IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

TUNG H.,
Appellant,

v.

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

No. 2 CA-JV 2015-0047
Filed July 14, 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NOT FOR PUBLICATION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. JD166108
The Honorable Jennifer P. Langford, Judge Pro Tempore

AFFIRMED

COUNSEL

Scott W. Schlievert, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Laura J. Huff, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

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

M I L L E R, Presiding Judge:

¶1 Tung H. appeals from the juvenile court's order terminating his parental rights to his daughter C., born in January 2013, on time-in-care and neglect grounds. *See* A.R.S. § 8-533(B)(2), (B)(8)(a), (B)(8)(b). We affirm.

¶2 C. was removed from Tung and her mother's care in June 2013 after police officers responded to a report of domestic violence at an automobile repair shop where it appeared the family was living. The repair shop was dirty, the temperature inside was approximately ninety degrees in early afternoon, and the shop smelled strongly of chemicals and gasoline. The Department of Child Safety (DCS)[1] caseworker was unable to retrieve any items for C. because they were covered in grease, and her formula had ants crawling on it. At the time of removal, C. was suffering from severe diaper rash with open sores and a rash under her neck, and her immunizations were not up to date. Tung initially did not

[1]The Department of Child Safety is substituted for the Arizona Department of Economic Security (ADES) in this decision. *See* 2014 Ariz. Sess. Laws 2nd Spec. Sess., ch. 1, § 20. 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.

participate in the case plan, becoming somewhat compliant only after DCS filed a motion for termination of his parental rights.[2]

¶3 The motion alleged that termination was warranted based on neglect as well as time-in-care grounds. *See* § 8-533(B)(2), (B)(8)(a), (B)(8)(b). After a contested severance hearing, the juvenile court found DCS had met its burden of proof for all alleged grounds and termination of Tung's parental rights was in C.'s best interests.[3] This appeal followed.

¶4 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 finds by a preponderance of the evidence that 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 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).

¶5 Tung's opening brief is limited to the services provided by DCS and his participation in those services. He summarily

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[2] There also was evidence, however, that Tung failed to comply with portions of the case plan that directly affected C.'s health. For instance, despite C.'s asthma, Tung continued to smoke before the parent-child visits, which caused her physical distress that necessitated medical treatment. Relatedly, Tung did not provide proof of income that would ensure he could provide for C.'s physical and medical needs.

[3] The juvenile court also severed the parental rights of C.'s mother. She is not a party to this appeal.

claims the court erred in severing his parental rights because he participated in the services provided by DCS, DCS "failed to provide effective services" to him, and DCS "punished [him] for his non-legally required lack of participation prior to" the dependency adjudication. Tung confines his discussion of the law governing provision of services to termination on time-in-care grounds. And, although he cites law pertaining to termination on neglect grounds, he does not develop an argument that the court erred in terminating his parental rights based on neglect.[4] *See State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument on appeal waives claim). Based on his failure to address the neglect ground, we need not address whether termination was appropriate on any other grounds. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 13, 995 P.2d 682, 685 (2000) (accepting the juvenile court's best interests finding when father did not challenge it on appeal); *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 3, 53 P.3d 203, 205 (App. 2002) ("If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.").

¶6 Unlike termination on time-in-care grounds, *see* § 8-533(B)(8), nothing in § 8-533(B)(2) requires DCS to provide reunification services before it may seek termination of parental rights based on abuse or neglect. We acknowledge that this court has concluded DCS is required to provide reunification services before seeking termination on mental-illness grounds pursuant to § 8-533(B)(3). *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 34, 971 P.2d 1046, 1053 (App. 1999). But Tung has not developed the argument that we should extend the holding in *Mary Ellen C.* to require DCS to provide reunification services before seeking

[4]Tung did not file a reply brief to address the state's argument that we may affirm the juvenile court's order solely because he did not challenge the court's determination that termination is warranted based on neglect. Tung's failure to file a reply brief is a sufficient basis for us to adopt the state's argument. *See State v. Morgan*, 204 Ariz. 166, ¶ 9, 61 P.3d 460, 463 (App. 2002).

termination based on neglect; therefore, we decline to do so here. Equally important, Tung did not raise any purported deficiency in the offered services before termination proceedings began below, despite the juvenile court's finding at a November 2013 permanency hearing that DCS had made reasonable efforts to accomplish the case plan goals by providing specific services. Accordingly, he has waived any such argument on appeal. *See Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, ¶ 16, 319 P.3d 236, 241 (App. 2014) (parent who does not object to adequacy of services waives issue on appeal).

¶7 We affirm the juvenile court's order terminating Tung's parental rights.