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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

CHARLES C., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, KELONI C., and KEI'NANI C., Appellees.	2 CA-JV 2013-0008 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J193387

Honorable Kathleen Quigley, Judge

AFFIRMED

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Tucson
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H O W A R D, Chief Judge.

¶1 Charles C. appeals from the juvenile court's January 2013 order terminating his parental rights to his son Keloni C., age four, and his daughter Kei'nani C., age two. Charles argues there was insufficient evidence to support the termination on the ground that he was unable to discharge his parental responsibilities due to chronic substance abuse, *see* A.R.S. § 8-533(B)(3), or because the children had been in court-ordered, out-of-home placement for fifteen months or longer, *see* § 8-533(B)(8)(c). We affirm the termination order.

¶2 A juvenile court may terminate a parent's rights if it finds clear and convincing evidence of one of the statutory grounds for severance and a preponderance of evidence that termination of the parent's rights is in the children's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). "[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the court's decision, and we will affirm a termination order that is supported by reasonable evidence." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009) (citations omitted). That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶3 In January 2010, Charles and his girlfriend Treva P., the children's mother, were charged with felony child abuse after then six-year-old Ashley P., Treva's daughter from an earlier relationship, had gone to school with multiple bruises on her neck, arm,

and upper and lower back and reported that Charles frequently "whooped" her with a belt, at Treva's request. Child Protective Services (CPS), a division of the Arizona Department of Economic Security (ADES), took Ashley and her half-brother Keloni, who had just turned one, into protective custody, and ADES filed a dependency petition, which Charles did not contest. Keloni was adjudicated dependant in March 2010.

¶4 When Kei'nani was born in January 2011, she was also placed in protective custody, and ADES filed a petition alleging her dependency in February 2011. Kei'nani was adjudicated dependent in April 2011 after Charles admitted allegations that he and Treva had a history of domestic violence, that he had physically abused Ashley, and that he has a history of substance abuse involving "Percocet, cocaine, marijuana and alcohol." He also admitted he "ha[d] not participated significantly in substance abuse treatment and continue[d] to minimize his substance abuse issues," and had "tested positive for alcohol throughout October [2010]" and in January, March, and April 2011.

¶5 That same month, Charles was accepted for participation in the Family Drug Court Program, and during his eight months of participation in the program, he did not test positive for drugs or alcohol. He also engaged in weekly individual therapy and attended group sessions focused on healthy relationships, anger management, addiction/relapse and recovery, substance-abuse education, and parenting. But after graduating from Family Drug Court on January 25, 2012, he failed to provide a required sample for urinalysis in early February, and the following week he tested positive for alcohol. He tested positive for alcohol again in April 2012, but claimed that result was due to his having used more alcohol in his cooking and "entertaining more."

¶6 In June 2012, ADES moved to terminate Charles's parental rights to Keloni and Kei'nani on grounds of chronic substance abuse and the length of time the children had been in out-of-home care. *See* § 8-533(B)(3) and (8)(c). About a month later, Charles began canceling and rescheduling his visits with Keloni and Kei'nani based on a new work schedule, stopped attending relapse-prevention and anger-management groups, reduced his attendance at Alcoholics Anonymous, and failed to attend a parent-child relationship session and a child and family team meeting. He complied with drug testing through October 2012, however, and no further test results were positive for drugs or alcohol.

¶7 After a four-day termination hearing, the juvenile court granted ADES's motion in a twelve-page ruling, concluding ADES had proven the alleged grounds for termination by clear and convincing evidence and had also established termination was in the children's best interests.[1] This appeal followed.

¶8 To establish termination was warranted pursuant to § 8-533(B)(8)(c), ADES was required to prove the children

> ha[d] been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order . . . the parent has been unable to remedy the circumstances that cause the child[ren] 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.

[1]Charles does not challenge the juvenile court's finding that termination is in the children's best interests.

§ 8-533(B)(8)(c).[2] In addressing this ground, the juvenile court noted that Charles had "made some progress towards reunification" during his involvement with Family Drug Court. But the court continued,

> However, due to his lack of benefit from therapeutic services designed to address the physical abuse he inflicted on a six year old child and his lack of sustained benefit after a plethora of services designed to address his substance dependence there is a substantial likelihood he will not be able to exercise proper and effective parental care and control now or in the near future.

According to Charles, the juvenile court erred in finding there was a substantial likelihood he would be unable to parent effectively in the near future by "disregarding" testimony from his parent-child relationship therapist, Leo Jeffero Jr., the "more credible" mental health expert, while "quot[ing] extensively" from the report of Dr. Jill Plevell, who had conducted a psychological evaluation of Charles just six weeks before the termination hearing.

¶9 We disagree. The juvenile court clearly considered all of the evidence presented, stating it "acknowledge[d] and appreciate[d]" Charles's "current remission" and citing Jeffero's opinion that Charles had "showed improvement in his parenting and discipline skills." But the court noted Jeffero also had concerns about Charles's ability to parent now or in the near future. Jeffero testified that he "would want to see" how

[2]Charles misstates this standard on appeal, asserting "the state must prove that the parent 'will not be capable of exercising proper and effective parental care and control in the near future,'" when it need only prove "a substantial likelihood" of that eventuality. § 8-533(B)(8)(c). Similarly, he misstates the juvenile court's ruling when he suggests the court "erroneously found that [he] had no reasonable possibility of parenting in the near future."

Charles managed the "stressors" of being a single parent during gradually extended periods of unsupervised visitation over a period of ninety days "before [he] would make a recommendation for [Charles] to have long periods of unsupervised time with the children," adding, "[I]t could go either way with parents. You never know . . . [if he is] going to handle the stress and be effective in the single parent mode or is . . . going to think he can do it and then find out it's harder than he thought it was."[3] And, Jeffero acknowledged his concern that Charles had struggled with relapse and other issues so late in the case, despite receiving extensive support services for more than two years.

¶10 More critically, in asking that we find error, Charles essentially is asking that we reweigh the evidence on appeal, which we will not do. *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). He does not dispute that the juvenile court's ruling is supported by Plevell's report and testimony, as well as other record evidence. As in other contexts, a juvenile court "has broad discretion in determining the weight and credibility given to mental health evidence." *State v. Doerr*, 193 Ariz. 56, ¶ 64, 969 P.2d 1168, 1181 (1998). The court did not abuse that discretion here.

¶11 The juvenile court's ruling sets forth its well-reasoned analysis of the statutory grounds for termination, and its findings are fully supported by the record. We see no need to restate that analysis here. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 207-08 (App. 2002), *citing State v. Whipple*, 177 Ariz. 272,

[3]We cannot agree with Charles that this testimony evinces Jeffero's belief "that a return of the children to Charles's care could safely be accomplished within [ninety] days."

274, 866 P.2d 1358, 1360 (App. 1993).[4] Accordingly, we affirm the order terminating Charles's parental rights to Keloni and Kei'nani.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Michael Miller
MICHAEL MILLER, Judge

[4]Because we affirm the juvenile court's termination of Charles's parental rights pursuant to § 8-533(B)(8)(c), we need not consider his arguments with respect to § 8-533(B)(3) as an alternate ground for termination. *See Jesus M.*, 203 Ariz. 278, ¶ 3, 53 P.3d at 205.