IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

STEVEN P.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND P.P.,
Appellees.

No. 2 CA-JV 2016-0175
Filed March 28, 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NOT FOR PUBLICATION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. JD20150425 and S20160022 (Consolidated)
The Honorable Peter W. Hochuli, Judge

AFFIRMED

COUNSEL

Sarah Michèle Martin, Tucson
Counsel for Appellant

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, 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 Steven P. appeals from the juvenile court's November 2016 order terminating his parental rights to his son P.P., who was born in May 2015. As grounds for termination, the court found Steven was unable to parent effectively due to a mental illness that was likely to continue for a prolonged, indefinite period, *see* A.R.S. § 8-533(B)(3), and also found he had substantially neglected or willfully refused to remedy the circumstances that caused P.P., a child under the age of three, to be in court-ordered, out-of-home care for longer than six months, *see* § 8-533(B)(8)(b). We affirm the court's termination order.

Factual and Procedural Background

¶2 As detailed in the juvenile court's under-advisement ruling, the Department of Child Safety (DCS) first took P.P. into temporary custody when he was six days old, after a DCS investigator learned that both Steven and P.P.'s mother, Jennifer E., had stopped taking prescribed medications for their mental illnesses and were living in a home that was "'filthy'" and unsafe for P.P., who had "high needs" due to his low birth weight and his having

lost weight since birth.[1] Steven told the investigator he had been diagnosed with schizoaffective disorder with auditory hallucinations and post-traumatic stress disorder (PTSD).[2] He said his PTSD causes him to "flash[] back" to childhood abuse when he hears a baby crying, and, during these episodes, he "needs to get away." P.P. was adjudicated dependent in August 2015, after Steven admitted allegations about his mental illness diagnosis, his lack of income, and his inability to provide for P.P.'s needs.[3]

¶3 At a permanency hearing in December 2015, the juvenile court found that, although Steven was in compliance with his DCS case plan, P.P. could not safely return to his parents' care at that time, and it denied motions by DCS and P.P.'s counsel to change the case plan goal to severance and adoption. The following month, P.P.'s counsel filed a petition to terminate Steven and Jennifer's parental rights on mental illness and time-in-care grounds, *see* § 8-533(B)(3) and (B)(8)(b), and the court consolidated the termination and dependency proceedings.

¶4 After a hearing held over six days in August and September 2016, the court issued an under-advisement ruling granting P.P.'s petition to terminate parental rights, finding he had established both statutory grounds alleged by clear and convincing evidence and had shown termination was in his best interests. In his appeal from that ruling, Steven maintains there was insufficient evidence to support the court's ruling.

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[1]Jennifer's parental rights to P.P. were also terminated. She is not a party to this appeal.

[2]The psychologist who conducted an evaluation of Steven in July 2015 diagnosed him as suffering from attention deficit hyperactivity disorder; schizoaffective disorder with auditory hallucinations; anxiety disorder (possibly PTSD); and "[s]ome oppositional and possibly borderline traits."

[3]Steven admitted allegations amended to reflect that, at that time, he was "currently taking his medication as prescribed."

Discussion

¶5 A juvenile court may terminate a parent's rights if it finds clear and convincing evidence of one of the statutory grounds for termination and also finds, by a preponderance of evidence, that termination of the parent's rights 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). 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. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶6 Pursuant to § 8-533(B)(3), termination may be warranted if a parent "is unable to discharge parental responsibilities because of mental illness [or] mental deficiency . . . and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." Because we find clear and convincing evidence supports the juvenile court's termination of Steven's parental rights based on this ground, we need not address the alternative time-in-care ground found by the court. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 3, 53 P.3d 203, 205 (App. 2002).

¶7 In its thorough analysis of the evidence related to Steven's longstanding mental illness, the juvenile court summarized a portion of his psychological evaluation as follows: "Ultimately, to be able to effectively discharge his parental responsibilities, [Steven] must believe in his diagnoses, recognize his problems, and show a commitment to taking care of his own mental health." The court then added, "In the seventeen months of this dependency case, [Steven] has failed to achieve these benchmarks."

¶8 On appeal, Steven argues there was insufficient evidence "to sustain the juvenile court's conclusion that the Father's mental illness renders him unable to discharge his parental responsibilities,"[4] asserting that finding was "contradicted" by testimony from his ongoing therapist, Sherri Mikels-Romero. But the court recognized the evidence Mikels-Romero provided about Steven's progress, as well as positive remarks made by the evaluator who performed Steven's parent-child relationship assessment. The court nonetheless found, "based on [Steven]'s own testimony," as well as his reported difficulties in maintaining medication compliance, that "he still fails to grasp the weight of his symptoms and diagnoses." Indeed, Mikels-Romero expressed "concern[]" when she was told that Steven had "disavowed [having] any mental illness" during his testimony.

¶9 The juvenile court also addressed, in considerable detail, its finding that termination was in P.P.'s best interests, finding both that P.P. would be harmed by continuing his relationship with Steven and would benefit from termination. With respect to the latter finding, the court noted that P.P. has bonded with foster parents who have provided him with a home since he was ten days old. According to the court, those foster parents have been meeting all of P.P.'s needs, have proactively attended to his health care, and "are willing and able to adopt him and wish to do so." Although Steven does not expressly dispute these findings, he seems to suggest "self-serving" testimony of a DCS case manager was insufficient to support them. But the juvenile court is in the best position to judge the credibility of witnesses, and it is "uniquely the province" of that court to resolve conflicts in the evidence. *Jesus M.*, 203 Ariz. 278, ¶¶ 4, 12, 53 P.3d at 205, 207.

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[4] As DCS suggests, Steven has not challenged the juvenile court's findings that he has a mental illness, that DCS has provided reasonable rehabilitative services, or that there are reasonable grounds to believe his mental illness will continue for a prolonged indeterminate period. Accordingly, we assume he has conceded those findings are correct. *See Britz v. Kinsvater*, 87 Ariz. 385, 388, 351 P.2d 986, 987 (1960).

Disposition

¶10 In essence, in his arguments challenging the statutory grounds for termination and the finding of best interests, Steven is asking this court "reweigh the evidence or substitute our judgment for that of the juvenile court," which we will not do. *Bennigno R. v. Ariz. Dep't of Econ. Sec.*, 233 Ariz. 345, ¶ 31, 312 P.3d 861, 867 (App. 2013). We find no basis to disturb the court's termination order and, accordingly, we affirm it.