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AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

PAULE C., *Appellant*,

v.

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

No. 1 CA-JV 22-0045
FILED 9-15-2022

Appeal from the Superior Court in Maricopa County
No. JD530310
The Honorable Ashley V. Halvorson, Judge

AFFIRMED

COUNSEL

Law Office of Ed Johnson, PLLC, Peoria
By Edward D. Johnson
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Amanda Adams
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge D. Steven Williams delivered the decision of the court, in which Presiding Judge David D. Weinzweig and Judge Randall M. Howe joined.

WILLIAMS, Judge:

¶1 Paule C. (“Father”) appeals the termination of his parental rights to J.H. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 As stated in *Paule C. v. Department of Child Safety*, No. 1 CA-JV 18-0315, 2019 WL 3494052 (Ariz. App. Aug. 1, 2019) (mem. decision), Father and Charlinda H. (“Mother”)¹ were living in Florida when Mother left for Arizona. She was eight months pregnant and alleged domestic violence by Father. She gave birth to J.H. a few weeks later in 2016. J.H. had significant medical issues. He suffered a stroke in utero, resulting in a large void filled with fluid in the right side of his skull, and a shunt was placed in his head. He was paralyzed on the left side of his body and suffered from a clotting disorder. J.H. was also born substance-exposed to marijuana, and the Department of Child Safety (“DCS”) took him into care shortly after his birth.

¶3 Mother informed DCS that Father was J.H.’s biological father, and Father, who still lived in Florida, contacted DCS and sought to establish paternity, which he did several months later. Father also indicated that he would participate in whatever services were necessary to have J.H. placed in his care.

¶4 Based upon Mother’s allegations, DCS alleged J.H. was dependent as to Father due to domestic violence, substance abuse, and mental health issues. Father denied the dependency allegations but submitted the issue to the superior court, which found J.H. dependent.

¶5 Because Father lived in Florida, DCS referred Father for a home study through the Interstate Compact for the Placement of Children (“ICPC”) pursuant to A.R.S. §§ 8-548 to -548.06. In March 2017, the Florida

¹ The court terminated Mother’s parental rights, but she is not a party to this appeal.

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social worker who conducted the ICPC evaluation denied Father's application because he had not completed services and because two rooms in his house were locked, preventing inspection.

¶6 DCS then began providing Father with reunification services, all of which he successfully completed. These services included a psychological evaluation, Skype visits with J.H., transportation for in-person visits with J.H. in Arizona, drug testing, and counseling, which included twenty group sessions. Father also found and paid for counseling services in Florida on his own. Additionally, he participated in parenting classes, networked with parents of special-needs children, and found resources for children with special needs.

¶7 Father never tested positive for illegal substances, and, consequently, he was not required to drug test after June 2017. Additionally, DCS was unable to substantiate Mother's claims about domestic violence, so domestic violence concerns and services were removed from Father's case plan.

¶8 Despite Father's compliance with the case plan, DCS moved to terminate Father's parental rights. Months later, in June 2018, a second ICPC was denied and DCS added the severance ground of fifteen months' out-of-home placement to its motion to terminate Father's parental rights. Following a trial, the superior court terminated Father's parental rights finding, among other things, that "Father has not demonstrated he fully understands the child's many medical issues nor the ability to provide for the child's medical needs."

¶9 Father then appealed to this court. On appeal, we noted that the superior court terminated Father's parental rights "based on new, late-raised concerns outlined in the second ICPC denial for which Father never received time or services to address." *Paule C.*, No. 1 CA-JV 18-0315, 2019 WL 3494052, ¶16. Because "DCS did not allow Father the time and opportunity to remedy the circumstances necessitating the placement[,] [n]or did DCS demonstrate that such efforts would be futile," we reversed the termination order and remanded the matter to the superior court. *Id.*

¶10 Meanwhile, though J.H. improved in many areas while under his foster family's care, he continued to require frequent medical appointments and therapies. For example, he was diagnosed with failing to thrive (requiring him to see a nutritionist and a gastroenterologist), and later, with a severe form of Chiari Malformation (which his neurologist

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opined would likely cause him additional physical and developmental concerns as he ages). J.H. also began speech therapy.

¶11 On remand, DCS required Father to demonstrate he understood and could meet J.H.'s basic and special needs. DCS communicated these goals to Father and provided him with a comprehensive list of J.H.'s diagnoses, specialists, therapies, and assistive devices with explanations of their effect on J.H.'s daily life. DCS also kept him informed of the dates and times of J.H.'s medical and therapy appointments, though on a few occasions DCS provided Father very late notice of appointments. Foster mother facilitated Father's virtual attendance at each appointment using her personal phone. Further, the DCS case manager supervised weekly, twenty-minute virtual visits between Father and J.H.

¶12 For the next two years, Father's attendance at J.H.'s medical and therapy appointments was negligible; and Father attended less than half of the virtual visits. Eventually, J.H.'s guardian ad litem moved to terminate Father's parental rights under grounds of abandonment and fifteen months in an out-of-home placement. *See* A.R.S. § 8-533(B)(1), (B)(8)(c). Shortly before the second termination trial, J.H. developed separation anxiety after Father showed him his bedroom in Florida during a virtual visit, so DCS referred the child for behavioral-health services. After trial, the superior court terminated Father's parental rights based solely on the fifteen months' out-of-home placement ground. Father appealed.

¶13 We have jurisdiction under Article 6, Section 9, of the Arizona Constitution, A.R.S. §§ 8-235(A), 12-120.21(A)(1), -2101(A)(1), and Arizona Rule of Procedure for the Juvenile Court 601(a).

DISCUSSION

¶14 Parental rights are fundamental, but not absolute. *Dominique M. v. Dep't of Child Safety*, 240 Ariz. 96, 97, ¶ 7 (App. 2016). A court may terminate a parent's right in the care, custody, and management of their child "if it finds clear and convincing evidence of one of the statutory grounds for severance, and also finds by a preponderance of the evidence that severance is in the best interests of the child[]." *Id.* at 97-98, ¶ 7.

¶15 We review a termination order for abuse of discretion, accepting the court's factual findings unless clearly erroneous, *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 47, ¶ 8 (App. 2004), and view the evidence in the light most favorable to sustaining the court's ruling, *Manuel*

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M. v. Ariz. Dep't of Econ. Sec., 218 Ariz. 205, 207, ¶ 2 (App. 2008). Because the superior court “is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts,” we will affirm an order terminating parental rights if reasonable evidence supports the order. *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 93, ¶ 18 (App. 2009) (quoting *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004)).

¶16 Fifteen months in an out-of-home placement is one statutory ground authorizing termination. A.R.S. § 8-533(B)(8)(c). The superior court may terminate a parent-child relationship under that ground if DCS has made a diligent effort to provide appropriate reunification services and:

The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order or voluntary placement pursuant to [A.R.S.] § 8-806, the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement and 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.

Id.

¶17 Father contends insufficient evidence supports the superior court’s findings that: (1) DCS made diligent efforts to provide appropriate reunification services, (2) Father was unable to remedy the circumstances causing J.H.’s out-of-home placement, and (3) a substantial likelihood exists that Father will be incapable of exercising proper and effective parental care and control of J.H. in the near future. Father also argues termination of the parent-child relationship was not in J.H.’s best interests.

I. Diligent Reunification Efforts

¶18 Father claims DCS set him up for failure by not securing counseling for him. But DCS did not condition reunification upon Father’s participation in counseling. Even if it had, record evidence supports the superior court’s finding that DCS “contacted 15 different service providers in Father’s area,” and then “attempted to identify a counselor in Arizona who could provide virtual counseling and who was dually licensed in Florida (as required by law), to no avail.” The record similarly supports the court’s finding that “at least part of the delay in providing counseling services is attributed to Father” for not timely providing proof that he had been denied by Florida’s state insurance.

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¶19 Father also takes issue with DCS's failure to provide him with a subsequent ICPC home study upon remand from this court, but does not explain how a home study, even if approved, would have demonstrated his ability to understand and meet J.H.'s special needs.

II. Circumstances Causing Out-of-Home Placement / Proper and Effective Parental Care and Control

¶20 Father claims that DCS "moved the finish line and unfairly and unilaterally shifted the requirements" by focusing on his ability to meet J.H.'s basic and special needs after remand. And the superior court acknowledged DCS's requirements had shifted over time. However, since September 2016, DCS expected Father to "demonstrate an ability to meet [J.H.'s] behavioral health needs and ensure that all educational, medical and other basic needs are met." Before the first termination order, Father reported he was speaking weekly with his counselor about parenting special-needs children. DCS reiterated its requirement frequently, and it was a primary concern raised during the first termination trial. On remand, DCS specified that the main circumstance preventing reunification hinged on Father's ability to develop a substantial relationship with J.H. and understand his medical and developmental needs.

¶21 In August 2019, DCS informed Father that he needed to demonstrate knowledge of all of J.H.'s medical and developmental needs, be actively involved in all related appointments without prompting, distinguish what each diagnosis and intervention means for J.H. specifically, and identify a support network of state-recognized resources for children with developmental and medical disabilities and a care team for J.H. These goals were regularly discussed at court hearings, and the court warned Father that he needed to attend *all* of J.H.'s medical and therapy appointments. Father stated he understood the requirements.

¶22 Moreover, these requirements were directly related to the circumstances preventing reunification. The case manager testified that J.H.'s medical and therapy appointments provided opportunities for Father to demonstrate his motivation and commitment to meeting J.H.'s special needs and to learn about J.H. and how his diagnoses specifically affect him. J.H.'s foster mother confirmed that during the appointments, his therapists share instructions and exercises on how to assist J.H. at home. She also testified that J.H. would likely have physical disabilities the rest of his life and would therefore require therapy for a very long time. Regarding visits, the case manager testified that consistency was important in helping Father establish a relationship and a connection to J.H.

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¶23 Nevertheless, the case manager testified that over a two-year period, Father attended less than one-third of J.H.'s seventy-five medical and therapy appointments. Father did not attend any appointments in the nineteen months leading up to the termination trial. During the few appointments Father did attend, there was some evidence he focused on other activities instead of learning from the doctors or therapists. Father also did not respond to J.H.'s behavioral-health provider's attempts to contact and engage him. And there is some evidence that Father, more than once, suggested J.H. would outgrow the need for his therapies, which was contrary to his prognosis.

¶24 Regarding scheduled visits with J.H., Father attended less than half over more than a two-year period. He never sent J.H. cards or letters, but did give J.H. a gift on one or two occasions. Father failed to take advantage of DCS's offer to fly him to Arizona for an in-person visit, except during the termination trial.

¶25 To his credit, at trial, Father was able to list some of J.H.'s diagnoses but could not describe how they affected the child's daily functioning. He could not state how often J.H. was receiving physical and occupational therapy, and he could not explain why J.H. needed behavioral-health services. Nor could Father describe what a normal day looks like for J.H. Regarding visits, Father was only able to engage J.H. some of the time, and he could not identify the child's favorite things, or his bedtime routine.

¶26 Father stated it was primarily his work schedule that caused him to miss J.H.'s appointments and visits. But even after DCS changed visit times to accommodate his work schedule, and after Father obtained new, more flexible employment, he still missed several visits. Father also stated that the COVID-19 pandemic contributed to him not visiting J.H. more in-person. But DCS offered to pay for his airline ticket as early as October 2019 (before the pandemic). The pandemic cannot explain Father's overall lack of engagement since the matter was remanded.

¶27 The superior court found that the circumstance Father had failed to remedy was demonstrating he is able to safely parent J.H.

Father has not demonstrated that he understands how [J.H.]'s medical issues impact him, nor demonstrated his ability to provide for the child and meet his needs. Father was required to attend medical appointments in order to gain critical information needed in order to safely parent the child. . . .

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While he was initially engaged, Father completely ceased his involvement in the child's medical care.

The court also found that "Father has been given five years to establish a parent-child relationship and to demonstrate the ability to parent the child and meet his special needs, but has not done so."

¶28 On this record, reasonable evidence supports the court's findings. Father has shown no error.

III. *Child's Best Interests*

¶29 Father's final contention is that the superior court erred in finding termination was in J.H.'s best interests.

¶30 Once the court finds a parent unfit under at least one statutory ground for termination, "the interests of the parent and child diverge," and the court proceeds to balance the unfit parent's "interest in the care and custody of his [] child . . . against the independent and often adverse interests of the child in a safe and stable home life." *Kent K. v. Bobby M.*, 210 Ariz. 279, 286, ¶ 35 (2005). "[A] determination of the child's best interest must include a finding as to how the child would benefit from a severance or be harmed by the continuation of the relationship." *Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5 (1990). Courts consider the totality of the circumstances "existing at the time of the severance determination, including the child's adoptability and the parent's rehabilitation." *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, 148, ¶ 1 (2018).

¶31 Though Father loved his child, felt his own participation in visits had improved in the five months leading up to trial, "was enjoying once a week virtual visits with [J.H.]," and indicated he had support to help him parent the child in Florida, record evidence supports the court's finding that termination was in J.H.'s best interests.

¶32 J.H. lived with a foster caregiver who was meeting all of his needs, including significant special needs, and is a potentially adoptive placement. By contrast, Father never lived in the same state as J.H. and had only visited him in person a few times over a five-year period. Evidence also showed Father's inconsistency had been difficult for J.H. and that J.H. was experiencing separation anxiety regarding the prospect of being separated from his foster family. On this record, Father has shown no error.

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CONCLUSION

¶33

For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court
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