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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

TIMOTHY J., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, T.J., *Appellees*.

No. 1 CA-JV 17-0470
FILED 5-15-2018

Appeal from the Superior Court in Maricopa County
No. JD509011
The Honorable David J. Palmer, Judge

AFFIRMED

COUNSEL

Robert D. Rosanelli Attorney at Law, Phoenix
By Robert D. Rosanelli
Counsel for Appellant

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

MEMORANDUM DECISION

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

J O N E S, Judge:

¶1 Timothy J. (Father) appeals the juvenile court’s order terminating his parental rights to T.J. (Child), arguing the Department of Child Safety (DCS) failed to prove the statutory grounds for severance and that termination was in Child’s best interests. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In May 2014, Samantha M. (Mother) allowed each of her four children (the Older Children), then ages eleven, eight, six, and four, to go on a “joy ride” on Father’s motorcycle, without a helmet, while Father was intoxicated. During the course of those rides, Father crashed the motorcycle, causing life-threatening injuries to six-year-old E.B. The Older Children, who have no biological tie to Father, were removed from Mother’s care and adjudicated dependent in July.¹

¶3 In early 2015, Mother became pregnant with Child. Father agreed to participate in services and was referred for substance abuse testing and treatment and parent aide services. Father lived with Mother and attended parent aide and family reunification services while in the home. He also consistently submitted to drug testing, returning positive only for prescribed medication. It was determined he did not require

¹ The Older Children were also adjudicated dependent as to their fathers. The oldest child was ultimately placed under a permanent guardianship with Mother’s consent, and the juvenile court terminated all parental rights to the other three children in March and October 2017. The fathers did not appeal these orders. Although Mother appealed the termination, her counsel was unable to identify any non-frivolous issue to challenge, and her appeal was dismissed. Accordingly, neither Mother, the Older Children, or the Older Children’s fathers are parties to this appeal, and the caption is amended accordingly.

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substance abuse treatment or further testing, and the services were closed in July 2015. Child was born in August 2015.

¶4 Approximately six months later, in February 2016, while DCS was attempting to transition the Older Children back to Mother's care, five-year-old T.P. walked away from the family's home unnoticed while Mother was at an appointment and Father and Child were sleeping. T.P. was gone for approximately forty-five minutes before a stranger saw her approaching a main roadway and contacted the police. When confronted, Father blamed the incident on T.P., who "knew what she was doing was wrong yet she did[] it anyway." Father's subsequent urinalysis test did not test positive for any substances. Nonetheless, noting concerns about Father's willingness or ability to supervise children in his care and that Father "was the main adult responsible for two events that could have caused a child to have serious damage and/or death," DCS removed Child and petitioned for a dependency as to both parents. After a contested hearing, the juvenile court adjudicated Child dependent and affirmed a case plan of family reunification concurrent with severance and adoption.

¶5 Father completed a psychological evaluation in June 2016. Although Father was not diagnosed with any significant mental illness or personality disorder, the psychologist expressed concern about Father's poor decision-making and failure to accept responsibility for his part in the incidents putting the children at risk. Additionally, when discussing those events, Father "focused on ways to remedy that specific concern rather than discussing his future-focused plan to ensure that the children are provided sufficient care and oversight long-term," suggesting he may not be able to anticipate and react to new situations. These concerns are "increasingly notable" in relation to young children who "need . . . increased oversight, limit[-]setting, and guidance from a caregiver."

¶6 The psychologist recommended Father participate in parent aide services and individual therapy, suggesting the services "focus[] specifically on parenting skills" and "improving his judgment surrounding parenting decisions, ability to anticipate potential safety concerns, and skills for proactive parenting to prevent against safety risks or harm to his children." Additionally, the psychologist recommended the providers focus on "increasing [Father]'s accountability and responsibility-taking for the incidents that have warranted DCS involvement while challenging him regarding his cognitive distortions and justifications surrounding these events."

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¶7 Father was referred for the recommended services. He scheduled but failed to attend four intake appointments for parent aide services, and the service was closed. He scheduled and failed to attend one intake for individual counseling. He eventually completed a counseling intake in September 2016 but thereafter failed to attend half of the scheduled sessions. Although DCS also referred Father for further substance abuse testing, he did not participate. During this same time, Father began using methamphetamine.

¶8 Meanwhile, in the summer of 2016, the family's residence was condemned after the parents set a mattress on fire. In January 2017, DCS received a report that both parents had been arrested for possession of dangerous drugs. During the investigation, police determined the parents continued to live in the condemned residence and had been stealing electricity from neighbors by plugging extension cords into their Christmas decorations. Father admitted to the police that he and Mother snorted methamphetamine – a claim consistent with the sores observed in both of Father's nostrils. However, he later denied either possessing or using methamphetamine to his therapist.

¶9 DCS requested the case plan for Child be changed to severance and adoption, noting the parents were actively using methamphetamine, did not have stable employment or housing, had no proof of income, and were not committed to reunification. The request was granted, and DCS immediately moved to terminate the parent-child relationship as to Father upon the grounds of chronic substance abuse and the length of time in care.

¶10 Father advised the DCS caseworker in early February 2017 that he had ended his relationship with Mother and "is trying to get things turned around." He participated in two urinalysis tests that were negative for substances. A few days later, Father told the substance abuse treatment provider that he had used methamphetamine only one time, in January 2017. But at that same appointment, in early February, he tested positive for methamphetamine. He was recommended to participate in standard outpatient substance abuse treatment, but then turned himself in on an outstanding warrant. Father's referral for substance abuse treatment was closed as a result of his incarceration. He later pleaded guilty to one count of misconduct involving weapons and was placed on supervised probation.

¶11 In March 2017, Father was re-referred for substance abuse treatment. At the intake, Father reported he had been using methamphetamine since July 2016. He then fully engaged in counseling

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and substance abuse treatment. He was compliant with substance abuse testing, and all tests were negative with the exception of one diluted sample. Father maintained regular contact with Child and acted appropriately at visits. Although Father had not reached his goals in individual counseling, a few weeks before trial, he moved to Wyoming where he had reportedly obtained employment and lived alone in housing paid for by his parents. The DCS caseworker questioned DCS's ability to effectively coordinate services out-of-state.

¶12 At trial in August 2017, the DCS caseworker acknowledged Father's recent efforts but did not believe five months of services were sufficient to gauge their ultimate success. Additionally, she noted Father had never completed a parenting class and had not shown he could maintain sobriety in an unsupervised setting. The caseworker testified, given Father's previous pattern of behavior, an additional year of compliance was necessary to demonstrate that the required behavioral changes had been made.

¶13 DCS presented evidence that Child was happy and healthy with his paternal grandparents and that they were meeting Child's needs and willing to adopt him. The caseworker testified severance and adoption would benefit Child by providing him with permanency in a safe home "free of substance abuse, free of neglect, free of abuse, and with people who want to and will provide adequate care and proper supervision." Conversely, further delay in establishing permanency would cause Child emotional harm, particularly given that Father had not remedied the circumstances requiring Child to be out-of-home after eighteen months.

¶14 Father testified he wanted to parent Child and "knew" he had made the necessary behavioral changes to do so. Paternal grandmother testified Father is "a very good dad, although he has made some very bad decisions" and supported Child's return to him. Mother, however, expressed some trepidation as to whether Father could safely care for Child alone.

¶15 After taking the matter under advisement, the juvenile court found clear and convincing evidence that termination of Father's parental rights was warranted because Father had substantially neglected or willfully refused to remedy the circumstances causing Child to be placed in out-of-home care for longer than the statutory period, *see* Ariz. Rev. Stat.

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(A.R.S.) § 8-533(B)(8)(a)-(b),² and because Father had a history of chronic substance abuse and there were reasonable grounds to believe the condition would continue for a prolonged indeterminate period, *see* A.R.S. § 8-533(B)(3). The court also found that severance was in Child’s best interests and accordingly entered an order terminating Father’s parental rights. Father timely appealed, and we have jurisdiction pursuant to A.R.S. §§ 8-235(A), 12-120.21(A)(1), -2101(A)(1), and Arizona Rule of Procedure for the Juvenile Court 103(A).

DISCUSSION

¶16 To terminate parental rights, the juvenile court must find by clear and convincing evidence at least one statutory ground for severance 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). We do not reweigh the evidence on appeal; as the trier of fact, the court “is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004) (citing *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002)). “Accordingly, we view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the court’s decision.” *Jordan C. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009) (citing *Jesus M.*, 203 Ariz. at 282, ¶ 13). We will affirm a termination order “unless we must say as a matter of law that no one could reasonably find” the evidence sufficient to support the findings and conclusions. *Id.* (quoting *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 210 Ariz. 92, 95, ¶ 10 (App. 2005)).

I. DCS Proved the Statutory Grounds for Severance by Clear and Convincing Evidence.

¶17 If a child is under the age of three, his parent’s rights may be terminated if he has been in an out-of-home placement for six months or longer, DCS has made a diligent effort to provide reunification services, and “the parent has substantially neglected or wil[l]fully refused to remedy the circumstances that cause the child to be in an out-of-home placement, including refusal to participate in reunification services.” A.R.S. § 8-533(B)(8)(b). In evaluating the parent’s performance, the juvenile court

² Absent material changes from the relevant date, we cite a statute’s current version.

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must consider “the availability of reunification services to the parent and the participation of the parent in these services.” A.R.S. § 8-533(D).

¶18 Although Father admits he initially was only “semi-engaged” in services and never completed parent aide services, he nevertheless contends the juvenile court abused its discretion in finding he substantially neglected to remedy the circumstances causing Child to be in an out-of-home placement.³ In advancing this argument, he relies on evidence that he had recently committed himself to sobriety, fully engaged in services, and terminated his relationship with Mother.

¶19 Severance based upon a child’s time in an out-of-home placement “is not limited to those who have *completely* neglected or willfully refused to remedy such circumstances.” *Maricopa Cty. Juv. Action No. JS-501568*, 177 Ariz. 571, 576 (1994). Rather, the court is “well within its discretion in finding substantial neglect and terminating parental rights” where a parent makes only “sporadic, aborted attempts to remedy” the situation. *Id.* And even where a parent eventually engages in services and exhibits improvement, those efforts may be “too little, too late.” *Id.* at 577 (“Leaving the window of opportunity for remediation open indefinitely is not necessary, nor [is] it . . . in the child’s or the parent’s best interests.”) (citing *Maricopa Cty. Juv. Action No. JS-4283*, 133 Ariz. 598, 601 (App. 1982)). This scheme furthers a young child’s interest in permanency by giving the parent an incentive to address his deficiencies and assume his parental responsibilities as soon as possible. *See id.* (citing *Maricopa Cty. Juv. Action No. JS-6520*, 157 Ariz. 238, 243 (App. 1988)).

¶20 DCS removed Child from Father’s care based upon concerns regarding Father’s ability to keep Child safe. The record reflects Father participated in a psychological evaluation and then “semi-engaged” in the recommended counseling between February 2016 and February 2017. At the same time, however, he missed four intake appointments for parent aide services and had yet to admit he was using methamphetamine. Father did not commit to services, sobriety, or separating from Mother’s “destructive” influence until Child had been in an out-of-home placement for twice the statutory period. Although Father points to evidence that he eventually made some progress in establishing his ability to parent, even

³ Father also suggests DCS was not diligent in providing reunification services. Because he did not challenge the type or manner of services provided with the juvenile court, the argument is waived. *See Shawanee S. v. Ariz. Dep’t of Econ. Sec.*, 234 Ariz. 174, 179, ¶ 18 (App. 2014).

then he ultimately failed to complete individual counseling and parent aide services and relocated out-of-state regardless of the continuation of services.

¶21 Sufficient evidence supports the juvenile court’s finding that Father substantially neglected to remedy the circumstances causing the Child to be out-of-home for the statutory period. *See Maricopa Cty. Juv. Action No. JS-8441*, 175 Ariz. 463, 468 (App. 1993) (holding that a parent who participated in some services but maintained instability in his residence and employment substantially neglected to remedy the circumstances causing the child to be in an out-of-home placement), *abrogated on other grounds by Kent K.*, 210 Ariz. at 288, ¶ 41. The record further supports the court’s implied finding that Father’s more recent efforts, albeit commendable, are simply too little, too late. *See Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 17 (App. 2004) (“[W]e will presume that the juvenile court made every finding necessary to support the severance order if reasonable evidence supports the order.”) (citing *Pima Cty. Severance Action No. S-1607*, 147 Ariz. 237, 238 (1985)); *JS-501568*, 177 Ariz. at 577 (concluding a parent’s “successful efforts at rehabilitation in the eight months prior to the severance hearing” did not “exempt her from severance” where she had previously substantially neglected to remedy her substance abuse during the statutory period). Accordingly, we find no error in the conclusion that DCS proved the statutory ground for severance by clear and convincing evidence.⁴

II. DCS Proved Severance Was in Child’s Best Interests by a Preponderance of the Evidence.

¶22 Father argues the juvenile court abused its discretion by finding termination was in Child’s best interests. Termination is in a child’s best interests if the child “would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship.” *Oscar O.*, 209 Ariz. at 334, ¶ 6 (citing *Jennifer B. v. Ariz. Dep’t of Econ. Sec.*, 189 Ariz. 553, 557 (App. 1997)); *accord Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4, ¶ 16 (2016) (quotation omitted). The inquiry is a fact-specific, case-by-case

⁴ “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.” *Jesus M.*, 203 Ariz. at 280, ¶ 3 (citing *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 251, ¶ 27 (2000), and *JS-6520*, 157 Ariz. at 242). Accordingly, we do not reach Father’s arguments that insufficient evidence supports severance on the grounds of chronic substance abuse and nine months’ out-of-home care.

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determination, in which the court balances “the unfit parent’s ‘diluted’ interest ‘against the independent and often adverse interests of the child in a safe and stable home life.’” *Demetrius L.*, 239 Ariz. at 4, ¶¶ 13, 15 (quoting *Kent K.*, 210 Ariz. at 286, ¶ 35).

¶23 Although Father argues Child would neither benefit from severance nor suffer from continuing the relationship with Father because Father “has turned his life around” and intends to maintain contact with Child, the juvenile court found otherwise. Specifically, the court found Father “ha[d] demonstrated in serial fashion, a distinct inability to make decisions that are consistent with the best interests and physical safety of the children.” Moreover, Father had been given ample opportunity to make the changes necessary to parent Child but failed to convince the court he could provide Child a safe, stable home. Meanwhile, Child was left to “languish in foster care.”

¶24 Father does not contest these findings, and the record supports them. On the evidence presented, we cannot say the juvenile court abused its discretion in balancing the evidence in favor of Child’s interest in permanency. This is particularly true given Father’s failure to complete necessary services or otherwise prove he had overcome a pattern of poor decision-making that had seriously endangered other children in his care. Accordingly, we find no error.

CONCLUSION

¶25 The juvenile court’s order terminating Father’s parental rights to Child is affirmed.



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