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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JEREMY C.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, J.C.,
Appellees.

No. 1 CA-JV 21-0256
FILED 12-23-2021

Appeal from the Superior Court in Maricopa County
No. JD23665
The Honorable Robert Ian Brooks, Judge

AFFIRMED

COUNSEL

Maricopa County Public Advocate, Mesa
By Suzanne W. Sanchez
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Jennifer R. Blum
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge James B. Morse Jr. delivered the decision of the Court, in which Presiding Judge D. Steven Williams and Judge David B. Gass joined.

M O R S E, Judge:

¶1 Jeremy C. ("Father") appeals the juvenile court's order terminating his parental rights to J.C. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Father and Amanda C. ("Mother") are the biological parents of J.C., born in December 2019 (the "Child"). In January 2020, the Department of Child Safety ("DCS") received a report that the Child was born exposed to methamphetamines and opiates and that Father was using methamphetamine and heroin.

¶3 DCS instituted a safety plan referring Father for substance-abuse treatment and calling for paternal grandparents to supervise contact between the parents and the Child. Father did not comply. Father and Mother resisted DCS's attempt to remove the Child, and police eventually removed the Child. The juvenile court adjudicated the Child dependent in August 2020.

¶4 Father completed parent-aide and visitation services but refused to participate in the substance-abuse services DCS offered. Instead, Father engaged in some testing with a methadone clinic, Community Medical Services ("CMS"). In January 2021, the court ordered Father to participate in substance-abuse testing with Physician Services, Inc. ("PSI") and substance-abuse treatment through Terros Health ("Terros"). The court specifically advised Father that there would be a negative inference from every missed day of testing or treatment.

¶5 After DCS moved to terminate Father's parental rights on the substance-abuse and nine months in an out-of-home placement grounds, it referred him for substance-abuse treatment with Terros for a third and then a fourth time. Father still did not participate. Father tested with PSI a month before trial and was positive for methamphetamines, amphetamines, methadone, opiates, and oxycodone.

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¶6 The court conducted a two-day trial in August 2021. The court heard testimony from Father, Mother, and the DCS case manager. The court found termination warranted on the substance-abuse and nine-month time-in-care grounds. See A.R.S. § 8-533(B)(2) and (B)(8)(b). The court also found termination was in the Child's best interests and terminated Father's parental rights. Father timely appealed.¹ We have jurisdiction under A.R.S. §§ 8-235(A), 12-120.21(A)(1), and -2101(A)(1).

DISCUSSION

I. Termination of the Parent-Child Relationship.

¶7 A parent's right to custody and control of his child is fundamental, but not absolute. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248-49, ¶¶ 11-12 (2000). The juvenile court may terminate a parent's rights if it finds, "by clear and convincing evidence, at least one of the statutory grounds set out in section 8-533" and, by a preponderance of the evidence, that termination is in the child's best interests. *Id.* at 249, ¶ 12; Ariz. R.P. Juv. Ct. 66(C). 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." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004). We review a termination order for an abuse of discretion and will affirm the order unless "there is no reasonable evidence" to support the decision. *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004) (citation omitted).

¶8 To prove the allegations for the nine months in an out-of-home placement ground, DCS had to show that it "made a diligent effort to provide appropriate reunification services" and that:

The child has been in an out-of-home placement for a cumulative total period of nine months or longer pursuant to court order . . . and the parent has substantially neglected or wilfully refused to remedy the circumstances that cause the child to be in an out-of-home placement.

A.R.S. § 8-533(B)(8)(a). The relevant "circumstances" are those "existing at the time of the severance that prevent a parent from being able to appropriately provide for his or her children." *Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 330, ¶ 22 (App. 2007) (cleaned up).

¹ The juvenile court also terminated Mother's parental rights, but she is no longer a party to this appeal.

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¶9 The record supports, and Father does not dispute, the services offered by DCS and the length of the Child's out-of-home placement. Instead, Father argues that the juvenile court erred in determining that DCS had shown Father substantially neglected or willfully refused to remedy the circumstances causing the Child to be in an out-of-home placement. Specifically, Father points to services he allegedly participated in and argues that he established his ability to parent.

¶10 The court noted that, although Father participated "in some services, such as the parent-aide services and some services through CMS," the central concern was Father's drug use. *See Maricopa Cnty. Juv. Action No. JS-501568*, 177 Ariz. 571, 576 (App. 1994) (noting "substantially neglected" does not mean "completely neglected"). The court found twice-monthly testing with CMS, rather than twice-weekly testing with PSI, was inadequate to address Father's needs "because it was less likely to capture [his] active and ongoing abuse of substances." The court also found Father failed to test even twice-monthly with CMS and, thus, his participation was "superficial." The court further found that CMS was unable to offer the counseling Father required and Father admitted that he continued to have intense cravings for heroin. Finally, the court found Father's "decision to not engage in any Court ordered and DCS provided treatment services amounts to a willful refusal to participate in the services and an unwillingness to remedy the circumstances that brought [the Child] in to care."

¶11 Father argues that he maintained sobriety, but the court found his "testimony not credible in its entirety." We must defer to the court's credibility determination. *See Gutierrez v. Gutierrez*, 193 Ariz. 343, 347, ¶ 13 (App. 1998) ("We will defer to the trial court's determination of witnesses' credibility and the weight to give conflicting evidence.").

¶12 Substantial evidence supports the juvenile court's findings, and we reject Father's arguments. Because we affirm on the nine-months time-in-care ground, we need not address Father's challenges to the substance-abuse ground. *See Michael J.*, 196 Ariz. at 251, ¶ 27.

II. Best Interests Finding.

¶13 Terminating a parent-child relationship is in a child's best interests if the child will benefit from the termination or will be harmed if the relationship continues. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 4, ¶ 16 (2016). Courts "must consider the totality of the circumstances existing at the time of the severance determination, including the child's adoptability

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and the parent's rehabilitation." *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 148, ¶ 1 (2018). Moreover, "we can presume that the interests of the parent and child diverge because the court has already found the existence of one of the statutory grounds for termination by clear and convincing evidence." *Kent K. v. Bobby M.*, 210 Ariz. 279, 286, ¶ 35 (2005). Once a juvenile court finds that a parent is unfit, the focus shifts to the child's interests. *Id.* at 285, 287, ¶¶ 31, 37. Thus, the court must balance the unfit parent's "diluted" interest "against the independent and often adverse interests of the child in a safe and stable home life." *Id.* at 286, ¶ 35. "Of foremost concern in that regard is 'protect[ing] a child's interest in stability and security.'" *Demetrius L.*, 239 Ariz. 1, 4, ¶ 16 (quoting *Kent K.*, 210 Ariz. at 286, ¶ 34).

¶14 Father argues that the court erred because he maintained sobriety and is a fit parent. But the court found that Father is unable to parent due to his failure to remedy his ongoing substance abuse. See *Alma S.*, 245 Ariz. at 150, ¶ 10 (noting § 8-533(B)(8) is a "prox[y] for parental unfitness").

¶15 The juvenile court found that termination would benefit the Child because the Child is living with a maternal aunt who is willing to adopt the Child, meeting the Child's needs, and able to provide permanency, stability, and a drug-free home. The court recognized Father's bond with the Child but found that termination remained in the Child's best interest due to Father's substance abuse. The court did not err.

CONCLUSION

¶16 For the foregoing reasons, we affirm the juvenile court's order terminating Father's parental relationship with the Child.



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