IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JUERGEN M., *Appellant*,

v.

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

No. 1 CA-JV 19-0074
FILED 9-26-2019

Appeal from the Superior Court in Maricopa County
No. JD22977 and JS19777
The Honorable M. Scott McCoy, Judge

AFFIRMED

COUNSEL

The Stavris Law Firm, PLLC, Scottsdale
By Alison Stavris
Counsel for Appellant

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

MEMORANDUM DECISION

Judge David D. Weinzweig delivered the decision of the Court, in which Presiding Judge James B. Morse Jr. and Judge Samuel A. Thumma joined.

W E I N Z W E I G, Judge:

¶1 Juergen M. ("Father") appeals the juvenile court's order terminating his parental rights to L.M., arguing the court erred in admitting hearsay evidence. We affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Father and Ashley C. ("Mother") are the biological parents of L.M., born in July 2018, and five older children, born between 2011 and 2017. The juvenile court terminated their parental rights to the five older children between March 2015 and September 2018 on various statutory grounds, including (as to Father) mental illness, time in out-of-home care and prior severance. Neither Mother nor the five older children are part of this appeal, which only concerns Father's parental rights to L.M.

¶3 The Arizona Department of Child Safety ("DCS") referred Father to five mental health professionals in connection with the first five dependency and severance actions, including three psychologists, one neuropsychologist, and one psychiatrist. These professionals evaluated Father or his mental health records between July 2013 and November 2017. In written reports, all five found that Father suffered from ADHD and either schizoid personality disorder or autism spectrum disorder. They largely agreed that Father was unlikely to exhibit "minimally adequate parenting skills" in the foreseeable future, his children were at risk for neglect, he was "unlikely" to benefit from mental health services and treatment would be futile.

¶4 DCS immediately took custody of L.M. after his July 2018 birth and filed a dependency petition, alleging that Father was unable to parent due to mental illness.

¶5 DCS referred Father to a fourth psychologist, Dr. Shane Hunt, in August 2018. Dr. Hunt examined Father and reviewed his prior mental health records. In October 2018, Dr. Hunt reported that previous services had not helped Father demonstrate minimally adequate parenting skills and recommended no more services or evaluations. That same month, DCS moved to terminate Father's parental rights to L.M. based on grounds of mental illness and prior severance. A.R.S. § 8-533(B)(3), (10). The juvenile court granted DCS' request to relieve the obligation to provide reunification services under A.R.S. § 8-846(D)(1)(b).

¶6 The juvenile court held a combined contested dependency and severance adjudication in February 2019, admitting several exhibits

and hearing testimony from the case manager and Dr. Hunt. Dr. Hunt opined that Father's condition had not changed from the earlier mental-health evaluations, and he concluded it was "futile" and "pointless" to offer him more services or seek another psychological evaluation. Dr. Hunt also explained the work he performed to arrive at his opinion; he met Father in person, reviewed an earlier mental health evaluation from March 2017, reviewed the DCS records and spoke with the DCS case manager. After the hearing, the juvenile court adjudicated L.M. dependent and terminated Father's parental rights. It found DCS proved the statutory grounds of mental illness and prior severance. It also found termination was in L.M.'s best interests. Father timely appealed.

DISCUSSION

¶7 Father does not contest the juvenile court's findings, but instead argues that we should "reverse the order of severance and dependency" because the court "allowed hearsay evidence to be admitted through the testimony" of Dr. Hunt. Father points to Dr. Hunt's explanation that he relied on Father's prior mental health records in forming his opinion, and that he reviewed DCS records and spoke with the DCS case manager.

¶8 Father has shown no error. Dr. Hunt explained what he had reviewed and relied upon to describe the basis of his opinion, not "to prove the truth of the matter asserted." Ariz. R. Evid. 801(c)(2); *see State v. Tucker*, 215 Ariz. 298, 315, ¶ 60 (2007) (expert could "reveal the substance" of another expert's statements "because the information was offered, not for its truth, but for the limited purpose of showing the basis of [the expert]'s opinion"). Moreover, Father never contends it was unreasonable for Dr. Hunt to rely on the records and never questions the probative value of the records. Ariz. R. Evid. 703 (expert may rely on inadmissible information if it is the kind of information that "experts in the particular field would reasonably rely on," and the information may be disclosed "only if [its] probative value in helping the jury evaluate the opinion substantially outweighs [its] prejudicial effect").

CONCLUSION

¶9 We affirm.