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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

DAVID P., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, S.C., Z.P., *Appellees*.

No. 1 CA-JV 19-0267
FILED 7-7-2020

Appeal from the Superior Court in Maricopa County
No. JD529859

The Honorable David Gass, Judge, *Retired*

AFFIRMED

COUNSEL

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

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

MEMORANDUM DECISION

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge David D. Weinzweig and Judge James B. Morse Jr. joined.

P E R K I N S, Judge:

¶1 David P. (“Father”) appeals the trial court’s decision to terminate his parental rights to S.C. and Z.P. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Father and Chelsey C. (“Mother”; collectively “Parents”) are the parents of S.C., born in 2016, and Z.P., born in 2017. Mother is not a party to this appeal. Parents met in a psychiatric facility and married in June 2017. The Department of Child Safety (DCS) removed both children from Parents’ home, each within a month of birth. Parents did not understand how to care for the children, did not have appropriate provisions, and were immature and violent with each other. For example, Father put his hands around Mother’s neck at the hospital shortly after S.C.’s birth. Father repeatedly engaged in suicidal ideation, including wandering out of the home and lying down in the dirt for an entire day, and leaving suicide notes for Mother.

¶3 DCS referred Parents for psychological evaluations in August 2016. DCS then referred Parents to dialectic behavioral therapy (“DBT”) and child psychotherapy through Cradles to Crayons. Father closed out of DBT unsuccessfully based on a lack of participation in 2017.

¶4 DCS provided three parent aides. Parents successfully completed the first parent aide service in August 2016. Still, the aide informed DCS that Parents continued to need prompting to understand when to provide S.C. with food, diaper changes, and other necessities. A second parent aide closed out successfully in March 2017 but noted that Parents still struggled to “read some basic cues.”

¶5 After removing Z.P. in September 2017, DCS asked the children’s maternal uncle to be a safety monitor in order to move towards in-home services. DCS scrapped this idea in February 2018 after

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disagreements between the uncle and Parents led to his departure. Around the same time, Parents' closed out unsuccessfully of a third parent aide service for a failure to meet goals. The third parent aide noted that Parents followed instructions during visits but then needed someone to "remind them, to reshaw, to reteach after every parent aide or every case aide."

¶6 Parents received child psychotherapy through Cradles to Crayons. Cradles to Crayons discontinued the services in October 2018 after Mother revealed that she was only interested in more visitation, rather than improving skills. Father did not ask to have visits reinstated.

¶7 DCS referred Father for a second psychological evaluation in January 2018. Dr. James Thal conducted the evaluation and diagnosed Father with bipolar disorder, paranoid personality disorder, and unspecified depressive disorder. He recommended that Father receive individual therapy and a psychiatric evaluation. DCS referred Father for those services that April.

¶8 After Father participated regularly in individual therapy and received a psychiatric evaluation, DCS referred Parents to couples counselling in August 2018. Parents did not begin counselling until November 2018. But the counselor discontinued couples counselling in January 2019 after noting that Parents had "individual issues" that they needed to address. Around the same time, Father broke the children's furniture and the television in anger. DCS again referred Father to individual counselling in March 2019 but he declined to participate until April to focus on his job.

¶9 DCS moved to terminate parental rights in May 2018 on the grounds of six-months time-in-care as to both children, and nine-months and fifteen-months time-in-care as to S.C. only. DCS later filed two amended petitions to terminate Parents' rights, adding grounds based on nine-months time-in-care as to Z.P., and Father's mental health as to both children.

¶10 The trial court held a termination hearing in December 2018 and May 2019. At trial, Cradles to Crayons parent/child clinician Natalie Anderson testified. For a period of about 18 months she worked with both parents in psychotherapy. She testified that Father exhibited paranoid behavior in a manner that could pose a risk to children by making him difficult to understand. She also testified that Father would "struggle to cope with his understanding of reality during [her] sessions," and that this could put the children at risk. Anderson believed that Father could not

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protect the children from Mother's endangering behavior. Mother had allowed Z.P. to put a small spring in her mouth, chew on a nose bulb, stand in a high-chair, and nearly fall downstairs. In each case, Father was either absent or needed prompting to intervene. She testified that Father's suicidal ideation, unless treated aggressively, would also be a danger to the children. Anderson believed Parents did not understand what it would take to parent a child full time and that Father could not parent S.C. and Z.P.

¶11 Based on his March 2018 psychological evaluation of Father, Dr. James Thal concluded that Father's prognosis to demonstrate minimally adequate parenting skills in the foreseeable future was poor. He based this on Father's "self-destructive thoughts, unstable emotions, poor judgment, conflicted relationship with his spouse, and uncertain ability to protect." Dr. Thal noted that Parents seemed more dysfunctional together than separately, but Father chose to stay married even if it jeopardized his parental rights. He recommended that DCS move towards a severance and adoption case plan because "quite frankly, the outlook seemed bleak for both individuals."

¶12 DCS supervisor Amanda Gonzales testified that DCS continued to have safety concerns, particularly with domestic violence by Mother against Father. Gonzales was troubled by Parents' difficulty "pinpointing basic needs for the kids [and] understanding age-appropriate milestones," and their failure to address mental health issues. Gonzales did not believe Parents were able to parent Z.P. and S.C., nor did she think Father could independently parent.

¶13 DCS case manager Heather Briggs testified that she met with Parents in October 2018. She testified that Parents believed the reason DCS had removed the children was to "make money off of their children" and that, to this end, DCS used video cameras or "undercover agents" disguised as people living in their apartment complex. She testified that it was "extremely concerning" that despite receiving a litany of services, Parents had made no behavior changes.

¶14 In May 2019, the juvenile court terminated parental rights to S.C. and Z.P. on the grounds of six, nine, and fifteen months time-in-care. The court found the children had been in out-of-home placement since 2016 and 2017 respectively, and that Parents had willfully refused to participate in some services while insufficiently improving their ability to exercise proper and effective parental care and control. The court noted that Parents may have made some initial progress, but "their decision to stop engaging in services means they have receded to where they started." Finally, the

court drew a negative inference from Father's failure to testify on his behalf when finding that termination was the best interests of the children. Father timely appealed.

DISCUSSION

¶15 We review the termination of parental rights for an abuse of discretion. *Titus S. v. Dep't of Child Safety*, 244 Ariz. 365, 369, ¶ 15 (App. 2018). This court will uphold the trial court's findings of fact "if supported by adequate evidence in the record." *Christy C. v. Ariz. Dep't Econ. Sec.*, 214 Ariz. 445, 452, ¶ 19 (App. 2007) (quoting *State v. Smith*, 123 Ariz. 243, 247 (1979)). "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). "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." *Id.* at ¶ 3.

I. Statutory Ground

¶16 To terminate the parent-child relationship, the juvenile court must find at least one statutory ground under A.R.S. § 8-533(B) by clear and convincing evidence. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 22 (2005).

¶17 A court may terminate a parent-child relationship if a child remains in an out-of-home placement for a total period of fifteen months or longer "and the parent has substantially neglected or willfully refused to remedy the circumstances that cause the child to be in an out-of-home placement." A.R.S. § 8-533(B)(8)(c). The circumstances in view are those "existing at the time of the severance that prevent a parent from being able to appropriately provide for his or her child[ren]." *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22 (App. 2007) (citation omitted).

¶18 S.C. and Z.P. have been in out-of-home placement since March 2016 and September 2017, respectively. The court found that Parents were "not prepared for" and "not properly caring for" both children at birth. The court found that at the time of trial "[P]arents cannot recognize when their children face risks, their children's needs, and their children's cues," and that "[m]ental health issues continue to serve as obstacles to reunification." The court accordingly found that Parents "remain incapable of parenting the children."

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¶19 Father first argues that DCS presented insufficient evidence that he could not remedy the circumstances that caused the placement and that he would be unlikely to do so in the near future. In particular, he asserts that the court should have considered his stable housing and employment, parenting skills, and engagement with services. The record refutes these contentions. Father's engagement with DBT, individual therapy, and child psychotherapy was, at best, spotty. Father's demonstration of some parenting skills does not mitigate the safety concerns raised by his untreated mental illness, and failure to guard children from obvious safety risks unnoticed by Mother. And while Father's employment and housing are necessary conditions for the children's return, they are not enough.

¶20 As for the future, Dr. Thal noted in mid-2018 that Father's parenting prognosis was "poor." Multiple witnesses noted that Father continued to fail to recognize risks to his children and to improve his parenting. Father continued to suffer from unaddressed bipolar disorder and suicidal ideation that posed a risk to the children. Reasonable evidence supports the juvenile court's findings.

¶21 Father also argues that DCS did not prove that it provided him with appropriate reunification services. In particular, he argues that he should have been receiving individual DBT therapy from May 2017 onward. He contends that DCS unreasonably delayed referral to couples counseling, and that DCS should have provided therapeutic visitation. Before moving for termination, DCS must make reasonable efforts to preserve the family. *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶ 32 (App. 1999). While the state need not offer "'every conceivable service,' it must provide a parent with the time and opportunity to participate in programs designed to improve the parent's ability to care for the child." *Id.* at 192, ¶ 37 (quoting *Maricopa Cty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994)).

¶22 DCS met its burden. Father received three parent aide referrals, psychological and psychiatric evaluations, a case aide, rule-out drug testing, case management, and transportation. Father's own inaction led to the closure of his initial referral to DBT, thereby causing the delay. And while clinician Anderson recommended couples counseling in February 2018, DCS policy is not to refer for couples counselling before seeing success in individual counselling. Even so, after mediation, all parties asked the court to order that Parents receive such services. DCS's policy proved prescient: Parents closed out of the service unsuccessfully after one month because, "neither parent [had] fully resolved their underlying issues which makes it very hard to make any progress in

couple's counseling." Reasonable evidence supports the court's finding that DCS made sufficient efforts to reunify Father and the children.

¶23 We need not address the other grounds for termination the trial court relied on because we affirm the fifteen-months time in care ground. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 251, ¶ 27 (2000).

II. Best Interests

¶24 The court must also find by a preponderance of the evidence that severance would be in the best interests of the child. A.R.S. § 8-533(B); *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 149–50, ¶ 8 (2018). Once a court has found at least one statutory ground to terminate, it may "presume that the interests of the parent and child diverge." *Kent K.*, 210 Ariz. at 286, ¶ 35. We thus focus our inquiry here on "the interests of the child as distinct from those of the parent." *Id.* at 285, ¶ 31. The "child's interest in stability and security" is the touchstone of our inquiry. *See id.* at 286, ¶ 34. Termination of parental rights 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.*, 245 Ariz. at 150, ¶ 13. Courts must consider the totality of the circumstances existing at the time of the severance. *Id.* Courts may consider "evidence that . . . an existing placement is meeting the needs of the child." *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 238, ¶ 26 (App. 2011). When no specific adoption plan is in place, DCS must show that the children are adoptable. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 50, ¶ 19 (App. 2004). When considering the best interests of the child, courts may draw a negative inference when a parent refuses to testify at a severance hearing. *Melissa W.*, 238 Ariz. at 117, ¶ 6.

¶25 Here, the court found that the children were adoptable, and that their current placement was meeting their needs. The court also considered the bond between Father and his children. *See Dominique M. v. Dep't of Child Safety*, 240 Ariz. 96, 98, ¶ 12 (App. 2016). The court found that the children would benefit from permanency with their foster family, and that maintaining the relationship with Father would be detrimental because the Parents were "locked in place while struggling with their mental health issues and lack of understanding of their children's needs." Finally, the court correctly drew a negative inference from Father's failure to testify. *See Melissa W. v. Dep't of Child Safety*, 238 Ariz. 115, 117, ¶¶ 5–6 (App. 2015).

¶26 But Father argues the court abused its discretion by failing to consider his loving relationship towards the children and the daily parenting tasks that Father managed to accomplish. Further, he argues that

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termination of his rights was “not the best option.” *Citing Demetrius L. v. Joshlynn F.*, 239 Ariz. 1 (2016). We will not reweigh this evidence on appeal. *Jesus M.*, 203 Ariz. at 282, ¶ 13 (App. 2002) (“Whether severance is in the child’s best interests is a question of fact for the juvenile court to determine.”). Reasonable evidence supports the juvenile court’s findings; we find no abuse of discretion.

CONCLUSION

¶27 We affirm.



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