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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

VINCENT H. , *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, B.H., B.B., *Appellees*.

No. 1 CA-JV 20-0183
FILED 11-19-2020

Appeal from the Superior Court in Maricopa County
No. JD 36621
The Honorable Randall H. Warner, Judge

AFFIRMED

COUNSEL

David W. Bell Attorney at Law, Higley
By David W. Bell
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Emily M. Stokes
Counsel for Appellee, Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Jennifer B. Campbell delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge Maurice Portley¹ joined.

CAMPBELL, Judge:

¶1 Vincent H. (“Father”) appeals the juvenile court’s order terminating his parental rights to his children, Megan and Emily.² We affirm the termination order and hold that sufficient evidence supports (1) the finding that the Department of Child Safety (“DCS”) made diligent reunification efforts, and (2) the finding that severance was in the children’s best interests.

BACKGROUND

¶2 Father and Sarah B. (“Mother”)³ are the biological parents of Megan, born in 2007, and Emily, born in 2011. The family lived together in Ohio until 2013, when Mother moved with the children to Arizona. By his own account, Father only had “off and on” contact with the children over the next several years through occasional visits.

¶3 In 2017, Mother left the children in the long-term care of their maternal grandmother (“Grandmother”). DCS became involved because Grandmother did not have power of attorney for the children and one of them needed emergency dental surgery. DCS began investigating Mother for child neglect and drug abuse.

¶4 DCS unsuccessfully attempted to locate Father. DCS then filed a dependency petition alleging he abandoned his children, and the juvenile court ruled that the children were dependent.

¹ The Honorable Maurice Portley, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Section 3, of the Arizona Constitution.

² We will use pseudonyms for the children’s names to protect their identity.

³ Mother’s parental rights were severed as part of the same case as Father. However, Mother is not a party to this appeal.

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¶5 Eventually DCS discovered that Father was incarcerated in Ohio. Around the same time, Father learned of the dependency proceedings from a family member and contacted DCS in March 2019. Father began remotely attending court proceedings. He also filed a motion requesting telephonic visitation with the children, which the court granted in June 2019. Father was also released from incarceration the same month.

¶6 After his release, Father participated in the first scheduled telephonic visitation. Although Megan did not participate, Father spoke with Emily. According to the DCS case manager, Emily was “overjoyed” that she was able to talk with her Father, and the conversation was “really good.” However, Father missed the second scheduled weekly visitation. He asserted a dental appointment had taken more time than expected. In the following months, Father failed to call in for scheduled visitation on several occasions, and when he did call in, the children refused to speak to him.

¶7 By August 2019, Father stopped calling in all together. The DCS case manager encouraged Father to keep trying, suggesting he write the children letters. However, DCS never received any gifts or letters for the children from Father. Father claimed that he did send gifts and cards to the DCS case manager for the children, but that they were returned to him. DCS encouraged the children to engage in a relationship with their Father and provided them therapy. However, the children consistently told the case manager that they did not want to speak with him.

¶8 After Father was released from incarceration, he disclosed that he had been diagnosed with bipolar disorder and depression. DCS then asked Father to produce records that confirmed his diagnosis and to self-refer for mental health services. Father did not provide any records confirming the diagnosis, but did report that he was receiving mental health services through a local provider. DCS asked Father to either produce his mental health records or sign a release allowing DCS to communicate with the provider directly. Father did neither.

¶9 Father also disclosed he had a history of drug use, and DCS asked him to self-refer for substance abuse treatment. Father initially agreed to seek treatment, but later denied having substance abuse issues.

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Father claimed he regularly drug tested through his doctor, but Father never produced any proof of drug testing.⁴

¶10 Father did not appear at a scheduled status hearing in January 2020, and the court changed the case plan to severance and adoption. As the trial approached, DCS had lingering concerns including Father's lack of relationship with the girls, and his unstable living arrangements and employment. Initially DCS asked the child welfare agency in Ohio to evaluate Father's home for possible placement of the children. Placement of the children was not recommended because Father lacked housing and had a recent arrest for drug possession. Later, Father lived with his mother but was eventually evicted from their apartment. At trial, Father testified that he had been living in an apartment since August of 2019. He also testified that he expected to prevail on the new drug possession charge.

¶11 After hearing the evidence, the juvenile court severed Father's parental rights on the ground of fifteen months' out-of-home placement pursuant A.R.S. § 8-533(B)(8)(c). Father timely appealed.

DISCUSSION

¶12 We view the evidence and reasonable inferences therefrom in the light most favorable to sustaining the juvenile court's termination order. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009). As the trier of fact, the juvenile court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Id.* (citation omitted). This court will not, therefore, reweigh the evidence. *Id.* We will affirm a termination order supported by reasonable evidence. *Id.*

¶13 "Parents possess a fundamental liberty interest in the care, custody, and management of their children." *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 24 (2005). But even fundamental rights are not absolute. *Id.* To terminate a parent's parental rights the juvenile court must find at least one statutory ground under A.R.S. § 8-533 by clear and convincing evidence, A.R.S. § 8-537(B), and by a preponderance of evidence that termination is in the child's best interests. *Kent K.*, 210 Ariz. at 288, ¶ 41.

⁴ DCS also asked Father to have a paternity test, as paternity for Emily had not been established. At the time of trial, Father had not completed the test.

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¶14 The law allows the juvenile court to terminate a parent's rights if it finds that: (1) "[t]he child has been in an out-of-home placement for a cumulative total period of fifteen months or longer"; (2) "the parent has been unable to remedy the circumstances" that caused the out-of-home placement; and (3) "there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future." A.R.S. § 8-533(B)(8)(c). Additionally, DCS is required to prove that it made diligent efforts to provide the parent appropriate reunification services. A.R.S. § 8-533(B)(8). In making that determination, the court must consider the availability of the reunification services offered and the parent's participation in services. A.R.S. § 8-533(D).

I. Reunification Efforts

¶15 The juvenile court found that the circumstances causing the children to remain in out-of-home care were Father's lack of stability and inability to repair his relationship with his children. At the time of trial, the court determined that Father was unable to remedy these circumstances. Father does not dispute these findings. Instead, he argues that insufficient evidence supported the juvenile court's finding that DCS provided appropriate reunification services. He argues that by failing to provide the necessary services, DCS denied him the time and opportunity to become an effective parent.

¶16 To support his argument, Father points out that the DCS case manager testified that Father's mental health and potential substance abuse were barriers to family reunification. Father also highlights the juvenile court's finding that DCS "did not do anything to assist [F]ather with substance abuse or mental health, other than ask him to self-refer." Father argues that it is inconsistent for the juvenile court to make this factual finding but conclude that DCS made diligent reunification efforts.

¶17 We disagree. DCS is required to "provide a parent with the time and opportunity to participate in programs designed to improve the parent's ability to care for the child." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶ 37 (App. 1999). However, it is not DCS' duty to force parents to participate in the services offered. *Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994). The juvenile court did not terminate Father's rights based on substance abuse or mental health grounds. Instead, as recounted above, the juvenile court found that Father's inability to achieve stable living arrangements and repair his relationship with his daughters remained persistent barriers to reunification. Father does not assert that services relating to housing or bonding with his

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children were not offered. As explained in the severance judgment, “because the court finds termination is not warranted on the basis of mental health or substance abuse, [DCS’] failure to provide those services does not affect the court’s conclusion.”

¶18 Nonetheless, Father argues that if DCS had provided him with mental health and substance abuse services, he may have been in a better position to parent. This directly contradicts his statements that he was already receiving mental health treatment and that he did not have a substance abuse problem. DCS is not required to provide services that a parent is already receiving or is adamant that he does not need. *Id.* (“[DCS] is not required to provide every conceivable service or to ensure that a parent participates in each service it offers.”); see *Pima Cnty. Sev. Action No. S-2397*, 161 Ariz. 574, 577 (App. 1989) (holding that reunification efforts were sufficient, in part, because “no other services could be provided which had not already been offered”). Additionally, DCS is only required to “undertake measures with a reasonable prospect of success,” and is not required “to undertake rehabilitative measures that are futile.” *Mary Ellen C.*, 193 Ariz. at 192, ¶ 34. Because Father failed to disclose the records from the services he claimed to be receiving, DCS could not be expected to determine what additional services, if any, might have been appropriate.

¶19 Father also contends that the juvenile court improperly shifted the burden of obtaining services to Father by suggesting Father could have requested additional services. Father is correct that DCS has the statutory duty to offer reunification services. See A.R.S. § 8-533(B)(8). However, we are not persuaded that the juvenile court shifted this burden. Rather, the court appeared to be commenting on Father’s lack of engagement, which is relevant to the question of whether DCS acted diligently. See *Mary Ellen C.*, 193 Ariz. at 192, ¶ 34.

II. Best Interests

¶20 Father also argues that the juvenile court erred when it found that severance was in the children’s best interests. Father argues that the court should not have addressed best interests because it erred by finding DCS had made diligent reunification efforts. We conclude the record supports the juvenile court’s best interests determination. As more fully explained above, DCS provided diligent efforts in reunification only to be thwarted by Father’s lack of engagement. Severance is in a child’s best interests if the child would “derive an affirmative benefit from termination or incur a detriment by continuing in the relationship.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 6 (App. 2004).

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Grandmother has been caring for the children for about four years, she is satisfying the children's needs, and wants to adopt them. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4, ¶ 12 (2016) ("When a current placement meets the child's needs and the child's prospective adoption is otherwise legally possible and likely, a juvenile court may find that termination of parental rights, so as to permit adoption, is in the child's best interests.").

CONCLUSION

¶21 Accordingly, on this record, reasonable evidence supports the juvenile court's findings that DCS made reasonable and diligent reunification efforts, and that severance was in the children's best interests. We affirm the termination of the parental relationship.



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