

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

TOMAS C.,
Appellant,

v.

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

No. 2 CA-JV 2017-0052
Filed October 3, 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NOT FOR PUBLICATION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
No. JD20140465
The Honorable K.C. Stanford, Judge

AFFIRMED

COUNSEL

Suzanne Laursen, Tucson
Counsel for Appellant

TOMAS C. v. DEP'T OF CHILD SAFETY
Decision of the Court

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

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Staring and Judge Kelly¹ concurred.

ESPINOSA, Judge:

¶1 Tomas C., the father of T.C., born in December 2012, appeals from the juvenile court's March 2017 order terminating his parental rights on the grounds of neglect, abuse, mental illness or deficiency, and length of time in court-ordered care, pursuant to A.R.S. § 8-533(B)(2), (3) and (8)(c). Tomas challenges the sufficiency of the evidence to support the court's ruling. We affirm for the reasons stated below.

¶2 A juvenile court may terminate a parent's rights if the court finds clear and convincing evidence establishing at least one of the statutory grounds for termination and a preponderance of evidence showing 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). We will affirm a termination order unless we can say as a matter of law that no reasonable person could find the evidence established the statutory elements by the applicable evidentiary standard. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶¶ 9-10, 210 P.3d 1263, 1265-66 (App. 2009). In reviewing the order, we view the evidence in the light most favorable to sustaining the juvenile court's decision. *Jade K. v. Loraine K.*, 240 Ariz. 414, ¶ 2, 380 P.3d 111, 112 (App. 2016).

¹The 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.

TOMAS C. v. DEP'T OF CHILD SAFETY
Decision of the Court

¶3 Tomas and Liberty C. are the parents of T.C. and D.C., born in February 2003. Liberty is also the mother of S.C., an autistic, non-verbal adult. The family has had a lengthy history of domestic violence. The child welfare department in California became involved with the family in 1992, and there was an in-home dependency proceeding in California as to one of the children between 2008 and 2010. Liberty moved to Arizona with all three of her children sometime after T.C. was born in December 2012. In January 2013, the Department of Child Safety (DCS)² received reports of domestic violence and neglect of the children.

¶4 About ten months later in November 2013, DCS received a report that Tomas, who was apparently visiting the family, had grabbed then ten-year-old D.C. by the face and shoved her, and had pushed and tried to choke Liberty. He was arrested and charged with assault and contributing to the delinquency of a minor. He pled guilty to the latter charge and was placed on probation.

¶5 The incident that resulted in the children's removal from the home occurred in July 2014, by which time it appears Tomas had moved to Arizona to live with Liberty and the children. Tomas was intoxicated and argued with Liberty. She left the home at around 2:00 a.m., taking D.C. with her but leaving T.C. and S.C. with Tomas. When Liberty and D.C. returned at around 5:00 a.m., T.C. had bruises and scratches on his back. Tomas then shoved D.C. as she tried to telephone the police for help.

¶6 When police officers arrived, they observed bruising on about seventy percent of T.C.'s back and scratches that appeared to be finger nail marks. S.C. had blood under her nose and around her mouth. Tomas was intoxicated and combative. After he claimed S.C.

²At the time the reports were made, Child Protective Services was a division of the Arizona Department of Economic Security; DCS has since undertaken its responsibilities. *See* 2014 Ariz. Sess. Laws 2d Spec. Sess., ch. 1, §§ 6, 20, 55. For ease of reference, we refer to DCS throughout this decision.

TOMAS C. v. DEP'T OF CHILD SAFETY
Decision of the Court

had injured T.C., the officers took D.C., S.C., and T.C. to a hospital for observation.

¶7 Liberty told a DCS investigator Tomas had been drinking for several hours and she saw T.C.'s injuries when she returned. The investigator stated in her report that the home was unsanitary and there was a strong odor of urine in the house, dirty dishes in some of the rooms, and roaches in the rooms and the refrigerator. D.C. stated during her DCS interview that Tomas would become violent when he drank alcohol. She insisted T.C.'s back was "clear" before she and her mother had left the home. She also said both of her parents spanked her with a belt, and Tomas would "smack[] her," pull T.C.'s hair, and kick S.C. Tomas admitted to police officers and the DCS investigator that he had choked and hit Liberty in the past. He also admitted he sometimes drank beer until he passed out on the floor. He was arrested and convicted in November 2015 of child abuse after pleading guilty to that offense.

¶8 Immediately after the July 2014 incident, DCS took temporary custody of the children and filed a dependency petition alleging, among other things, that Tomas had abused T.C., Liberty had failed to protect him, and both parents were cognitively impaired such that they were unable to parent their children safely and protect them. The juvenile court adjudicated D.C. and T.C. dependent as to Liberty in October 2014 and as to Tomas in November.

¶9 Tomas apparently was released from custody in December 2014, but he did not immediately contact DCS. By May 2015, Tomas was receiving alcohol addiction treatment through pretrial services and, thereafter, DCS referred him for parenting education, domestic violence education, and individual therapy. A previous no-contact order as to T.C. in the criminal case was vacated sometime in the fall of 2015 and supervised visitation began. In October, Tomas was placed on three years' probation for the child abuse conviction. He and the rest of the family continued to receive a variety of reunification services. But in April 2016, the case manager reported to the juvenile court that neither parent had benefitted from the services sufficiently to parent the children safely and

TOMAS C. v. DEP'T OF CHILD SAFETY
Decision of the Court

appropriately, and she recommended that the court change the case plan goal of reunification to severance and adoption.

¶10 After a dependency review hearing in May 2016, the juvenile court changed the case plan to a concurrent plan of reunification and severance and adoption. DCS filed a motion to terminate both parents' rights on the grounds of neglect, mental illness or deficiency, and length of time in court-ordered care, and as to Tomas, the additional ground of abuse. The severance hearing took place over ten sessions between August 2016 and February 2017.

¶11 The juvenile court terminated the parents' rights on all grounds alleged by DCS in a thorough, twenty-five-page under-advisement ruling.³ The court reviewed the history of the case, described the services DCS had provided, and summarized the evidence presented at the severance hearing. It then entered factual findings related to each of the statutory grounds and T.C.'s best interests, concluding DCS had sustained its burden. This appeal followed.⁴

¶12 Tomas first challenges the sufficiency of the evidence to support the termination of his rights on the ground of neglect or abuse, arguing that the incident in July 2014 was isolated and alcohol-induced and occurred before DCS had filed the dependency petition. He asserts that throughout the dependency proceeding, he complied with all alcohol-treatment requirements and maintained sobriety.

¶13 Section 8-533(B)(2) provides a court may terminate a parent's rights if the parent "has neglected or wilfully abused a child. This abuse includes serious physical or emotional injury" We apply a clear and unambiguous statute such as this according to its

³Because D.C. was thirteen years old and less vulnerable than T.C., DCS withdrew her from the severance motion during the severance trial.

⁴Liberty also appealed the termination order, which we affirmed. *Liberty C. v. Dep't of Child Safety*, No. 2 CA-JV 2017-0051 (Ariz. App. Sept. 11, 2017) (mem. decision).

TOMAS C. v. DEP'T OF CHILD SAFETY
Decision of the Court

plain language, which is the best reflection of the legislature's intent. *E.R. v. Dep't of Child Safety*, 237 Ariz. 56, ¶¶ 10, 13, 15, 344 P.3d 842, 845 (App. 2015) (finding court erred in denying severance motion based on plain language of § 8-533(B)(2) in part because abuse for purposes of statute not limited to serious physical or emotional injury).

¶14 The juvenile court found “the father’s physical assault of [T.C.] was an abusive act.” Tomas does not challenge that finding and the record supports it. Instead, he attempts to minimize the abuse by characterizing it as an isolated incident and focusing on the ways in which he complied with the case plan. Relying on this court’s decision in *Jade K.*, 240 Ariz. 414, 380 P.3d 111, he argues a single incident of abuse is “insufficient to lead to the severe consequence of termination of parental rights.”

¶15 *Jade K.* is distinguishable. There, the juvenile court had terminated the father’s parental rights based on neglect, not abuse. 240 Ariz. 414, ¶5, 380 P.3d at 112. We concluded the evidence regarding a single incident of neglect was in that instance insufficient to satisfy the following statutory definition of neglect in A.R.S. § 8-201(25): a parent’s “inability or unwillingness . . . to provide [a] child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child’s health or welfare.” *Id.* ¶¶ 11-12, 21. Abuse is not the same as neglect. It is subject to its own definition in § 8-201(2).⁵ As we stated above, Tomas does not challenge the sufficiency of the evidence to establish he abused T.C., and, in any event, the records contain reasonable evidence supporting the court’s finding in that regard. The plain language of § 8-533(B)(2) and § 8-201(2) does not support Tomas’s suggestion that, as a matter of law, a single incident of abuse that occurred before T.C. was removed from his custody, which essentially eliminated the risk of repeated abuse, cannot show parental unfitness and therefore is not a sufficient basis for

⁵“Abuse” is defined, in relevant part, as “the infliction or allowing of physical injury, impairment of bodily function or disfigurement,” or “serious emotional damage.” § 8-201(2).

TOMAS C. v. DEP'T OF CHILD SAFETY
Decision of the Court

terminating a parent's rights. Tomas's reliance on *Jade K.* is unavailing.

¶16 Moreover, unlike the neglect in *Jade K.*, the July 2014 incident was not an isolated incident of abuse. Rather, the record shows the family had a lengthy history of domestic violence. And as noted above, in November 2013 Tomas grabbed D.C. by the face and pushed her and tried to choke Liberty, giving rise to charges of assault and contributing to the delinquency of a minor and a conviction for the latter. And after the July 2014 incident, D.C. had told the DCS investigator that Tomas had spanked her with a belt, "smack[ed] her," and pulled T.C.'s hair.

¶17 Finding sufficient evidence to support the juvenile court's order on the ground of abuse, we need not address Tomas's arguments relating to termination of his rights based on neglect, § 8-533(B)(2), length of time in court-ordered care, § 8-533(B)(8)(c), or mental illness or deficiency, § 8-533(B)(3). *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 3, 53 P.3d 203, 205 (App. 2002). We nevertheless additionally reject Tomas's challenge to the court's termination of his rights pursuant to § 8-533(B)(8)(c).

¶18 A court may terminate a parent's rights on this ground if it finds the child has been out of the home for fifteen months or longer pursuant to a court order, "the parent has been unable to remedy the circumstances that cause the child to" remain out of the home, and "there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future." § 8-533(B)(8)(c). The court found that T.C. had been out of the home for two-and-a-half years, during which the parents had received adequate reunification services. The court found both parents were incapable of parenting T.C. Tomas asserts the evidence does not show there is a substantial likelihood that he will not be capable of properly and safely parenting T.C. in the near future, insisting he remedied the circumstances that had resulted in T.C.'s removal.

¶19 The record contains ample evidence supporting the juvenile court's findings and its conclusion that DCS had sustained its

TOMAS C. v. DEP'T OF CHILD SAFETY
Decision of the Court

burden of proving severance was warranted based on the length of time T.C. had been in court-ordered care. That evidence included the report and testimony of Lorraine Rollins, Ph.D., who evaluated Tomas in October 2015 and concluded he was at risk to abuse a child in his care. She testified it was unlikely he would be able to “mitigate” these concerns because he continued to deny his violent behavior and domestic violence. Rollins also stated that Tomas had a moderate alcohol-use disorder, which appeared to be in remission while he was being monitored. The case manager testified she was concerned about his long-term sobriety because he denied that he needed any after-care plan or relapse prevention program.

¶20 Additionally, when DCS brought to Tomas’s attention D.C.’s sexualized behaviors, Tomas refused to recognize there was an issue of concern and would not acknowledge that contact between her and T.C. could place T.C. at risk for sexual abuse. Although Tomas participated in supervised visitation, he was never able to reach a point where the case manager felt he could have unsupervised visitation. As the case manager explained, he did not achieve any of the expectations that were outlined in the May 2016 letter given to both parents. The child and family therapist testified at the severance hearing that she did an assessment of Tomas between October 2015 and early 2016 to determine what services might assist Tomas in developing and enhancing his relationship with T.C. She stated that Tomas ultimately “disengaged in the assessment process.” In her December 2015 report, she stated that Tomas did not “appear to have an accurate understanding of the cycle of substance abuse and denie[d] the possibility of relapse,” and was not “able to discuss the effects of his substance use on his parenting or his son.” She could not recommend additional services because Tomas had disengaged in the parent-child relationship assessment and because of his limited response to suggestions made to improve his parenting skills and his “ongoing denial of the abuse and apparent limited understanding of his own limitations and substance use.”

¶21 The juvenile court was well aware of the efforts Tomas made to be able to parent T.C. and the ways in which he had complied with the case plan. Indeed, demonstrating its careful consideration of the evidence, the court noted in its ruling that neither parent was

TOMAS C. v. DEP'T OF CHILD SAFETY
Decision of the Court

“neglecting or refusing to parent,” but were simply unable to do so. Tomas is essentially asking this court to reweigh the evidence, which we will not do. *See Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207. It was for the juvenile court, not this court, “to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). We have no basis for interfering.

¶22 We find sufficient evidence in the record before us to sustain the juvenile court’s ruling on the two grounds of abuse and length of time in court-ordered care pursuant to § 8-533(B)(2) and (8)(c). Accordingly, we affirm the juvenile court’s order terminating Tomas’s parental rights to T.C.