IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

WILLIAM S.,
Appellant,

v.

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

No. 2 CA-JV 2014-0142
Filed August 31, 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NOT FOR PUBLICATION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 Cochise County
No. JD201200059
The Honorable James L. Conlogue, Judge

AFFIRMED

COUNSEL

Harriette P. Levitt, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Dawn R. Williams, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Howard and Judge Kelly[1] concurred.

VÁ S Q U E Z, Presiding Judge:

¶1 Appellant William S. challenges the juvenile court's October 2014 order, terminating his parental rights to his daughter C.S., on the ground C.S. had been in a court-ordered, out-of-home placement for longer than fifteen months. *See* A.R.S. § 8-533 (B)(8)(c). On appeal, William challenges the sufficiency of the evidence to sustain the statutory ground for severance and argues the court "committed reversible error in finding that reasonable efforts at reunification had been made."

¶2 Before it may terminate a parent's rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). We will affirm an order terminating parental rights unless we must say as a matter of law that no reasonable person could find those essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). We view the evidence in the light most favorable

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[1]The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

to upholding the court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008).

¶3 In October 2012 the Department of Child Safety[2] (DCS) filed a dependency petition alleging that William and his wife, C.S.'s mother, Charlotte, were engaging in domestic violence, neglecting C.S., and using drugs; that Charlotte had mental health issues; and that William had "prostituted [Charlotte] out." William "entered an admission and no contest pleas," and the juvenile court adjudicated C.S. dependent in December 2012.

¶4 William participated in services provided by DCS including drug testing, substance abuse classes, anger management classes, advanced parenting class, and visitation. C.S., who had been placed in foster care, was returned to William's physical custody in April 2013. At DCS's request, however, the juvenile court ordered that the case would remain open for ninety days so DCS could continue to provide services.

¶5 A review hearing was set for July 2013, but in June the case manager "received concerning information" about "possible criminal activity" at William's home. The case manager testified she had received a report that there had been "regular traffic" of people "in and out" of a trailer parked on William's property and hooked up to the house for electricity or water. When the case manager

[2]At the outset of this proceeding, C.S. was taken into care by Child Protective Services (CPS), formerly a division of the Arizona Department of Economic Security (ADES) and ADES filed the initial dependency petition. 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. Accordingly, DCS has been substituted for ADES in this matter. *See* Ariz. R. Civ. App. P. 27. For simplicity, our references to DCS in this decision encompass both ADES and the former CPS.

went to investigate in June 2013 she observed three women outside the trailer "moving quite erratically," apparently "under a substance." Another woman came out of the trailer and the four talked for five to ten minutes before driving away. Two of the women were arrested later; one admitted to having used heroin an hour before and one had "a scantily clad or lingerie type item" in her purse. When the case manager walked up to the trailer, the door was open and a man, later determined to have "a very long track record of prostitution and theft and possession of methamphetamine," came out, looking "very dirty, very sweaty, clammy, . . . pa[le], and . . . moving very fast." Although William's car was present, he did not answer the door to the house.

¶6 William was arrested in July 2013 for facilitating Charlotte's prostitution in the family home, and C.S. was removed again. At that time DCS received additional information about the earlier allegations relating to prostitution in the home. DCS referred William for a second psychological evaluation, a psychosexual evaluation, individual therapy, supervised visitation, and "[p]arent child therap[y]."

¶7 In the following months the case manager "needed to consult with [her] supervisor[s]" and "mental health specialists in Phoenix," so William was not offered additional services. And, the individual therapies recommended for William were not offered in Tucson. In December 2013, William filed a "motion for finding of no reasonable efforts," asserting DCS had not "set up any services which they require prior to reunification." In January 2014, William began counseling through his military benefits, as well as with a therapist arranged by DCS. But William was unwilling to identify goals for treatment or otherwise address issues relating to the substance abuse and prostitution occurring in his home, and his treatment with the therapist was terminated. DCS arranged for William to complete a second psychological evaluation and a psychosexual evaluation.

¶8 In April 2014 DCS filed a motion to terminate William's parental rights based on the length of time C.S. had spent in out-of-home, court-ordered care. The evaluations arranged by DCS

included examinations in February, April, May, and June, with reports issued in May and June. William participated in the psychosexual evaluation, but refused to answer some questions or to give details during the polygraph portion. The psychologist who performed the evaluation provisionally determined William may suffer from a personality disorder and noted that his "behaviors and symptoms interfere with his ability to parent" and that his condition was "typically chronic." In the psychological evaluation, the same doctor who had completed such an evaluation after the first removal determined William had a personality disorder that left him unable to properly and safely parent C.S.

¶9 Urine testing also was done after the second removal, but five of the first seven samples William gave were diluted. And when DCS asked that he complete a hair analysis test, he removed all of his hair. After a contested severance hearing held over three days in July and October 2014, the juvenile court terminated William's parental rights on the time-in-care ground. This appeal followed.

¶10 On appeal, William contends insufficient evidence supports the juvenile court's order severing his parental rights. He maintains "there was no evidence that [he] had ever placed [C.S.] in danger" because "there wasn't . . . any evidence as to where [C.S.] was" when the prostitution was taking place, because there was no evidence showing C.S. had contact with the trailer on the property, and because although DCS held his denials of involvement against him, "the only people who believed the . . . prostitution story" were the detective and the case manager, as evidenced by the Cochise County Attorney's Office deciding not to prosecute him. He challenges the trial court's conclusion that he substantially neglected, willfully refused, and was unable to remedy the circumstances that caused C.S.'s out-of-home placement. *See* A.R.S. § 8-533 (B)(8)(c).

¶11 But William's argument ignores the contrary evidence upon which the juvenile court relied. The court found William had allowed "significant illegal drug use on the property" where C.S. was living. As outlined above, the record contains evidence of drug

use in the trailer on William's property, and the trailer was present on the property for a substantial period of time after C.S. was returned to William's physical custody.

¶12 Likewise, the record contains evidence that William was involved in his wife's prostitution and that he attempted to conceal his use of drugs. Despite William's denials about his involvement in his wife's prostitution, law enforcement officers discovered that the family's home contained a false vent in the master bedroom with screws "consistent with running wires" and the use of "a hidden security camera inside." Officers found two electronic mail messages in William's account that suggested his involvement in his wife's prostitution. They also found a video recording in which the lights in a bedroom were turned down; William entered the room, kissed Charlotte, and left; and eleven minutes later another man walks in with Charlotte, hands her what appears to be money, and the two engage in various sexual acts. And, although William denied having removed his hair before testing was requested, photographs demonstrated he had hair before the testing, and yet the testers found him to be without hair. In view of this evidence, the juvenile court's finding that William had been "untruthful" in regard to the activity in his home was amply supported.

¶13 Additionally, a June report from William's June 2014 psychological evaluation indicated William had an "unspecified personality disorder, with significant histrionic, narcissistic and antisocial features." Dr. Daniel Overbeck, who provided the evaluation, stated William was "unlikely to seek psychological treatment or to cooperat[e] fully with treatment if it is implemented." Overbeck also opined that William's "capacity to be a consistent, effective, nurturing parent is sufficiently impaired" that he was concerned for C.S.'s "emotional and physical well-being" if returned to William's care.

¶14 William's argument on appeal essentially asks us to reweigh the credibility of the witnesses and the evidence against him. This we will not do. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002). Rather, we defer to the juvenile court's resolution of conflicting inferences as they are

supported by the record. *See In re Pima Cnty. Adoption of B-6355 & H-533*, 118 Ariz. 111, 115, 575 P.2d 310, 314 (1978).

¶15 William also contends the juvenile court erred in "finding that reasonable efforts at reunification had been made during the second removal." Citing *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 971 P.2d 1046 (App. 1999), he argues the state "did not fulfill its obligations in delaying provision of any services and in neglecting to follow up to ensure that services were being provided and to assess [his] progress."

¶16 Although DCS initially delayed providing the appropriate psychological and psychosexual evaluation and treatment after the second removal, at the severance hearing DCS provided sufficient evidence from which the juvenile court could find it had "made a diligent effort to provide appropriate reunification services." § 8-533(B)(8)(c). Despite having received substantial services and having complied with his case plan after C.S.'s first removal, William again allowed illegal activity on his property and failed to properly provide specimens for urinalysis. And the experts who completed the psychological and psychosexual evaluations indicated William's problems were "chronic," he would not be able to properly parent C.S., and treatment was unlikely to improve the situation, particularly in view of William's failure to meaningfully engage in therapy to date. DCS is not required to provide services that are futile, *Mary Ellen C.*, 193 Ariz. 185, ¶ 34, 971 P.2d at 1053, and in view of the evidence presented, we cannot say the juvenile court abused its discretion in determining that further services would be futile here.

¶17 For all these reasons, the juvenile court's order terminating William's parental rights to C.S. is affirmed.