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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

IN RE TERMINATION OF PARENTAL RIGHTS AS TO A.B.

No. 1 CA-JV 23-0056
FILED 7-25-2023

Appeal from the Juvenile Court in Maricopa County
No. JD36689
The Honorable Pamela Dunne, Judge

AFFIRMED

COUNSEL

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Counsel for Appellant

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By Jennifer R. Blum
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MEMORANDUM DECISION

Presiding Judge D. Steven Williams delivered the Court’s decision, in which Judge Samuel A. Thumma and Judge Paul J. McMurdie joined.

WILLIAMS, Judge:

¶1 Travis B. (“Father”) appeals the juvenile court’s order terminating his parental rights. We affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 In 2016, Andy (a pseudonym) was born to Father and Stacy H. (“Mother”). Both parents have significant intellectual disabilities. In 2018, Andy began living with relatives because both parents struggled to provide the child with adequate care. That same year, relatives sought guardianship over Andy, but when they could not locate the parents, the court-appointed guardian ad litem petitioned for a dependency. The Department of Child Safety (“DCS”) later substituted in as petitioner.

¶3 DCS arranged for Father to undergo a psychological evaluation in 2019. The psychologist evaluator diagnosed Father with a moderate intellectual disability and concluded sufficient evidence existed to consider a diagnosis of “Unspecified Schizophrenia Spectrum or Other Psychotic Disorder.” The evaluator gave Father a “very poor” prognosis that he would be able to exercise “minimally adequate parenting skills in the foreseeable future,” and concluded that Father’s conditions would “continue for [a] prolonged period of time.”

¶4 The juvenile court eventually found Andy dependent. Over the next four years, Father – to his credit – actively engaged in many of the services DCS offered him.

¶5 However, Father failed to consistently engage in mental health treatment, including for his intellectual disability. In 2019, Father reported experiencing hallucinations since he was twelve years old and sometimes heard voices that interfered with his ability to stay employed. In a subsequent psychiatric evaluation, Father was diagnosed with an adjustment disorder and unspecified psychosis. His treatment plan involved taking psychotropic medication and individual therapy. But

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Father failed to take medication or engage in therapy consistently, and eventually, the behavioral-health services were closed out.

¶6 Father also struggled to improve his parenting abilities. At the outset of the dependency, the parent-services provider reported that Father had fifteen diminished protective parenting capacities. The parent aide accommodated Father's intellectual disability, including reading the materials aloud, breaking down lessons into smaller parts, and repeating lessons multiple times. But Father still failed to understand or remember many of the lessons. In 2020, this service closed unsuccessfully after Father enhanced only one of his fifteen diminished capacities. From that point forward, DCS provided Father with supervised visitation. And though Father consistently attended visits, he struggled to manage Andy's behavior and frequently required intervention from the case aide to keep the child safe.

¶7 In 2022, DCS referred Father and Andy for a bonding and best interests assessment with a licensed psychologist. The psychologist based her assessment on (1) DCS reports, (2) Father's 2019 psychological evaluation, (3) records from Father's behavioral-health treatment, (4) interviews with Father and Andy, and (5) observations from watching Father and Andy interact. In Father's interview, he claimed his only diagnoses were depression and anxiety and that he had never participated in therapy. Father also could not explain why Andy had been removed from his care. The evaluator observed Father "struggled to maintain parental control" of Andy and concluded the 2019 psychological evaluation continued to be accurate in 2022, including that it was "highly unlikely that [Father's] conditions and capacities will improve to the point of achieving reunification in the foreseeable future."

¶8 After the superior court changed the case plan to severance and adoption, DCS moved to terminate Father's parental rights on grounds of mental deficiency and fifteen months in an out-of-home placement. *See* A.R.S. § 8-533(B)(3), (8)(c). The parties stipulated to the court's review of various exhibits in determining whether a statutory basis existed for termination, but testimony from the DCS case manager would address whether termination was in Andy's best interests. The court later granted DCS's motion and terminated Father's parental rights.

¶9 Father timely appealed. 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).

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DISCUSSION

¶10 Father's only challenge on appeal is whether sufficient evidence supported the statutory grounds of mental deficiency and fifteen months in an out-of-home placement justifying termination of his parental rights.

¶11 We review a termination order for an 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, see *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2 (App. 2008).

¶12 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 his 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 98, ¶ 7.

¶13 A court may terminate parental rights if there is clear and convincing evidence "the parent is unable to discharge parental responsibilities because of mental illness [or] mental deficiency" and "there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." A.R.S. § 8-533(B)(3).

¶14 Father contends the juvenile court's termination order relied "almost entirely" on the "stale" psychological evaluation he underwent in 2019 and was insufficient to show Father is currently unable to discharge parental responsibilities. And though the 2019 report gave a "very poor" prognosis of Father's ability to exercise "minimally adequate parenting skills in the foreseeable future," Father points out that since that time, he has complied with "virtually all services," including taking classes, domestic violence counseling, parental visitation, and that he was consistent with his medication and dealing with mental health services.

¶15 DCS conducted a more recent bonding and best interests assessment in 2022, which concluded that Father had made little progress. Regardless, Father argues the evaluator heavily quoted from and relied on the 2019 report. But sufficient evidence does support the juvenile court's finding that Father is not currently capable of discharging his parental responsibilities and that it is reasonable to believe Father's mental deficiency and the circumstances causing Andy's removal from Father's home will continue for the foreseeable future.

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¶16 First, the 2022 bonding and best interests assessment was based not entirely on the 2019 psychological evaluation but also on a review of DCS reports, Father's behavioral-health records, an interview of Father and Andy, and the evaluator's observations of Father and Andy's interaction.

¶17 Additionally, Father's parent aide services report indicated that despite Father's noteworthy participation in various services over several years, Father had only improved in one of fifteen diminished parental capacities. Father argues that these diminished capacities do not mean Father is necessarily an inadequate parent. Be that as it may, the report also indicated Father did not possess minimally adequate parenting skills because he was unable to recognize dangerous situations, lacked basic and essential knowledge of child development and caregiving, and could not recognize the cause-effect relationship of his actions; all of which had resulted in Andy being "maltreated and unsafe."

¶18 Finally, Father did not engage in all services, particularly those deemed necessary for improvement by the 2019 psychological evaluation. Father sporadically took his medication, stopped therapy, and downplayed his mental illnesses.

¶19 Sufficient evidence supported the juvenile court's termination order on the mental illness or deficiency ground. Because we affirm the court's order on that ground, we need not consider whether the court's finding on the fifteen months in an out-of-home placement ground was justified. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 251, ¶ 27 (2000).

CONCLUSION

¶20 For the foregoing reasons, we affirm the juvenile court's order terminating Father's parental rights.



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