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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

DANIEL P., *Appellant*,

v.

LORI R., E.P., *Appellees*.

No. 1 CA-JV 19-0419

FILED 5-19-2020

Appeal from the Superior Court in Maricopa County

No. JS518965

The Honorable Timothy J. Ryan, Judge

AFFIRMED

COUNSEL

Czop Law Firm PLLC, Higley
By Steven Czop
Counsel for Appellant

Law Office of H. Clark Jones LLC, Mesa
By H. Clark Jones
Counsel for Appellee

MEMORANDUM DECISION

Judge Randall M. Howe delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Chief Judge Peter B. Swann joined.

H O W E, Judge:

¶1 Daniel P. (“Father”) appeals the juvenile court’s order terminating his parental rights to E.P. on the ground of chronic substance abuse under A.R.S. § 8-533(B)(3). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Father has been abusing drugs for about 20 years. He started using marijuana while he was in middle school, and he acknowledged using it “four or five nights a week” up through the time of trial. By age 15, Father had become addicted to methamphetamine and admitted he remained addicted for “a year or two.” Father used and abused several different substances throughout his life, including marijuana, Percocet, LSD/acid, cocaine, crystal meth, alcohol, and fentanyl.

¶3 According to Lori R. (“Mother”), Father “had been through rehab a few times.” In 2017, Father attended a drug-treatment program at the direction of Mother in California, which Mother paid \$15,000 for Father to attend. Although he completed the program, he remained sober for only two weeks. He was using fentanyl and marijuana at the time.

¶4 Mother and Father divorced in December 2017. E.P. was born the day after the divorce decree was finalized and was not mentioned in the decree. Despite the divorce, Father continued to live with Mother in her home.

¶5 In March 2018, Mother suspected that Father had exposed E.P. to fentanyl. She consequently requested him to take a drug test that she had purchased. After the test came back positive for fentanyl, Mother made Father move out.

¶6 By June 2018, Father was diagnosed with opioid dependence and his substance abuse issues “had increased to a degree in which they have interfered with [his] ability to function outside of a treatment facility

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in which there is a structured environment with 24/7 monitoring.” That same month, Father was admitted to the Crossroads Red Mountain program, where he reported a history of problems with employment and relationships due to his continued substance abuse. According to the intake report, Father had completed drug treatment in the past but had not been able to achieve any notable length of sobriety since he, again, started using drugs. He also had a criminal record of drug-related charges and had been incarcerated in the past for using drugs.

¶7 Shortly after Father entered Crossroads, Mother petitioned the juvenile court to terminate his parental rights, citing abuse and neglect under A.R.S. § 8-533(B)(2) and chronic substance abuse under A.R.S. § 8-533(B)(3). Father contested the termination and the court held an adjudication hearing in June and July 2019. At the hearing, Father acknowledged that he had struggled with substance abuse “for a very long time.” Although Father claimed that he had been sober for about a year, he conceded that he still faced addiction and that he was “not cured.” He stated that he “really screwed up his life” and had “a lot of things to fix.”

¶8 Father also testified that he had last used marijuana just two days before trial. Trial exhibits showed that Father missed 14 TASC drug tests and tested positive for marijuana in nearly all the tests that he did take. Father testified further that he had completed his Crossroads rehabilitation program in August 2018 and was residing at a sober-living facility at the time of trial.

¶9 Mother also testified at trial. Mother denied that Father had bond with E.P. According to Mother, Father “didn’t lift a finger” to care for E.P. while they lived together. She also testified that E.P. had a much stronger bond with her current husband than Father. After hearing the evidence, the juvenile court terminated Father’s parental rights to E.P. based on the chronic substance abuse ground. The court found that Father was unable to discharge his parental responsibilities because of his chronic history of substance abuse and that Father’s substance abuse would continue for a prolonged and indeterminate period. It also concluded that termination was in the child’s best interests. Father timely appealed.

DISCUSSION

¶10 Father argues, among other things, that insufficient evidence supports the juvenile court’s order terminating his parental rights. 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). “The juvenile court,

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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). We accept the juvenile court’s factual findings unless no reasonable evidence supports them and will affirm an order terminating parental rights unless it is clearly erroneous. *Bobby G. v. Ariz. Dep’t of Econ. Sec.*, 219 Ariz. 506, 508 ¶ 1 (App. 2008).

1. Statutory Grounds for Termination

¶11 To terminate parental rights, a court must find by clear and convincing evidence that at least one statutory ground 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). As pertinent here, the juvenile court may terminate parental rights when: (1) the parent has a history of chronic substance abuse, (2) the parent is unable to discharge her parental responsibilities because of her chronic substance abuse, and (3) reasonable grounds exist to believe that the abuse will continue for a prolonged and indeterminate period. A.R.S. § 8-533(B)(3); *Raymond F. v. Ariz. Dep’t of Econ. Sec.*, 224 Ariz. 373, 377 ¶ 15 (App. 2010).

¶12 Sufficient evidence supports the juvenile court’s chronic substance abuse finding. Father’s substance abuse began when he was still in middle school. He continued to use substances, such as marijuana, through the termination hearing, tested positive multiple times, and missed several drug tests. Furthermore, Father lived in a halfway house at the time of trial and, accordingly, was unable to provide a residence for E.P.

¶13 Reasonable evidence also existed to believe that Father’s substance abuse would continue for a prolonged and indeterminate period. In determining whether Father’s chronic substance abuse would continue for an indeterminate period, the juvenile court may consider prior substance abuse. *See Jennifer S.*, 240 Ariz. at 287 ¶ 20. This evidence includes “the length and frequency of [Father]’s substance abuse, the types of substances abused, behaviors associated with the substance abuse, prior efforts to maintain sobriety, and prior relapses.” *Id.* A parent’s failure to abstain from substances despite a pending termination is also “evidence [the parent] had not overcome [the] dependence on drugs and alcohol.” *Raymond F.*, 224 Ariz. at 379 ¶ 29. Here, Father started abusing methamphetamine and marijuana as a teenager, and has continued to abuse those and several other substances decades later. Although Father attempted to remain sober at times, he consistently reverted to abusing

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substances after brief stints of sobriety. Accordingly, the juvenile court did not err in finding that Mother proved termination under the chronic substance abuse ground.

¶14 Father nevertheless contends that the juvenile court erred in its finding because his substance abuse was “amenable” to services. The court found, however, that Father had not appreciably demonstrated sustained sobriety. Further, the record reflects that Father continued to use marijuana and did not consistently submit to substance testing. As such, this argument fails.

¶15 Father concedes that “there is currently not a requirement” for expert opinion to establish that a parent is unable to discharge parental responsibilities due to substance abuse and that the condition will continue for a prolonged indeterminate period. But he nevertheless argues that an expert opinion should be required before terminating a parent’s rights under A.R.S. § 8-533(B)(3). However, he offers no legal authority for his argument. Furthermore, even absent expert testimony, the court here reasonably could find each element of the substance abuse ground.

¶16 Father also argues that the court erred as a matter of law in finding that he is unable to parent because he is having unsupervised parenting time with his other children. This argument is waived, however, because he raises it for the first time on appeal. *See Orfaly v. Tucson Soc’y*, 209 Ariz. 260, 265 ¶ 15 (App. 2004) (“[A]rguments raised for first time on appeal are untimely and, therefore, deemed waived.”).

2. Best Interests

¶17 Father argues that terminating his parental rights was not in E.P.’s best interests. Terminating 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 a child will benefit from termination, relevant factors include whether the 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). “Of course, a court need not automatically conclude that severance is in a child’s best interests just because the child is adoptable; there may be other circumstances indicating that severance is not the best option.” *Id.* at 4 ¶ 14. The juvenile court must, therefore, consider the totality of the circumstances when making a best-interests finding. *Dominique M. v. Dep’t of Child Safety*, 240 Ariz. 96, 99 ¶ 12 (App. 2016).

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¶18 Here, Mother has been appropriately providing for E.P.'s needs and has had an overall positive relationship with E.P. In contrast, Father has been unable to provide for E.P.'s needs because of his stability issues and has essentially had no bond with E.P. Thus, the record adequately supports the court's finding that termination was in the E.P.'s best interests.

CONCLUSION

¶19 For the foregoing reasons, we affirm.



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