IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

DAVID P.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, C.P., C.P., AND D.P.,
Appellees.

No. 2 CA-JV 2014-0078
Filed January 20, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD181809
The Honorable Lisa Abrams, Judge Pro Tempore

AFFIRMED

COUNSEL

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Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Erika Z. Alfred, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

Pima County Office of Children's Counsel
By Deborah Abbey
Counsel for Appellees C.P., C.P., and D.P.

MEMORANDUM DECISION

Presiding Judge Kelly authored the decision of the Court, in which Judge Miller and Judge Vásquez concurred.

K E L L Y, Presiding Judge:

¶1 David P. appeals from the juvenile court's July 2014 order terminating his parental rights to his two daughters—C.K.P., age eight, and D.A.P., age five—and his son, C.L.P., age seven[1]. For the following reasons, we affirm the court's termination order.

Background

¶2 The Department of Child Safety (DCS)[2] first became involved with this family in 2007, when it removed C.K.P., the

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[1]In its order, the trial court also terminated the parental rights of the children's mother, Diana H.; in a separate appeal, we have affirmed the court's order with respect to Diana. *See Diana H. v. Dep't of Child Safety*, No. 2 CA-JV 2014-0079 (memorandum decision filed Dec. 19, 2014).

[2]Throughout most of these proceedings, employees of Child Protective Services (CPS), formerly a division of the Arizona Department of Economic Security (ADES), acted on behalf of the state. Effective May 29, 2014, the Arizona legislature repealed the statutory authorization for CPS and for ADES's administration of child welfare and placement services under title 8 and transferred powers, duties, and purposes previously assigned to those entities to the newly established DCS. *See* 2014 Ariz. Sess. Laws 2d Spec. Sess., ch. 1, §§ 6, 20, 54, 163. Accordingly, DCS has been substituted for ADES in this matter. *See* Ariz. R. Civ. App. P. 27. For simplicity, our

oldest of the three children, from her parents' care based on allegations of substance abuse by both parents, domestic violence between the two, unstable housing, and Diana's untreated mental health issues. In its termination order, the juvenile court set forth a detailed history of that proceeding, the new or reactivated proceedings initiated after C.L.P. and D.A.P. were born, and the actions taken and reunification services provided by DCS during the past seven years. We limit our discussion to the findings of fact and conclusions of law challenged on appeal.

¶3 The most recent dependency petition was filed in December 2011, after DCS received a report that C.K.P., then four, had a four-inch-long scratch on her back and said the injury had occurred when David "chased her and then threw her into the wall" as a form of punishment. When interviewed, other children in the home "consistently reported" David's verbal and physical abuse toward them and their mother. C.K.P., C.L.P., and D.A.P. were removed from the home, and C.K.P. reported that she "fear[ed] going back home to her father." DCS had also received six reports in as many months involving ongoing abuse, neglect, or domestic violence in the home, with most of those reports identifying David as a perpetrator. David did not contest the dependency finding.

¶4 At a permanency hearing in December 2012, the juvenile court found David was "in partial compliance with parts of [his] case plan services" but found an issue remained regarding whether he was benefitting from those services. Finding "there [was] good cause to extend the time, briefly," for the parents to remedy the circumstances that caused the children to be in out-of-home placement, the court denied DCS's request to change the case plan goal to severance and adoption but declined to return the children to their parents' care, finding doing so "would create a substantial risk of harm to their physical, mental, and emotional health and safety." But by May 2013, the court granted DCS's

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references to DCS in this decision encompass both ADES and the former CPS.

request to change the case plan goal and directed DCS to file a motion to terminate parental rights.

¶5 In its motion, DCS alleged David had abused or neglected the children, noting he had been convicted in October 2011 of criminal charges related to that abuse or neglect. *See* A.R.S. § 8-533(B)(2). DCS also alleged he was unable to discharge his parental responsibilities due to a persistent mental illness, with reasonable grounds to believe the condition would continue for a prolonged indeterminate period. *See* § 8-533(B)(3). Finally, DCS alleged (1) the children had been in court-ordered, out-of-home care for more than fifteen months; (2) despite its diligent effort to provide appropriate reunification services, David had failed to remedy the circumstances causing that placement; and (3) there was a substantial likelihood that David would be unable to parent effectively in the near future. *See* § 8-533(B)(8)(c).

¶6 A contested severance hearing commenced on August 15, 2013, spanned seventeen hearing dates, and concluded on April 22, 2014. On July 3, 2014, the juvenile court issued a twenty-page, under-advisement ruling detailing this family's history with DCS; the "myriad of services" or referrals for service DCS provided to David before and during these proceedings, and his participation in those services; the evidence presented during the severance hearing; and the basis for the court's credibility determinations. The court granted the motion for termination, concluding DCS had proven the three grounds alleged by clear and convincing evidence and also had established, by a preponderance of the evidence, that termination of David's parental rights was in the children's best interests.[3] This appeal followed.

Discussion

¶7 David argues insufficient evidence supports termination of his parental rights on any of the three grounds

[3]David does not dispute the juvenile court's best interests finding.

alleged. "[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] 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) (citation omitted). 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). We conclude ample evidence supported the court's order terminating David's parental rights.

¶8 David first argues that DCS failed to present clear and convincing evidence that he had abused or neglected the children. He notes he disputed C.K.P.'s statement that she had been injured when he pushed her against a wall as punishment and asserted she had instead fallen against the wall while trying to get away from him. Although he acknowledges he was convicted in October 2011 of permitting the life, health, or morals of the children to be imperiled by neglect, *see* A.R.S. § 13-3619, and concedes "there is some overlap between the elements of § 13-3619 and the definitions of abuse and neglect set forth in A.R.S. § [8-201]," he seems to suggest evidence of his conviction should have received little weight because "the judge in the criminal case apparently did not consider the evidence [of abuse or neglect] serious enough to warrant prison."

¶9 In its termination order, the juvenile court detailed the evidence supporting his criminal conviction, and David does not dispute those findings. This evidence was more than sufficient to establish a basis for termination on the ground of abuse and neglect; we therefore need not address whether the evidence was sufficient to establish the alternative grounds of time-in-care or mental illness. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 3, 53 P.3d 203, 205 (App. 2002).

¶10 But David also asserts, with respect to all three grounds for termination found by the juvenile court, that DCS failed to provide him with sufficient reunification services. *See* § 8-533(B)(8)

(requiring evidence that agency responsible for court-ordered, out-of-home care of child has made "diligent effort to provide appropriate reunification services"); *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 33, 971 P.2d 1046, 1053 (App. 1999) (termination on mental illness grounds, § 8-533(B)(3), requires proof that state "has made a reasonable effort" to reunify family).[4]

¶11 He claims DCS failed to meet its obligation because it had not provided him unsupervised visitation with any of the children, had not provided him therapeutic visitation with C.K.P., had not "obtain[ed] an apology note or letter from [him] to assist [C.K.P.] in therapy," had failed or delayed in providing him with individual therapists, and had failed to "work with" a therapist he obtained through his own efforts.

¶12 Like the other issues David raises on appeal, these issues are fully addressed in the juvenile court's exhaustive ruling. In addition to identifying the extensive services provided, the court cited evidence that other services would have been ill-advised or were unnecessary. The court found the credibility of service providers who had recommended additional services impeached by their own contrary statements or by their lack of knowledge about the family's history or David's parenting skills. The court also noted instances in which services were unavailable or delayed, despite efforts by DCS, because of David and Diana's conduct or their history with contracting agencies. David does not challenge the evidentiary basis for these specific, unambiguous findings; he instead asks this court to reweigh the evidence and resolve conflicting evidence in his favor. But that is not the role of this court on review. *See Jesus M.*, 203 Ariz. 278, ¶¶ 4, 12, 53 P.3d at 205, 207.

[4]DCS argues the juvenile court was "not required to find that [DCS] made reasonable efforts to provide adequate reunification services before terminating parental rights on the abuse and neglect ground." But we need not resolve this legal issue, because we conclude the court properly determined, before it terminated David's parental rights, that DCS's efforts had been sufficient.

Disposition

¶13 The juvenile court's thorough and thoughtful ruling includes a well-reasoned analysis of the statutory grounds for termination in this case, and its findings are fully supported by the record. We find no error, and we see no need to restate the court's extensive analysis here. *See id.* ¶ 16, *citing State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Accordingly, we affirm the order terminating David's parental rights to C.K.P., D.A.P., and C.L.P.