received individual counseling. In November 2015, the Department consulted with a psychologist who recommended that Father have no unsupervised visits with C.F. and that the Department should consider referring Father and C.F. for family counseling. The psychologist further stated that if C.F., now 13 years old, did not want to see Father her decision should be respected and that the Department should explain to C.F. that she would not be alone with Father at any time during family therapy and visits.

¶6 In December 2015, the court found that C.F. was dependent as to Father. The court also ordered that the Department relocate C.F. to a confidential placement and that she undergo a new psychological evaluation. Father agreed not to visit C.F. until the psychologist made a new recommendation. C.F. met a psychologist in early March 2016, and she told the psychologist that Stepmother had abused her since she was seven years old. C.F. also stated that Father knew of the abuse because she had told him about it and that Father would sometimes inquire if Stepmother had hit her. Furthermore, C.F. described an incident in which Stepmother had tied her hands and feet until Father found her and freed her hours later. The psychologist recommended individual counseling for C.F. and no visits with Father. Despite this recommendation, the case manager set a visit for Father and C.F. in March. Father was 30 minutes late for the visit, and C.F. refused to attend.

¶7 In May, C.F. started individual therapy for trauma. The trauma therapist did not recommend any visits with Father. Meanwhile, Father and Stepmother had enrolled in a domestic violence and anger management program and graduated in August. They also completed a 16-hour parenting program.

¶8 In September, the Department moved to change the case plan to severance and adoption, which the court granted. In early October the Department also moved to terminate Father's parental rights. The Department moved to terminate under A.R.S. § 8-533(B)(2) because Father had willfully abused or failed to protect C.F. from willful abuse. The Department also moved to terminate under A.R.S. § 8-533(B)(8)(a) because

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C.F. had been in a court-ordered out-of-home placement for a cumulative period of nine months or longer.

¶9 Father received a referral for a psychological examination in October. He had completed prior evaluations in 2009 and 2010 during the previous dependency. The Department recommended that Father participate in parenting classes and informed him that he could send cards, gifts, and letters to C.F. through the Department.

¶10 In January 2017, Father completed his psychological evaluation. After reviewing Father's records, the psychologist noted that Stepmother was a "harsh disciplinarian" and that this was the second time that C.F. had complained of Stepmother's physical abuse. She further noted that Father "demonstrated little insight as he struggled to explain his circumstances" and had "implied that [C.F.] must accept the responsibility for the conflict." The psychologist concluded that Father did not plan to leave Stepmother and that he had "demonstrated a long[-]term pattern of fail[ing] to protect [C.F.] and an inability to resolve the conflict within the family." She opined that the prognosis for Father's circumstances to change in the foreseeable future was poor. She also opined that C.F. would be at risk for significant emotional and physical abuse if she returned to Father's care because of the parents' lack of progress. The psychologist recommended family counseling, therapeutic visitation between Father and C.F., and individual counseling with Spanish speaking therapists for Father. She did note, however, that C.F.'s therapist should be consulted regarding if and when C.F. could be included in these recommendations.

¶11 Father began individual counseling sessions in April. After the majority of Father's sessions, his therapist labeled his progress as "slight." In May, Father's counseling report stated that he had explained that Stepmother "was abusive to [C.F.] because she wanted to educate her in the best possible way." In June, C.F. told the Department to stop asking her if she wanted to visit Father.

¶12 The court held a contested termination hearing in July 2017. At the hearing, Father's psychologist testified that the circumstances of the second dependency were similar to the first. She also noted that Father had not made progress even though seven years had passed and he had received services during both cases. The psychologist testified that she would have expected Father to make "some change to protect [C.F.]" between the first and second cases, but that she did not observe any change when she met with Father in January 2017. She opined that Father's therapy

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reports from April through June showed that his progress was “moving very slowly if at all.”

¶13 The case manager testified that C.F. was over 12 years old, willing to be adopted, expressed no desire to return to Father’s care, and expressed fears about returning to his care because he could not protect her from Stepmother. She also testified that C.F. was in an adoptive placement and adoptable. The case manager stated that Father was unable to reunify with C.F. at that time and that remaining out of Father’s care was in C.F.’s best interests. For support, she stated that Father did not understand the severity of the trauma that C.F. had gone through, especially considering that he was still living with Stepmother, C.F.’s abuser. Moreover, she testified that terminating Father’s parental rights would provide C.F. with a safe and stable home in which she would not fear being abused. Last, she testified that it would be a detriment to C.F. if Father retained his parental rights because C.F. experienced fear and anxiety whenever the case manager discussed visiting Father.

¶14 The court terminated Father’s parental rights to C.F. on the grounds of willful abuse and court-ordered out-of-home placement for a cumulative period of nine months or longer. Under the willful abuse ground, the court found that: (1) Stepmother beat C.F. and used an axe to break down a bathroom door to further injure C.F., (2) Father failed to recognize and protect C.F. from the danger that Stepmother presented, (3) C.F. was living in a safe and stable environment, (4) Stepmother was prohibited from living in the same home as C.F., and (5) Father failed to understand that the living restriction was necessary. Under the nine months in an out-of-home placement ground, the court found that: (1) C.F. had been in an out-of-home placement for nine months, (2) the Department had made diligent efforts to provide appropriate reunification services, and (3) Father had substantially neglected or willfully refused to remedy the circumstances that caused C.F. to be in an out-of-home placement. The court further found that terminating Father’s parental rights was in C.F.’s best interests because she was now 15 years old and wanted no contact with Father, was living in a safe and stable environment, was adoptable, and wanted to be adopted. Father timely appealed.

DISCUSSION

¶15 Father argues that the Department failed to make diligent efforts to provide appropriate reunification services. He also contends that due to C.F.’s refusal to participate in visitation and reunification services with him, the juvenile court should not have terminated his parental rights.

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Father, however, does not challenge the court's willful abuse finding, nor does he contest the court's best interests finding. A juvenile court's termination order is reviewed 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 will 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 proven 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).

¶16 The Department is required to make diligent efforts to provide appropriate reunification services for terminations based on out-of-home placement under A.R.S. § 8-533(B)(8), (11). A.R.S. § 8-533(D). Additionally, the Department must make diligent efforts to preserve the family or show that preservation efforts would be futile before the juvenile court may terminate parental rights based on the mental illness ground under A.R.S. § 8-533(B)(3). *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 191-92 ¶¶ 29-34 (App. 1999). In contrast, the willful abuse ground is not listed under § 8-533(D), and the plain wording in § 8-533(B)(2) does not require a finding that the Department made diligent efforts to provide appropriate reunification services. See A.R.S. § 8-533(B)(2); cf. *Toni W. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 61, 64 ¶ 9 (App. 1999) (recognizing that the legislature amended § 8-533(B) to remove the requirement that services be provided before termination on the ground of abandonment).

¶17 Father has not challenged the court's findings as to the willful abuse ground, and thus, he has waived any argument that the court erred by terminating his parental rights on that basis. See *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 234 n.6 ¶ 14 (App. 2011) (recognizing that the failure to develop an argument on appeal usually results in abandonment and waiver of the issue). Because we affirm the court's order terminating Father's parental rights based on the willful abuse ground, we need not address his claims regarding the services related to the out-of-home placement ground. See *Raymond F.*, 224 Ariz. at 376 ¶ 14.

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CONCLUSION

¶18 For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court
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