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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JORGE C., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, Z.M., *Appellees*.

No. 1 CA-JV 18-0271
FILED 12-20-2018

Appeal from the Superior Court in Maricopa County
No. JD28256
The Honorable Nicolas B. Hoskins, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Maricopa County Public Defender's Office, Mesa
By Suzanne W. Sanchez
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Autumn Spritzer
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Maria Elena Cruz delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Randall M. Howe joined.

C R U Z, Judge:

¶1 Appellant Jorge C. (“Father”) appeals from the superior court’s order terminating his parental rights to his child, Z.M. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Father is the biological parent of Z.M., born in January 2016. The Department of Child Safety (“DCS”) took custody of Z.M. in March 2016, following his discharge from the hospital after birth. When Z.M. was born, his biological mother, Tonya M. (“Mother”)¹, was subject to an initial dependency petition from 2014 that concerned seven of her other children. Z.M. was born approximately ten months after Mother’s other children were removed from her care.

¶3 In January 2015, Mother and her children were living with her boyfriend, Father, when DCS received a report alleging Father sexually abused two of Mother’s daughters. DCS implemented a safety plan that prohibited contact between Mother’s children and Father. Mother moved out of Father’s home, but in March 2015, DCS removed the children after the Phoenix Police Department informed DCS that Mother and her children had secretly moved back in with Father, violating the safety plan. DCS reported that after a police investigation, Father was not formally charged with any crimes related to the alleged sexual misconduct, but DCS remained concerned about Father.

¶4 Z.M. was hospitalized for over a month at birth and spent time in intensive care; he experienced meconium aspiration and respiratory failure. As a result, Z.M. faced developmental delays and failure to thrive, in addition to permanent lung damage and chronic lung problems. Z.M. was diagnosed with cystic fibrosis, requiring ongoing testing and monitoring. Over the first two years of Z.M.’s life, he needed frequent

¹ Mother is not a party to this appeal.

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medical treatment, including twice-daily breathing treatments, weekly physical therapy, speech and feeding therapy, and a special diet.

¶5 The superior court found Z.M. dependent as to Father in May 2016. DCS offered Father reunification services, including parent aide services, supervised visitation, a psychosexual evaluation with Dr. Vega in June 2016, a psychological evaluation with Dr. Menendez in September 2017, and individual counseling. Father's case manager testified that Father was prepared and engaged during his visits with child.

¶6 Dr. Vega performed a psychosexual evaluation of Father in June 2016 because of his alleged sexual misconduct and reported history of using prostitutes in his twenties. Dr. Vega concluded that Father did not pose "any kind of sex offending risk," but noted that Father disclosed a deep ambivalence about his willingness and ability to parent Z.M. At trial, Father denied that he expressed this ambivalence toward parenting Z.M.

¶7 In September 2017, Dr. Menendez conducted a psychological evaluation. Based on this evaluation, Dr. Menendez noted that Father's "sexual maladjustment predispose[d] [Father] to dangerous sexual boundary violations" and "high risk behaviors that can place a child in danger of physical and emotional behavior." At trial, Dr. Menendez testified that throughout the evaluation, Father "maintained an ambivalent detached approach" to parenting Z.M. and struggled to create a detailed parenting plan. Dr. Menendez also diagnosed Father with paraphilia disorder, which represents a poor judgment issue that includes a risk of harm to Z.M.

¶8 Father failed to take advantage of opportunities to progress to unsupervised visitation in order to ultimately parent Z.M. full time. The case manager testified that DCS had concerns about Father's relationship with Mother, Father's lifestyle, and whether he would place Z.M. at risk of emotional harm. The case manager also testified that DCS attempted to work with Father to provide additional unsupervised visits and create a parenting plan so Father could take over full-time care of Z.M. DCS reported that Father had failed to take initiative over the two years of the dependency. Moreover, after Father proposed that his roommate could babysit Z.M. while Father worked, no one answered the door when DCS arrived for the scheduled visits. In October 2017, DCS reported that Father started canceling visits with Z.M. and did not reschedule, blaming his work schedule and a disconnected phone. Father did not reply to mail requests for updated contact information. Father failed to follow through with

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expanding his visits. Furthermore, at the time of trial, Father had attended only three out of Z.M.'s ninety-six medical appointments over two years.

¶9 In November 2017, DCS moved to sever Father's relationship with Z.M., citing out-of-home placement for more than fifteen months as grounds. Z.M. has been in a foster home since he was released from the hospital after birth; at the close of trial, Z.M. had been in care over twenty-eight months. After a five-day trial, the superior court severed Father's parental rights to Z.M. based upon his inability to remedy the circumstances that gave rise to the out-of-home placement pursuant to Arizona Revised Statutes ("A.R.S.") section 8-533(B)(8)(c). Father timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235(A), 12-120.21(A)(1), and 12-2101(A)(1).

DISCUSSION

¶10 The superior court severed Father's rights to Z.M. pursuant to A.R.S. § 8-533(B)(8)(c), finding Z.M. had been in an out-of-home placement for more than fifteen months and Father was unable to remedy the circumstances that resulted in Z.M.'s removal. The superior court found severance was in Z.M.'s best interests because a suitable adoptive placement capable of providing stability and permanency was available, and because of concerns Father could not meet Z.M.'s needs.

¶11 Father does not dispute the reasonableness or adequacy of the reunification services provided to him, nor does he dispute that Z.M. was in an out-of-home placement for over fifteen months. Instead, Father argues severance was improper because his parenting skills were improving; he argues the court should have allowed him more time to fully comply with DCS' expectations. Because of his progress in some areas, Father argues the superior court erred in finding he failed to remedy the circumstances that brought Z.M. into DCS' care, and termination was in the child's best interests. We disagree.

I. Standard of Review

¶12 The superior court may sever parental rights if it finds by clear and convincing evidence at least one of the statutory grounds set forth in A.R.S. § 8-533, *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12 (2000), and by a preponderance of the evidence that severance is in the best interests of the child, *Kent K. v. Bobby M.*, 210 Ariz. 279, 288, ¶ 41 (2005). "On review . . . we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of*

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Econ. Sec., 203 Ariz. 278, 280, ¶ 4 (App. 2002). Accordingly, we address Father's arguments "view[ing] the facts in the light most favorable to upholding the juvenile court's order." *Ariz. Dep't of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, 549, ¶ 7 (App. 2010).

II. Failure to Remedy the Circumstances Resulting in Removal

¶13 The superior court is justified in terminating the parent-child relationship if it finds that the "child has been in an out-of-home placement for a cumulative total period of fifteen months or longer," that "the parent has been unable to remedy the circumstances" that caused the out-of-home placement, that DCS "had made a diligent effort to provide appropriate reunification services," and that, despite those services, "there is a substantial likelihood that the parent will not be capable of exercising proper and effective care and control in the near future." A.R.S. § 8-533(B)(8)(c). In making this determination, the court must consider "the circumstances existing at the time of the severance rather than the initial dependency petition." *E.R. v. Dep't of Child Safety*, 237 Ariz. 56, 60, ¶ 17 (App. 2015) (quotation omitted).

¶14 In its order terminating Father's parental rights, the superior court found that Father's denial of sexual misconduct interfered with his ability to address that behavior and also found Father failed to take opportunities to expand his unsupervised parenting time or follow through with basic parenting responsibilities. The court also found Father's lack of engagement showed his ambivalence toward parenting. These findings were the basis of the court's conclusions that Father had failed to remedy the circumstances that led to the dependency and would be unable to exercise proper and effective care in the near future. Reasonable evidence supports these conclusions.

¶15 Father participated in parenting services and DCS attempted to expand his unsupervised parenting time. Although Father denied at trial that he expressed ambivalence toward parenting, he failed to take initiative over two years to take on more responsibility or develop a plan to parent Z.M. full-time. For example, according to DCS, Father did not provide DCS with information about his roommates until threat of a court order made him share information about the person he suggested could help with child care. This led the case manager to opine Father had failed to remedy the core reasons for Z.M.'s removal—his ambivalence toward parenting and lack of motivation to take on full-time care of his child.

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¶16 Dr. Menendez's psychological evaluation concluded Father suffers from paraphilia disorder, which represents an issue of poor judgment that could place Z.M. in harm. Moreover, during the trial, the superior court judge instructed Father to "[p]articipate in every service like it's a religion," but after two months, Father had still not participated in partially unsupervised visits with Z.M. Father's DCS case manager testified that while Father interacted well with Z.M. during supervised visitation, DCS was more concerned with Father's "willingness and ability to care" for Z.M. by himself.

¶17 Father argues DCS failed to prove that he did not remedy the circumstances that caused Z.M. to be in out-of-home placement and that Father would be unable "to parent his child in the near future." But reasonable evidence supports the superior court's conclusion that Father would need "material additional time" before he could be reunited with Z.M.

¶18 Father also argues severance is improper because he consistently and actively participated in all the family reunification services. He points to testimony by a DCS child safety specialist, who explained she observed Father engage "very appropriatel[ly]" with Z.M., and prepare for visits with food and activities for Z.M., who was happy to see Father. Father also cites his stable employment, income and housing, and absence of any substance abuse. Moreover, Father contends that the superior court erred by finding that his consistent denials of sexual misconduct with Mother's daughter "interfered with his ability to address that behavior" because "Father never was charged with any offenses in connection with these alleged incidents."

¶19 These arguments by Father do not address the circumstances that prevented his reunification with Z.M. There is reasonable evidence in the record to support the superior court's findings. Father's argument in essence asks the court to reweigh the evidence; we decline to do so. *Jesus M.*, 203 Ariz. at 282, ¶ 12; *Dominque M. v. Dep't of Child Safety*, 240 Ariz. 96, 98, ¶ 9 (App. 2016). The resolution of conflicting evidence is "uniquely the province of the juvenile court," *Jesus M.*, 203 Ariz. at 282, ¶ 12, and this rule applies even when "sharply disputed" facts exist, *In re Pima Cty. Severance Action No. S-1607*, 147 Ariz. 237, 239 (1985). Father has not pointed to anything in the record challenging the sufficiency of the evidence.

¶20 Altogether, Father's failure to take initiative led the DCS child safety specialist and case manager to conclude Father fell short of compliance with DCS' expectations. Thus, reasonable evidence supports

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the superior court's finding that Father has been unable to remedy his failure to follow through for over two years and his "modest uptick in participation is too little, too late."

III. Best Interests

¶21 Father also argues the superior court erred in determining that termination was in the child's best interests. Specifically, Father asserts the court erred in finding DCS proved either a benefit to Z.M. by termination, through potential adoption, or a detriment if termination was not granted.

¶22 When a statutory ground for termination has been proven, "the focus shifts to the interests of the child as distinct from those of the parent," *Kent K.*, 210 Ariz. at 285, ¶ 31, and "[o]f foremost concern . . . is protecting a child's interest in stability and security," *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4, ¶ 15 (2016) (citation omitted). "[T]ermination is in the child's best interests if either: (1) the child will benefit from severance; or (2) the child will be harmed if severance is denied." *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 150, ¶ 13 (2018) (citation omitted). "It is well established in state-initiated cases that the child's prospective adoption is a benefit that can support a best-interests finding," recognizing the court "must consider the totality of the circumstances existing at the time of the severance determination." *Id.* We view the record in a light most favorable to upholding the best-interests findings, and we affirm findings of fact "if reasonable evidence and inferences support them." *Id.* at 151-52, ¶¶ 18, 21 (citation omitted).

¶23 The superior court found that Z.M. would benefit by termination because he was placed with a licensed foster placement, which intended to proceed to adoption. The placement was meeting Z.M.'s needs and would provide permanence and stability he was lacking. The court also properly found that Z.M. would be harmed if termination were denied, because the child would remain in care for an indefinite period. Each finding would support best interests independently, and both are fully supported by the trial evidence.

¶24 Father also argues that the superior court erred because "the severance order contains no indication that the court reflected upon Father's rehabilitation." However, the superior court properly considered the totality of the circumstances. The court recognized that "Father ha[d] increased his attendance at medical appointments, but only after the first two days of trial." The court considered this "modest uptick in

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participation” to be “too little, too late.” Courts “must not . . . subordinate the interests of the child to those of the parent once a determination of unfitness has been made.” *Alma S.*, 245 Ariz. at 150, ¶ 15. Accordingly, Father has shown no abuse of discretion in the finding that Z.M. would benefit by termination and be harmed if termination was denied. *See, e.g., Alma S.*, 245 Ariz. at 152, ¶ 21; *Demetrius L.*, 239 Ariz. at 6, ¶ 22.

CONCLUSION

¶25 Because Father has shown no reversible error, the superior court’s order terminating rights to Z.M. is affirmed.



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