IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

BRIAN F.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND K.F.,
Appellees.

No. 2 CA-JV 2016-0153
Filed April 5, 2017

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NOT FOR PUBLICATION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
Nos. JD20140841 and S20150361
The Honorable Patricia A. Green, Judge Pro Tempore

AFFIRMED

COUNSEL

Brian F., Tucson
In Propria Persona

Mark Brnovich, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

Pima County Office of Children's Counsel, Tucson
By John Walters
Counsel for Minor

MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Vásquez concurred.

H O W A R D, Presiding Judge:

¶1 Brian F., father of K.F., born in 2005, challenges the juvenile court's order terminating his parental rights on neglect and nine- and fifteen-month out-of-home placement grounds.[1] *See* A.R.S. § 8-533(B)(2), (B)(8)(a), (B)(8)(c). Finding no error, we affirm.

¶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). "On review . . . we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶3 We view the evidence in the light most favorable to upholding the juvenile court's ruling. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). In November 2014, the Department of Child Safety (DCS) took temporary custody of K.F. based on allegations of abuse and/or neglect; K.F. was adjudicated

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[1]The juvenile court also severed the parental rights of K.F.'s mother, who is not a party to this appeal.

dependent as to Brian in February 2015. Although the court ordered Brian to participate in family therapy as part of the reunification case plan, K.F.'s therapist required that before participating in such services, Brian must remain sober for thirty days, engage in substance abuse and relapse prevention counseling, engage in individual therapy, and provide consent for his therapist to speak with K.F.'s therapist.[2] Because Brian failed to complete his individual therapy sessions, and because both K.F.'s and Brian's therapists thought "he still needed to work through individual counseling," family therapy did not occur.

¶4 In December 2015, K.F. filed a petition to terminate based on neglect and time-in-care, and in January 2016, the juvenile court imposed a concurrent case plan of family reunification and severance and adoption.[3] *See* § 8-533(B)(2), (B)(8)(a), (B)(8)(c). After a contested severance hearing that spanned two days in April and June 2016, the court granted the motion to sever on all of the grounds asserted. This appeal followed.

¶5 At the severance hearing, the DCS case manager testified that family therapy did not occur because Brian had not completed individual therapy, and K.F.'s and Brian's therapists did not think Brian was ready to parent. K.F.'s therapist similarly testified that Brian had not met the conditions to begin family therapy. Dr. Dee Winsky, the psychologist who evaluated Brian, reported that Brian "seem[ed] to believe that he should have the freedom to decide what case plan services he does and does not participate in" and that it was "up [to] him to decide when he has participated in enough therapy." Winsky also testified that both Brian and K.F. needed to complete individual therapy before beginning family therapy, and opined that Brian "had several issues that he needed to be working on before he was in family therapy with his son." Brian testified that he

[2]DCS offered Brian a variety of services including drug testing, substance abuse classes, parenting education, supervised visits with K.F., individual therapy, and case management services.

[3]DCS subsequently joined in K.F.'s petition to terminate.

participated in services until the summer of 2015, and acknowledged that "when participating wasn't good enough for [DCS], I stopped."

¶6 In August 2016, the juvenile court terminated Brian's parental rights to K.F. in a detailed, eleven-page ruling. The court included a summary of Brian's history with K.F., including the services DCS had provided and Brian's willful decision to stop participating in those services. The court also found that Brian's therapist had reported he "was not ready for family therapy." Concluding that severance was in K.F.'s best interests, the court determined the out-of-home and neglect grounds had been met.

¶7 Brian's opening brief is limited to claims regarding the services provided by DCS and his participation in those services.[4] Specifically, Brian argues "[b]ecause of K.F.'s wish not to do family therapy, [Brian] was not given a reasonable opportunity" to reunify with him. Brian also asserts that because K.F. no longer wanted to engage in individual therapy, Brian likewise "stopped attending individual therapy," and thus maintains his "efforts [to reunite with K.F.] were simply undercut by DCS based on K.F.'s wishes [not to participate in services]." DCS's duty to reunify the family does not require it to provide a parent with every conceivable service or to ensure that he participates in every service offered. *In re Maricopa Cty.*

[4]Brian suggests that reunification services were required for all of the grounds upon which the juvenile court based its ruling, including neglect under § 8-533(B)(2). Unlike termination on time-in-care grounds, *see* § 8-533(B)(8), there is no express requirement under § 8-533(B)(2) that a juvenile court must find DCS diligently provided a parent with reunification services before the court may terminate a parent's rights on that ground, nor has Brian provided any support so stating. *Cf. Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 31, 971 P.2d 1046, 1052 (App. 1999) (termination based on mental illness pursuant to § 8-533(B)(3) implicitly incorporates obligation to make reasonable efforts to preserve family before severing parent's rights). Because we conclude the court properly considered the reunification services DCS offered before terminating his parental rights, we need not address this argument.

Juv. Action No. JS-501904, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). In deciding whether to terminate a parent's rights, the court must consider the availability of reunification services to the parent and the parent's participation in the services and must find DCS made a diligent effort to provide those services. § 8-533(B)(8), (D); *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, ¶ 14, 256 P.3d 628, 632 (App. 2011). Although Brian maintains the juvenile court and DCS "violated [his] rights by permitt[ing] K.F.'s wishes to undermine [his] fundamental right to have a reasonable opportunity to reunify with his son," he does not suggest the court's extensive, detailed review of the evidence is inaccurate or unsupported by the record. Nor does he specifically challenge the court's finding that he "voluntarily refused to participate in the required services." In essence, Brian instead asks that we reweigh the evidence, which we will not do. *See Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009) (noting juvenile court, as trier of fact, in best position to weigh evidence, judge credibility of witnesses, and resolve disputed facts).

¶8 We have reviewed the record and conclude it amply supports the juvenile court's thorough factual findings and legal conclusions. "[W]e believe little would be gained by our further 'rehashing the . . . court's correct ruling'" and therefore adopt it. *Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08, *quoting State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). We therefore affirm the court's ruling terminating Brian's parental rights to K.F.