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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

CRYSTAL B., DANIEL T., *Appellants,*

v.

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

No. 1 CA-JV 21-0375
FILED 7-28-2022

Appeal from the Superior Court in Maricopa County
No. JD532151
The Honorable Jeffrey A. Rueter, Judge

AFFIRMED

COUNSEL

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By Steven Czop
Counsel for Appellant Crystal B.

John L. Popilek, Scottsdale
By John L. Popilek
Counsel for Appellant Daniel T.

Arizona Attorney General's Office, Mesa
By Amanda Adams
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. Weinzwieg and Judge Brian Y. Furuya joined.

P E R K I N S, Judge:

¶1 Crystal B. (“Mother”) and Daniel T. (“Father”) (collectively “Parents”) appeal the juvenile court’s order terminating their parental rights to Child, born November 2018. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Parents share three children. Their first child passed away from sudden infant death syndrome. Maternal grandmother (“Grandmother”) cares for their second child under a permanent guardianship, because Mother tried to submerge the girl in a bathtub.

¶3 Mother suffers from borderline personality disorder and schizoaffective disorder, which causes paranoia and hallucinations. Mother has lived in an adult behavioral health group home since about 2012 and receives daily services. Grandmother is Mother’s legal guardian.

¶4 In November 2018, the Department of Child Safety (“DCS”) received a report that Mother gave birth to Child, Parents lacked adequate housing, and Mother’s long-standing mental health issues posed a risk to Child. Parents confirmed Mother’s diagnoses to DCS and admitted they lacked proper housing—Father was homeless and Mother’s group home prohibited children.

¶5 Child experienced breathing and feeding issues from birth. Hospital staff described Mother as inattentive and impatient while caring for Child and reported that Child showed unexplained bruising from Parents’ unsupervised care. DCS took temporary custody of Child and placed her with relatives upon discharge from the hospital, in December 2018. Child’s health issues required special care, monitoring, and therapy. In early 2019, Child had surgery to repair her airway, and doctors inserted a nasogastric tube to make feeding easier.

¶6 Parents did not oppose DCS’s December 2018 dependency petition, which alleged Parents could not support Child’s basic needs and

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Mother's mental illnesses made her unable to parent. The juvenile court found Child dependent and approved a family reunification case plan.

¶7 Over the next three years, DCS provided Parents with various reunification services, including psychological consultations and evaluations; individual counseling; drug treatment and testing; multiple parent-aide referrals; transportation; and supervised visitation. Mother continued to receive psychiatric and supportive services, including behavioral health group therapy; medication monitoring and education; life-skills training; and parenting classes. Parents generally participated in DCS's services, but they made insufficient progress toward meeting Child's basic, medical, and developmental needs. DCS offered some services to Parents jointly and others separately.

I. Joint Services & Child's Progression

¶8 Parents received two joint parent aide referrals followed by separate parent aide referrals. The parent aide services included one-on-one parenting skill sessions designed to improve their deficient protective capacities, including their ability to understand Child's developmental needs and show adequate parenting skills.

¶9 Parents' first joint parent aide worked with them from December 2018 through June 2019. The aide described Parents as "consistently unprepared" for visits and noted Parents ignored or resisted redirection and argued with each other. The aide also reported that Mother could not perform basic parenting tasks, like preparing a bottle or unbuckling the car seat—Mother instead displayed anger management issues. Father attended visits while he had bed bug and the aide stopped visits from May to June 2019 because he failed to address the bed bugs.

¶10 The first joint parent aide closed Parents' referral in June 2019 because they enhanced none of their protective capacities.

¶11 DCS provided Parents a second joint parent aide in August 2019, but the second aide expressed many of the same concerns. Parents routinely argued over Child's care, did not understand her medical needs, argued with the aide when corrected, and expressed doubt about Mother's medical conditions. The second joint parent aide closed out Parents' referral in January 2020. Parents improved some protective capacities, but they needed more time to improve the remaining capacities. The aide determined Father could provide for Child's immediate needs but lacked the requisite ability to recognize threats, understand his protective role as a parent, and control his impulses. The aide also noted Father failed to

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establish housing stability. The aide reported Mother made little progress and lacked the intellectual ability to care for Child.

¶12 DCS referred Parents for separate psychological evaluations, individual counseling, and parent aides.

¶13 Parents also received supervised visitation and by April 2021, the visits took place in Father's home. The visitation aide reported Parents were generally prepared for visits, but they struggled at times to manage Child's behavioral and emotional needs.

¶14 In early 2021, Child's foster mother began reporting concerns about Child's physical, emotional, and behavioral development. Doctors diagnosed Child with sleep apnea, dysphagia, and several developmental delays, which prompted her enrollment in feeding, speech, occupational, and physical therapies beginning in May 2021. Despite invitations from the foster mother and DCS's case manager to attend Child's nine weekly therapy sessions, Mother attended only a handful of sessions while Father attended just two.

II. Mother's Services

¶15 Dr. Mary Oakley performed a psychological evaluation on Mother in February 2019. During her evaluation, Mother claimed housing was her only barrier to parenting, she did not need her medications, and Child was healthy. Mother stated she would "raise [Child] to be vegan" and to have "vegan friends to help [her] 'stay healthy and good and nice.'" Oakley affirmed Mother's schizoaffective and personality disorder diagnoses and gave her a poor prognosis. Oakley reported Mother lacked basic parenting skills, was "particularly naïve," had poor judgment, could not recognize her limitations, and would likely "have difficulty planning ahead, responding to novel situations, and recognizing the impact her actions have on herself and others." Oakley recommended Mother continue with individual counseling to correct her deficiencies. Oakley remained skeptical about whether Mother would benefit from individual counseling given her "poor judgment, distrust of the mental health system, and lack of insight." But Oakley believed Mother may benefit from couple's counseling if her individual counseling went well.

¶16 Mother's individual counseling sessions began in October 2019 and largely failed. Mother struggled to complete the intake, resisted her diagnoses, and sporadically attended sessions. Mother stopped attending altogether in January 2020 and declined additional services two months later. Mother's therapist thus closed her referral.

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¶17 DCS referred a third parent aide to Mother in Spring 2020. In October 2020, Mother's third parent aide closed her referral and reported Mother's inability to enhance her caregiver capacities.

¶18 In May 2021, Mother reengaged with individual counseling designed to improve her coping, parenting skills, and understanding of Child's medical and developmental needs. But Mother often missed sessions and, when she did attend, she appeared anxious, angry, or disheveled. Mother continued to express doubts about her conditions and downplayed or minimized Child's conditions. The counselor reported Mother did not appear to comprehend why "a vegan diet and enough love" could not treat Child's needs.

¶19 DCS did not refer Mother for an updated psychological evaluation before the hearing, due to her lack of progress in other services.

III. Father's Services

¶20 Dr. Jessica Leclerc performed a psychological evaluation on Father in March 2019. Father reported he participated in services and alternated between couch surfing and homelessness. Father downplayed Mother's mental health issues and Child's health and developmental challenges. Leclerc asked him what he could improve as a parent, to which he replied, "[h]onestly I don't feel like [I] have a lot of flaws" and "[I] know [] how to care for and raise children." Leclerc noted Father "attempted to portray himself in a more socially acceptable manner by denying personal shortcomings." Leclerc diagnosed Father with a narcissistic personality disorder and concluded that his "personality traits prevent[ed] him from acknowledging the significance and severity of [Mother]'s mental health issues, which in turn place[ed] [Child] in potential danger."

¶21 Father's counseling sessions began in July 2019. He successfully completed counseling in December 2019 and developed some insight into his and Mother's mental health.

¶22 In April 2020, Parents began receiving separate supervised visits and Father began services with a third parent aide. Father's visits went well at first and, with financial help from his parents, he obtained an apartment in July 2020. But the aide reported concerns that Father: appeared distracted, frustrated, and impatient; had trouble soothing Child; and raised his voice at the aide. Father soon began missing visits and shared concerns about his finances with the parent aide.

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¶23 Father's third parent aide referral closed in October 2020. The aide noted Father had completed some of his capacities but still struggled to place Child's needs above his own, to control his impulses, and to meet his financial obligations.

¶24 Father continued to deny Mother's limitations and Child's health issues during conversations with DCS's caseworker in May and June 2021. Father stated he had not seen "any evidence to suggest that [Child] was developmentally delayed."

¶25 In July 2021, Father completed an updated psychological evaluation with Leclerc. Father reiterated his doubts about Mother's conditions and continued to downplay the severity of her illness. But claimed he would not allow her unsupervised contact with Child if Mother's rights were severed. Father also continued to downplay the severity of Child's health issues but acknowledged their presence. Father again expressed his financial insecurity but stated he would borrow money from friends and family "if necessary." Leclerc echoed her previous caution in interpreting Father's testing because of his attempts to "portray himself in a more socially acceptable manner," but amended her prior diagnosis of narcissistic personality disorder to other specified personality disorder with narcissistic traits.

¶26 Leclerc reported concerns with Father minimizing Child's and Mother's health issues and believed he would struggle to meet Child's needs until he can acknowledge and recognize them. Leclerc noted Father would have likely "improve[d] the remaining diminished capacities prior to [the current] evaluation had he remained committed," but that Father's prognosis remained "guarded." Leclerc recommended that if DCS supplied him more time to complete parent-aide services through a fourth parent-aide referral, he must "successfully enhance all of his capacities, demonstrate interest and insight into all [of Child's] medical and mental health concerns, and be able to implement a solid plan of how he will meet all her needs."

IV. Severance Hearing

¶27 In May 2020, the juvenile court changed the case plan to severance and adoption, and DCS moved to terminate Parents' parental rights on the fifteen-months' out-of-home placement ground. Parents denied the allegations and requested a hearing. The court, after delays because of the COVID-19 pandemic and various continuances, scheduled the termination hearing for October 2021.

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¶28 The juvenile court held a three-day contested termination hearing in October and November 2021. The court heard testimony from Parents, both evaluating psychologists, Child’s current foster mother, the DCS supervisor, and DCS case manager. The supervisor explained the course of services DCS’s offered to Parents. The foster mother explained Child’s current and future medical and developmental needs. The foster mother also testified that she is willing and able to adopt Child. Both the case manager and foster mother testified that they informed Parents of Child’s therapy sessions, but that Parents failed to meaningfully attend. The case manager testified that she provided Parents with detailed notes summarizing the monthly Child and Family Team meetings and her monthly home visits with Child. The case manager detailed incidents from Parents’ supervised visits which cast doubt on Parents’ ability to care for Child or understand her medical and developmental needs.

¶29 Oakley reaffirmed her diagnoses of Mother and restated her previous concerns about Mother’s ability to parent Child, especially in light of Child’s health issues.

¶30 Father testified that he was aware of and able to meet all of Child’s medical and developmental needs. But when pressed for details by the State, Father admitted he did not know the “details” because he had not attended her therapy sessions and admitted he “[had] a bit to learn about [her] needs.” Father again claimed to be free of any mental health problems and testified he had maintained stable housing for the last year, although he still received his parents’ financial support. Leclerc reaffirmed her diagnosis of Father and stated he still had parenting capacity deficiencies.

¶31 The juvenile court terminated Parents’ parental rights on the fifteen months’ time-in-care ground. Parents timely appealed, and we have jurisdiction under A.R.S. §§ 8-235(A) and 12-120.21(A)(1).

DISCUSSION

¶32 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). On appeal, due process requires us to assess whether a reasonable factfinder could conclude, based on the record, that the state has met its clear and convincing evidentiary burden to sustain the termination of parental rights. *See Santosky v. Kramer*, 455 U.S. 745, 747–48, 769 (1982). We will uphold the court’s findings of fact “if supported by adequate evidence in the record.” *Christy C. v. Ariz. Dep’t of Econ. Sec.*, 214 Ariz. 445, 451–52, ¶ 19 (App. 2007) (cleaned up).

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¶33 To terminate the parent-child relationship, the juvenile court must find parental unfitness based on 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).

¶34 The juvenile court may terminate parental rights under the fifteen months' time-in-care ground 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). When seeking termination under the fifteen-months' out-of-home placement ground, DCS must prove that it "made a diligent effort to provide appropriate reunification services" to the parent. A.R.S. § 8-533(B)(8). DCS must show that it provided the parent with "the time and opportunity to participate in programs designed to help her become an effective parent." *In re Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353 (App. 1994). DCS need not "provide every conceivable service or . . . ensure that a parent participates in each service it offers." *Id.* Rather, DCS must undertake only those rehabilitative measures "with a reasonable prospect of success." *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, ¶ 34 (App. 1999).

¶35 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).

I. Mother

¶36 Mother does not challenge the juvenile court's finding that she failed to remedy the circumstances that caused Child to remain in an out-of-home placement for 15 months. Rather, she argues DCS failed to make diligent reunification efforts by failing to provide her (and Father) with couples counseling, an updated psychological evaluation, and a specialized parent aide.

¶37 Mother's counselor recommended couples counseling only if she successfully completed individual counseling – which Mother did not do. Instead, after outreach by the provider and DCS, Mother did not reengage in individual counseling and stated she did not need counseling. Similarly, given Mother's insufficient progress in general, and resistance to

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mental health services more particularly, DCS acted reasonably when it did not refer Mother for an updated psychological evaluation.

¶38 Mother has not established why she was entitled to a specialized case aide. Her assigned case aides provided Mother detailed instruction on Child’s care. And Mother received three parent aide referrals—two joint and one separate. Parent aide sessions included one-on-one parenting skill sessions designed to improve her deficient protective capacities. The aides helped her develop Child’s daily schedule, showed her how to feed Child, texted her reminders for visits and medical appointments, repeatedly explained Child’s diagnoses, and accompanied her to Child’s appointments.

¶39 DCS also provided Mother with a psychological evaluation, transportation services, and a variety of case-management services. And Mother received daily behavioral health services through her group home. Reasonable evidence supports the juvenile court’s findings that DCS provided Mother with the time and opportunity to participate in reunification services.

II. Father

¶40 Father first argues that DCS presented insufficient evidence he could not remedy the circumstances that caused the placement, and he would be unlikely to do so soon. He asserts that the juvenile court should have considered his stable housing and employment, parenting skills, and engagement with services. The record refutes these contentions. Father’s engagement with behavioral therapy, individual therapy, and Child’s therapy sessions was, at best, sporadic. Father’s demonstration of some parenting skills does not mitigate the safety concerns raised by Leclerc or his reluctance to guard Child from obvious safety risks unnoticed by Mother. And while Father’s employment and housing are necessary conditions for Child’s return, they are not alone sufficient.

¶41 The juvenile court found that given “the length of time in which . . . Father [has] been offered services and [his] lack of progress in those services, coupled with the prognosis set forth in [his] psychological evaluations, there is a substantial likelihood that Father would not be capable of exercising proper and effective parental care and control in the near future.” As for the future, Leclerc noted that Father’s parenting prognosis was “guarded.” Multiple witnesses testified to Father’s ongoing failure to recognize risks from Child’s conditions, his financial instability, and his failure to improve all his parenting capacities. Father also continued

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to display narcissistic traits that prevent him from understanding the gravity of Mother's conditions and the impact they have on Child. Reasonable evidence supports the court's findings.

¶42 Father also argues DCS failed to prove it provided him with appropriate reunification services. He asserts DCS should have referred him to a fourth parent aide because Leclerc recommended one. But Father misstates the record. Leclerc did acknowledge Father's progress on some services but remained concerned about his overall progress given his time in care. Leclerc noted that with more time, Father may be able to improve his deficiencies, if he "remained committed." But Leclerc also noted Father continued to downplay his own faults because of his narcissistic tendencies. DCS met its burden. Father received over the years: three parent aide referrals; two psychological evaluations; a case aide; rule-out drug testing; visitation; transportation assistance; and case management. And Father did not engage in DCS's transportation services to attend Child's sessions because he believed they were too "unreliable." Father's own inaction led to the closure of his initial parent aide referrals. Reasonable evidence supports the juvenile court's determination that DCS provided Father with the time and opportunity to participate in reunification services.

¶43 Mother and Father do not challenge the juvenile court's best interests finding so we do not address it.

CONCLUSION

¶44 We affirm.



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