IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

MICAH J.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, E.J., K.J., C.J., AND L.J.,
Appellees.

JOANN T.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, E.J., K.J., C.J., AND L.J.,
Appellees.

Nos. 2 CA-JV 2016-0035 and 2 CA-JV 2016-0041 (Consolidated)
Filed July 6, 2016

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NOT FOR PUBLICATION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. JD197243
The Honorable K.C. Stanford, Judge

AFFIRMED

COUNSEL

Sarah Michèle Martin, Tucson
Counsel for Appellant Micah J.

Nuccio & Shirly, P.C., Tucson
By Salvatore Nuccio
Counsel for Appellant Joann T.

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

Pima County Office of Children's Counsel
By Sarah Richelson, Tucson
Counsel for Minors

MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Judge Espinosa and Judge Staring concurred.

H O W A R D, Presiding Judge:

¶1 Appellants Micah J. and Joann T. challenge the juvenile court's order of February 29, 2016, terminating their parental rights to their children, E.J., K.J., C.J., and L.J., on grounds of chronic substance abuse and neglect. *See* A.R.S. § 8-533(B)(2), (3). On appeal, Micah challenges the sufficiency of the evidence to sustain either of those statutory grounds for severance, and both parents challenge the sufficiency of the evidence to establish that terminating their parental rights was in the children's best interests.

¶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 as a matter of law 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 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 2011, the three oldest children were removed from their parents' care after C.J. tested positive for methamphetamine at birth. The subsequent dependency proceeding was dismissed, the children were returned later that year, and Micah and Joann completed drug court services. In 2014, however, the youngest child, L.J., tested positive for methamphetamine at birth and the children were again removed. The children were found dependent after the parents admitted the allegations in an amended dependency petition.

¶4 The Department of Child Safety (DCS) filed a motion to sever parental rights in September 2015, after Micah tested positive for alcohol use in July and Joann tested positive for amphetamine, methamphetamine, and "k2Spice" use in June. After a contested severance hearing, the juvenile court granted the motion. This appeal followed.

¶5 On appeal, Micah maintains insufficient evidence supports the termination of his parental rights based on chronic substance abuse or neglect. He contends "no evidence [was] presented whatsoever that there are reasonable grounds to believe that [his] substance abuse will continue for a prolonged indeterminate period." And he argues that "[w]hile a finding of 'neglect' may have been valid at the time of the initial dependency . . . those conditions no longer existed at the time of the severance."

¶6 In challenging the juvenile court's findings of neglect and chronic substance abuse, Micah relies on favorable testimony but does not address the contrary evidence cited by the court. Evidence presented to the court showed Micah had a long history of substance abuse and had failed to comply with his case plan for the majority of the dependency. And although he had maintained a period of sobriety leading up to the severance hearing, he had not established appropriate housing or child care, had been with his current employer for only about three months, had held two different jobs for about a month and a half each before that, and was still trying to resolve legal issues related to an April 2015 drug paraphernalia conviction. He was living with his brother, who had a criminal record, and he did not believe DCS would approve the children's placement in his brother's home. He testified he would need approximately six additional months to be "set up in [his] own place and ready to care for the kids."

¶7 We do not reweigh the evidence presented to the juvenile court, *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002), and will defer to the court's resolution of conflicting inferences if supported by the record, *In re Pima Cty. Adoption of B-6355 & H-533*, 118 Ariz. 111, 115, 575 P.2d 310, 314 (1978). As outlined above, the evidence was sufficient to establish both grounds for severance.

¶8 Both parents contend the evidence was insufficient to establish that severance was in the children's best interests. But again, they discount evidence presented to the juvenile court, particularly evidence of their long-term substance abuse and the testimony of the family's DCS caseworker. Micah contends the caseworker's testimony was insufficient because "[s]he was not qualified as a child placement expert" and "[h]er testimony was not an expert opinion" but "merely an opinion by the responsible case manager." He cites no authority, however, to support the proposition that such testimony is insufficient to establish best interests.

¶9 The caseworker testified that the children would benefit from termination because they could "be in a place that's stable,

that's free from domestic violence, [and free from] substance abuse." She pointed out that this was not the family's first dependency and that reports had been received about the children going "back to 2011." She also explained it was hard for the children to continue to have "[no]where they can call home," and to continue in out-of-home care. She also noted L.J.'s placement was willing to adopt him and the other children were adoptable. Additionally, the court received extensive evidence about the parents' substance abuse dating back to their teenage years.

¶10 In arguing this evidence was insufficient, Joann correctly points out that the juvenile court's factual finding that the children were currently in adoptive placements was erroneous. On the record before us, only L.J. was currently in an adoptive placement. But that finding was not the sole basis for the court's conclusion that severance was in the children's best interests. Instead, the court found the children were adoptable, "would benefit from a permanent and stable home," and "would be at risk of abuse or neglect if returned to" their parents' care, "given the strong likelihood of the parents' relapses." Although the record includes contrary evidence as to best interests, the court's findings were supported by the evidence described above, and we do not reweigh that evidence. *Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207.

¶11 For these reasons, we affirm the juvenile court's order severing Micah's and Joann's parental rights.