

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

GAVIN H., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, L.H., K.H., *Appellees*.

No. 1 CA-JV 22-0064
FILED 9-8-2022

Appeal from the Superior Court in Mohave County
No. S8015JD202000073
The Honorable Aaron Michael Demke, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Your AZ Lawyer, Phoenix
By Robert I. Casey
Counsel for Appellant

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

MEMORANDUM DECISION

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

H O W E, Judge:

¶1 Gavin H. (“Father”) appeals the juvenile court’s order terminating his parental rights to his daughters, L.H. and K.H. (“children”), based on the willful abuse and fifteen months in out-of-home placement grounds. For the following reasons, we affirm.¹

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the juvenile court’s order. *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 2 ¶ 2 (2016). In August 2020, the Department of Child Safety filed a dependency petition based on the children’s unexplained injuries, including L.H.’s broken arm; Father’s marijuana use in front of the children; and Father’s inability to provide a home free from animal urine and feces. Father pled no contest, and the juvenile court found the children dependent. The Department provided Father with various reunification services, including visitation, parenting classes, domestic violence and anger classes, and individual counseling.

¶3 In January 2021, Father provided inconsistent explanations as to how the children received their injuries, at times acknowledging that his girlfriend abused them while also minimizing the abuse to the “point of denying they even occurred.” Around August 2021, Father told the children that he and his girlfriend were engaged, after which the children regressed. L.H.’s counselor recommended against family counseling until L.H., and Father addressed their individual issues in their individual counseling. Additionally, the Department reported that Father had a child with his girlfriend (now fiancée) in Colorado and that the child lived primarily with the fiancée’s parents there. That child’s maternal grandparents reported that

¹ The children’s mother’s parental rights have also been terminated; she is not a party to this appeal.

GAVIN H. v. DCS et al.
Decision of the Court

Father was no longer allowed in the home because of his anger issues. In one instance, Father got angry and swore at the child while the child cried in his arms. The grandparents took the child when it looked like Father would abuse the child.

¶4 In October 2021, Father got rough with K.H. in the car, leaving “red welt marks on the child’s neck.” When asked what happened, K.H. put her hand to her neck and said that “Daddy is really strong.” The Department moved to suspend Father’s visitation and moved to terminate his parental rights to the children under the abuse and fifteen months in out-of-home placement grounds. Around this time, Dr. Katrina Buwalda completed Father’s psychological evaluation, diagnosing him with an adjustment disorder and recommending that he continue to participate in individual therapy. Dr. Buwalda suggested that the Department should consider therapeutic supervised visitation for Father to work on his parenting skills in a therapeutic manner.

¶5 The juvenile court suspended Father’s visitation in December 2021, finding that the children’s behaviors had continually regressed after visiting Father. The children, particularly L.H., needed parents who had been trained in “trauma-informed” care, and although Father had been given services, he had failed to make the appropriate behavioral changes with the children. The juvenile court concluded that continuing to place the children in contact with Father—including supervised visitations—endangered the children’s physical, mental, moral, and emotional health. It permitted Father to engage in therapeutic visits with the children, however, or other visits that could be safely managed or mitigated. After the suspension, the Department reported that while Father continued to engage in services, the case manager reported that he continued to struggle and could not make behavioral changes. Indeed, Father could not admit or comprehend K.H.’s developmental delays, demanding that she wear underwear instead of “diaper/pull-ups” because she is five, despite being told “that she is functioning at a 1.5-2-year-old level.”

¶6 The juvenile court held a termination hearing in February 2022. The Department’s case manager testified that Father had completed all services offered him. Despite admitting that his then-fiancée caused K.H.’s injuries while punishing her, Father continued to maintain a relationship with her and did not adequately protect the children from harm and abuse. He also could not control his anger, as

GAVIN H. v. DCS et al.
Decision of the Court

evidenced by his actions in Colorado and at supervised visitation. While Father had requested family counseling, the Department did not provide the service because the children had regressed after he told them about his engagement and the children's psychologist thought therapeutic visitation would negatively affect the children. The case manager stated that she continued to follow up with the children's individual counselors but was continually rebuffed. Conversely, the foster family had provided for the children and the children had progressed under the foster family's sole supervision; the foster family was willing to adopt the children. She therefore opined that termination would benefit the children by providing stability.

¶7 Dr. Buwalda testified that she suggested Father engage in individual counseling and that the Department might wish to consider therapeutic supervised visitation. She clarified that therapeutic supervised visitation was a step up from supervised visitations and required a therapist to work on the family dynamics and familial bonds by modeling behaviors for the parent. She did not suggest regular supervised visits at the time, however.

¶8 Father testified that he had completed all services the Department required but that he was not offered therapeutic visitation. He also testified that his fiancée had ended the relationship, recognizing that he was "naïve" for not ending the relationship when the Department was first concerned that she had been abusing L.H. and K.H. He admitted that despite his family warning him about his fiancée, he did not act. He claimed that he would do so now by taking what they told him "more to heart" and addressing what they said immediately rather than succumbing to "lust" for her as he had in the past.

¶9 The juvenile court terminated his parental rights under the abuse ground, and the fifteen months in out-of-home placement ground. A.R.S. §§ 8-533(B)(2), (B)(8)(c). It found that he had caused L.H.'s injuries, had let his fiancée abuse his children, and had continued the relationship with her well into the dependency, minimizing her behaviors. Despite the Department's diligent efforts in providing services, Father failed to make behavioral changes and protect the children. It then found that termination was in the children's best interests because the children's foster family is part of their extended family and is willing to adopt them. Additionally, it concluded that

continuing the parent-child relationship would harm the children because it would delay their permanency. Father timely appeals.

DISCUSSION

¶10 Father argues that the Department did not provide him the reunification services that Dr. Buwalda suggested and that the suspension of his visitation rights violated his due process as a de facto severance. We review the court's termination decision for an abuse of discretion. *Jessie D. v. Dep't of Child Safety*, 251 Ariz. 574, 579 ¶ 10 (2021). "The juvenile court, 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 a termination order unless the order is clearly erroneous. *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, 508 ¶ 1 (App. 2008).

¶11 To support an order terminating parental rights, the juvenile court must find at least one statutory ground by clear and convincing evidence, *id.* at 582-83 ¶ 26; *Crystal E. v. Dep't of Child Safety*, 241 Ariz. 576, 577 ¶ 4 (App. 2017), and then must determine by a preponderance of the evidence whether severance is in the child's best interests, *Jessie D.*, 251 Ariz. at 583 ¶ 26. To terminate parental rights under the fifteen months in out-of-home placement ground, the juvenile court must find clear and convincing evidence that (1) the Department made diligent efforts to provide appropriate reunification services; (2) the child has been in an out-of-home placement for a cumulative total period of fifteen months or longer under court order; (3) the parent has been unable to remedy the circumstances that caused the child to be in an out-of-home placement; and (4) a substantial likelihood exists that the parent will be incapable of exercising proper and effective parental care and control in the near future. A.R.S. § 8-533(B)(8)(c). The Department must provide reunification services and give the parent an opportunity to engage in the services but is not required to wait an indefinite period before requesting termination of parental rights, *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192 ¶ 37, nor to provide services that would be futile or to ensure parents participate in the services offered, *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, 235 ¶ 15 (App. 2011).

GAVIN H. v. DCS et al.
Decision of the Court

¶12 The court did not err in terminating Father’s rights under the fifteen months in out-of-home placement ground. The children had been in out-of-home care from August 2020, more than fifteen months before the termination hearing. The Department provided Father with many services, including individual therapy, supervised visitation, and many classes to address his anger and domestic violence issues. But Father failed to adequately address his anger and domestic abuse issues. Although the Department became involved when his fiancée abused the children, Father continued to minimize the abuse and continued the relationship with her. The record also supports the juvenile court’s conclusion that Father continued his own aggressive and violent behaviors towards the children despite domestic violence and anger classes. As a result, the juvenile court did not err in terminating Father’s parental rights to the children.

¶13 Father nevertheless argues that the Department never provided him the services Dr. Buwalda suggested and therefore did not provide him an opportunity to correct his behavior. But the Department did consider Dr. Buwalda’s suggestion that Father and the children partake in therapeutic supervised visitation. The children’s psychologist suggested that the children were not ready to engage in the counseling with Father, however, and that so doing would be detrimental. The Department therefore was not required to provide the service before seeking termination. *See Christina G.*, 227 Ariz. at 235 ¶ 15 (not requiring the Department provide parents every conceivable service).

¶14 Father also argues that the juvenile court violated his due process rights in denying him visitation because doing so created a “de facto severance.” But visitation could have been restored had the circumstances changed thereby belying Father’s contention that a “de facto severance” occurred. Additionally, constitutional due process does not create an additional right or protection not provided for in A.R.S. § 8-533. *See Alma A. v. Dep’t of Child Safety*, 245 Ariz. 146, 150 ¶ 9 (2018). Because the Department was not required to provide every conceivable service to Father under A.R.S. § 8-533, including visitation after a showing that visitation caused the children significant regression, due process similarly did not require visitation. *Id.* Because we affirm under the fifteen months in out-of-home placement ground, we need not address the court’s alternative grounds. *See Jesus M.*, 203 Ariz. at 280 ¶ 3 (“If clear and convincing evidence supports any one of the statutory grounds on which the

GAVIN H. v. DCS et al.
Decision of the Court

juvenile court ordered severance, we need not address claims pertaining to the other grounds.”). And because Father has not contested the juvenile court’s best interests findings, he has waived any contention that the juvenile court erred in finding termination was in the children’s best interests. *Crystal E.*, 241 Ariz. at 577 ¶ 5.

CONCLUSION

¶15 For the foregoing reasons, we affirm.



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