IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MAISON W., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, N.W., *Appellees*.

No. 1 CA-JV 19-0347
FILED 5-19-2020

Appeal from the Superior Court in Maricopa County
No. JD35630
The Honorable Jo Lynn Gentry, Judge

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

Judge Randall M. Howe delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Joshua Rogers[1] joined.

H O W E, Judge:

¶1 Maison W. ("Father") appeals the juvenile court's order terminating his parental rights to his child, N.W.[2] For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 N.W. was born substance exposed in March 2018, and the Department of Child Safety took custody of him that same month based on allegations of substance abuse, neglect, and unstable housing. According to a Department case manager, Father used marijuana without a medical-marijuana card and lived with others who used illegal substances. The juvenile court found N.W. dependent as to Father in May 2018.

¶3 The Department provided Father parent-aide services, parenting classes, supervised visitation, substance-abuse testing and treatment, and transportation services. In May 2019, after a change in case plan to severance and adoption, the Department moved to terminate Father's parental rights, alleging the six and nine months' out-of-home placement grounds defined in A.R.S § 8–533 (B)(8)(a) and (b).

¶4 At the adjudication, the Department case manager testified that Father had a history of substance abuse and displayed poor participation in services during the dependency. She explained that Father had not participated consistently in substance-abuse testing and that when he did test, he tested positive for marijuana She also mentioned that Father frequently tested positive for opiates in 2018 and that although Father

[1] The Honorable Joshua Rogers, Judge of the Arizona Superior Court, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

[2] The juvenile court also terminated the parental rights of N.W.'s mother, but she is not a party to this appeal.

eventually obtained a medical-marijuana card, marijuana affected his ability to safely parent N.W. She testified that Father received three referrals for substance-abuse counseling through TERROS, two of which were closed due to lack of contact and poor participation. The third referral remained open as of trial "because Father ha[d] not made the behavior changes needed" to complete the program.

¶5 The case manager testified, in addition, that Father arrived late to visits, left early, and was oftentimes unprepared for visits. She recounted that the parent aide would often need to stop at a convenience store on the way to visits so that Father could purchase needed items, such as diapers, baby wipes, and baby food. The case manager also opined that terminating Father's parental rights would be in N.W.'s best interests because it would provide N.W. a safe, permanent, and stable home that would also be free of illegal substances. She also noted that N.W. was adoptable and in a potential adoptive placement meeting his needs.

¶6 The court terminated Father's parental rights to N.W. under the six and nine months' out-of-home placement grounds. *See* A.R.S § 8–533 (B)(8)(a), (b). The court found that the Department made a diligent effort to provide Father with appropriate reunification services and that Father had substantially neglected or willfully refused to remedy the circumstances that caused N.W. to be in an out-of-home placement. It noted that Father missed at least 73 random urinalysis tests and had tested positive for opiates and marijuana approximately 25 times in the past year. It also noted that Father had missed several visits with N.W. and had completed fewer than half of his parent-aide skills sessions.

¶7 The court also found that termination was in N.W.'s best interests. It noted that N.W. was adoptable and in an adoptive placement meeting his needs, and if that placement was unable to adopt, a new placement could be found. Father timely appealed.

DISCUSSION

¶8 We review a juvenile court's termination order for an abuse of discretion. *E.R. v. Dep't of Child Safety*, 237 Ariz. 56, 58 ¶ 9 (App. 2015). We will affirm an order terminating parental rights so long as reasonable evidence supports the order. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93 ¶ 18 (App. 2009). To terminate parental rights, a court must find by clear and convincing evidence that at least one statutory grounds in A.R.S. § 8–533 has been proven and must find by a preponderance of the evidence

that termination is in the child's best interests. *Jennifer S. v. Dep't of Child Safety*, 240 Ariz. 282, 286 ¶ 15 (App. 2016).

1. Statutory Grounds for Termination

¶9 As applicable here, a juvenile court may terminate a parent's parental rights when a child has been in an out-of-home placement for a cumulative total period of at least nine months (or six months if the child is under 3), the Department has made a diligent effort to provide appropriate reunification services, and the parent has substantially neglected or willfully refused to remedy the circumstances that caused placement. A.R.S § 8–533 (B)(8)(a), (b). Termination on these grounds is not appropriate when a parent has made "appreciable, good faith efforts" to comply with remedial programs outlined by the Department. *In re Maricopa Cty. Juv. Action No. JS-501568,* 177 Ariz. 571, 576 (App. 1994). The parent must, at minimum, demonstrate "something more than trivial or de minimus efforts at remediation." *Id.* at n.1.

¶10 Father challenges only the juvenile court's finding that he had substantially neglected or willfully refused to remedy the circumstances that caused his child to be in out-of-home placement. The evidence showed, however, that the Department consistently offered Father many reunification services, but he continuously failed to participate in those services. "[W]hen a party . . . makes only sporadic, aborted attempts to remedy" the circumstances that cause a child's out-of-home placement, a juvenile court "is well within its discretion in finding substantial neglect and terminating parental rights on that basis." *Id.* at 576. Thus, reasonable evidence supports the trial court's finding that Father had substantially neglected or willfully refused to remedy the circumstances that caused the child to be in an out-of-home placement under A.R.S. § 8–533(B)(8)(a) and (b).

¶11 Father nevertheless maintains that the court erred because it evaluated his parental misconduct under the standard applicable to the 15 months' out-of-home placement ground—an inability to remedy the circumstances and to parent in the future, rather than the standard applicable to the six and nine months' time-in-care ground defined in A.R.S § 8–533(B)(8)(a) and (b). Father attempts to support this argument by emphasizing that the court had noted that the case had been open for 17 months. Father's claim fails, however, because the record reflects that the court's reference to the duration of the case was made as part of the court's best-interests finding. Nothing in the record suggests that the court applied the wrong standard.

¶12 Father also argues that termination was not warranted under A.R.S. § 8–533(B)(8)(a) or (b) because his participation in services was more than "trivial" or "de minimus." He highlights the case manager's testimony that Father made progress in his parenting skills, was attentive to his child, and made a better effort to participate in services offered him through TERROS. Despite this evidence, the record supports the juvenile court's finding that Father's efforts were limited. Though Father made some efforts to comply with the case plan, those efforts were "too little, too late." *See id.* at 577. Moreover, Father's argument on appeal essentially asks this court to reweigh the evidence, which we will not do. *See Jesus M. v. Ariz. Dep't of Econ Sec.*, 203 Ariz. 278, 282 ¶ 12 (App. 2002). The juvenile court did not abuse its discretion in finding that the Department proved termination based on time-in-care under A.R.S § 8–533(B)(8)(a) and (b).

2. Best Interests

¶13 Although Father does not challenge the juvenile court's best-interests finding, the record shows that termination of Father's parental rights was in N.W.'s best interests. Termination of parental rights is in a child's best interests if the child will benefit from the termination or will be harmed if the relationship continues. *Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, 179 ¶ 20 (App. 2014). In determining whether the child will benefit from termination, relevant factors to consider include whether the current placement is meeting the child's needs, an adoption plan is in place, and if the child is adoptable. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 3–4 ¶ 12 (2016).

¶14 Here, the record supports the juvenile court's finding that termination was in N.W.'s best interests. N.W. was with a potential adoptive placement that met his needs, and N.W. was adoptable. Termination of Father's parental rights was therefore in N.W.'s best interests.

CONCLUSION

¶15 For the foregoing reasons, we affirm.

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