IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

JOSEPH H.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND S.H.,
Appellees.

No. 2 CA-JV 2014-0093
Filed April 10, 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NOT FOR PUBLICATION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. JD172956
The Honorable Kathleen Quigley, Judge

AFFIRMED

COUNSEL

Ellinwood & Francis, LLP, Tucson
By D. Tyler Francis
Counsel for Appellant

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

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Chief Judge Eckerstrom and Presiding Judge Miller concurred.

E S P I N O S A, Judge:

¶1 Joseph H. appeals from the juvenile court's order terminating his parental rights to his son S.H., born in January 2009, on time-in-care grounds pursuant to A.R.S. § 8-533(B)(8)(c) and prior out-of-home placement pursuant to § 8-533(B)(11). We affirm.

¶2 In 2009, the Department of Child Safety (DCS) [1] removed S.H. from the care of Joseph and his mother, D.C., following reports that D.C. had threatened to kill herself, Joseph, and S.H, and that D.C. was severely mentally ill. Joseph tested positive for amphetamine and cocaine, and D.C. tested positive for methamphetamine and cocaine. They had an extensive history of domestic violence and with DCS that ultimately resulted in D.C. surrendering her parental rights to her daughters in 2007. After Joseph and D.C. admitted amended allegations in a dependency petition filed by DCS, S.H. was found dependent as to both parents. The dependency was dismissed in 2010 after the court found both parents had complied with their case plan.

¶3 S.H. was again removed from the parents' home in May 2011, based on reports of domestic violence and drug abuse. Drug testing showed D.C. was abusing methamphetamine. Joseph denied

[1]DCS is substituted for the Arizona Department of Economic Security (ADES) in this decision. For simplicity, our references to DCS in this decision encompass ADES, which formerly administered child welfare and placement services under title 8, and Child Protective Services, formerly a division of ADES. *See* 2014 Ariz. Sess. Laws 2d Spec. Sess., ch. 1, §§ 6, 20, 54.

there had been domestic violence, despite the police having been called to their home fifteen times in the past year, and despite his having reported that D.C. had threatened to kill him and S.H. He supported D.C.'s explanation that she had tested positive for methamphetamine because she was participating in "a sting operation with the police," and stated he would not "abandon her." However, he acknowledged needing to find his own residence when DCS explained that was required for him to regain custody of S.H.

¶4 S.H. was again adjudicated dependent, based on Joseph's admission that he and D.C. had continued to engage in domestic violence and that her mental illness impaired her ability to parent. Joseph began to participate in an array of services, and continued to do so throughout the proceedings.

¶5 In November 2011, Joseph and D.C. reported they had separated. However, they arrived to court together, were seen together in public, and made telephone calls from the same number. The case manager would hear one parent in the background when on the telephone with the other. They also pressured the case manager to allow them to visit S.H. together, despite Joseph having again been warned that he needed to separate from D.C. Joseph then reiterated to the case manager that he would not end his relationship with D.C.

¶6 Because it had become clear that Joseph would remain with D.C., the case manager informed him he could continue with the case plan but, to reunify with S.H., he would have to address his relationship with D.C., and that she would have to address the concerns caused by domestic violence, her substance abuse, and her mental health. D.C., however, failed to complete domestic violence services. A psychologist evaluated D.C. in 2012 and concluded she was not capable of prioritizing S.H.'s needs due to her relationship with Joseph, was at a high risk of relapsing to drug abuse while in that relationship, and that the relationship would expose S.H. to the risk of abuse and neglect.

¶7 In May 2013, at the juvenile court's direction, S.H. moved to terminate Joseph's parental rights to him on the grounds

of abuse or neglect, mental illness, time-in-care, and prior out-of-home placement. DCS joined in that motion except for the mental illness ground. While the proceedings were pending, a therapist completed a parent-child assessment, concluding Joseph lacked insight into his relationship with S.H., particularly how the history of domestic violence had affected him. She also concluded that neither parent had effectively addressed their history of domestic violence or substance abuse. Although the therapist recommended therapeutically supervised visitation between both parents and S.H., she ultimately concluded that it had been ineffective and that contact with his parents was harmful for S.H.

¶8 Following a nine-day contested severance hearing, the juvenile court terminated Joseph and D.C.'s parental rights to S.H.,[2] finding termination warranted on time-in-care and prior out-of-home placement grounds. As to Joseph, the court noted that he was unwilling to separate from D.C. and, thus, could not effectively care for S.H., prevent further domestic violence, or "remain attentive to [D.C.'s] mental health concerns," particularly in light of her failure to complete her case plan or benefit from services. The court declined to address whether termination was warranted on the ground of abuse or neglect or mental illness. It further found that termination was in D.C.'s best interests. This appeal followed.

¶9 A juvenile court may terminate a parent's rights if it finds clear and convincing evidence of one of the statutory grounds for severance[3] and finds by a preponderance of the evidence that

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[2]D.C. is not a party to this appeal.

[3]Joseph asserts that, pursuant to A.R.S. §§ 1-601 and 1-602, the juvenile court was required to find the grounds for severance proven beyond a reasonable doubt. Not only did Joseph not raise this argument below, but those statutes do not address the applicable burden of proof, which is expressly and unambiguously stated in § 8-537(B). Moreover, he cites no other authority in support of this claim. We therefore decline to address this argument further. *See State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument on appeal waives claim); *Trantor v.*

termination is in the child'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 [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). 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. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶10 Joseph argues the juvenile court erred in finding DCS had made a diligent effort to provide appropriate reunification services as required by § 8-533(B)(8) and (11). But he does not identify any service that would have allowed him to retain his parental rights had it been provided. Instead, as we understand his argument, he suggests the court was required to order him to separate from D.C. and, had it done so, he would have complied. But he cites no authority suggesting a court order was required, particularly when he was repeatedly advised by DCS that his continuing relationship with D.C. seriously jeopardized his chances of regaining custody of S.H. Thus, he has not met his burden of demonstrating he is entitled to relief on this ground. *See State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995); *see also* Ariz. R. Civ. App. P. 13(a)(7) (appellant's brief shall include party's contentions, reasons therefor, and necessary supporting citations); Ariz. R. P. Juv. Ct. 106(A) (applying Rule 13 to juvenile appeals).

¶11 Joseph further asserts the juvenile court "ignor[ed]" his "demonstrated separation" from S.H., as well as "his testimony that he would choose S.H. over [D.C.]." But we do not reweigh the evidence on appeal; rather, we defer to the court's factual findings

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Fredrikson, 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994) (court of appeals does not address claims first raised on review absent extraordinary circumstances).

because, as the trier of fact, that court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). Joseph disregards substantial evidence that he did not meaningfully separate from D.C. And the court was in the best position to evaluate the credibility of his testimony. *See id.* He has offered no basis for us to disturb that evaluation on appeal.

¶12 Joseph also claims that the attorney appointed for S.H. failed to adequately represent S.H.'s interest because the attorney argued in support of termination although S.H. had expressed the desire to continue visitations. Joseph, however, has no standing to raise this argument. *In re Pima Cnty. Juv. Sev. Action No. S-113432*, 178 Ariz. 288, 291, 872 P.2d 1240, 1243 (App. 1993). We thus do not address it further. We also summarily reject his related argument that the attorney general failed to adequately represent DCS's interests in this case. Although Arizona law recognizes that a party may "be allowed to interfere with the attorney-client relationship of his opponent" "in extreme circumstances," *Alexander v. Superior Court*, 141 Ariz. 157, 161, 685 P.2d 1309, 1313 (1984), Joseph has made no effort to meet that burden here. *See Bolton*, 182 Ariz. at 298, 896 P.2d at 838.

¶13 Joseph next identifies a series of purported errors "in specific rulings and findings" by the juvenile court:[4] (1) the parent-child assessment was "flawed" and the testimony of the report's author "inconsistent and unreliable"; (2) the court could not find "for the first time" in its ruling that there had been problems with supervised visitation; (3) the foster parents "were improperly enmeshed in this case"; (4) the court failed to adequately consider that he and D.C. had completed the case plan; and (5) DCS "failed to

[4]This argument appears related to Joseph's assertion that error "accumulate[d]" throughout the case, thus denying his right to due process. Because Joseph cites no supporting authority for that proposition, the argument is waived. *See Bolton*, 182 Ariz. at 298, 896 P.2d at 838.

provide complete services" to S.H. But Joseph fails to tie these disparate claims to any legal argument that termination of his parental rights was improper. Most notably, he does not explain how these purported defects were relevant to the court's ultimate determination that his parental rights should be severed because he had failed to remedy the circumstances that required S.H.'s removal and that his continuing relationship with D.C. endangered S.H. Accordingly, we decline to address these arguments further. *See id*.

¶14 Joseph also argues the juvenile court erred in concluding severance was in S.H.'s best interests. He contends the juvenile court improperly "shifted the standard" because it based its best interests finding on the fact that S.H. was in an adoptive placement. But the availability of an adoptive placement is sufficient to support a best interests finding. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004). Joseph's argument seems to suggest we should reweigh the evidence concerning this issue. But that is not our role on appeal and we decline to do so. *See Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d at 945.

¶15 Last, Joseph asserts the juvenile court "erred in denying a one parent severance." He appears to argue the court could not rely on evidence that he had continued his relationship with D.C. to terminate his parental rights, because he, instead, was "entitled to his own case plan and services." But Joseph cites no authority, and we find none, suggesting that a juvenile court is required to ignore a parent's relationship with the child's other parent in evaluating whether termination is warranted. *See Bolton*, 182 Ariz. at 298, 896 P.2d at 838. As noted above, Joseph was warned repeatedly that he would need to discontinue his relationship with D.C. to regain custody of S.H. unless D.C. addressed her own issues and both parents addressed the problems within their relationship. Joseph does not demonstrate the court erred in concluding that any gains he might have made in resolving the issues causing S.H. to be in court-ordered custody were diminished by his continuing relationship with D.C., which placed S.H. at risk.

¶16 For all of the foregoing reasons, the juvenile court's order terminating Joseph's parental rights to S.H. is affirmed.