IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

WILLIAM C.,
Appellant,

v.

VANESSA L. AND C.C.,
Appellees.

No. 2 CA-JV 2017-0212
Filed April 17, 2018

Appeal from the Superior Court in Graham County
No. S0500SV201700012
The Honorable D. Corey Sanders, Judge Pro Tempore

AFFIRMED

COUNSEL

E.M. Hale Law, Lakeside
By Elizabeth M. Hale
Counsel for Appellant

Law Office of Josi Y. Lopez P.C., Safford
By Josi Y. Lopez
Counsel for Appellee C.C.

MEMORANDUM DECISION

Judge Brearcliffe authored the decision of the Court, in which Chief Judge Eckerstrom and Presiding Judge Staring concurred.

B R E A R C L I F F E, Judge:

¶1 Appellant William C. challenges the juvenile court's order of November 21, 2017, terminating his parental rights to C.C., on the ground of chronic substance abuse. *See* A.R.S. § 8-533(B)(3). On appeal, William challenges the sufficiency of the evidence to sustain the statutory ground for severance and to establish that terminating his parental rights was in the child's best interests. 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 (2005). We will affirm an order terminating parental rights unless we must say as a matter of law that 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 (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 (App. 2008).

¶3 In April 2017, Vanessa filed a petition for termination of the parent-child relationship between William and C.C., born September 2015. She alleged abandonment and incapacity based on substance abuse. After William failed to appear at the first severance hearing, the juvenile court entered an order terminating William's parental rights, but it was later set aside. A new severance hearing was held in November 2017.

¶4 Vanessa testified at the hearing that she never received child support from William and that William had not provided gifts to C.C. or other types of support for him. She explained that William used heroin and methamphetamines, had assaulted her, and had been "in and out of jail for assault, for drugs and substance abuse." She agreed that he had engaged in "17 years of substance abuse." Vanessa's mother also testified that she had seen William "punch[] [Vanessa] in the face while holding the baby in

his arms." William's sister, although generally positive about William's role in C.C.'s life, also acknowledged his use of drugs. William acknowledged having used drugs, having been "under the influence" when visiting C.C., and having paid less than $500 toward C.C.'s care over a period of about eight months.

¶5 The juvenile court concluded that the ground of abandonment had not been proved, but found that William's use of drugs, and "violent propensity while under the influence of such drugs" made him unable to parent C.C. safely. And, due to William's "lengthy involvement" in drug use, that condition would "continue for a prolonged indeterminate period of time." On that basis, the court terminated William's parental rights.

¶6 To sever parental rights based on chronic drug abuse, the petitioning party must establish "[t]hat the parent is unable to discharge parental responsibilities because of . . . a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." § 8-533(B)(3). On appeal, William relies on favorable testimony but merely minimizes the contrary evidence cited by the juvenile court. But we do not reweigh the evidence, *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (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 (1978). As outlined above, there was substantial evidence showing William's history of drug abuse and failure "to discharge parental responsibilities." § 8-533(B)(3).

¶7 William also argues that the juvenile court abused its discretion in concluding that severance was in C.C.'s best interests. William does not address the juvenile court's finding of C.C's "adoptability" as a benefit of severance; he acknowledges that the court "found that [his] contact with his child was detrimental due to his 'domestic violence history and chronic drug use.'" But he argues that he had "only the one charge for assault" and that his drug use was "sporadic." And he points out that he has a "good relationship" with C.C. "albeit sporadic" and "there is no one who is able to fill [his parental] role." He argues that "severing his rights would be a detriment to both father and son."

¶8 "[T]here are fundamental constitutional rights involved in severance cases." *In re Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. 1, 5 (1990). And "if the constitutional rights at stake are to be adequately

protected, a determination of the child's best interest must include a finding as to how the child would benefit from a severance *or* be harmed by the continuation of the relationship." *Id.* "In a best interests inquiry however we can presume that the interests of the parent and child diverge because the court has already found the existence of one of the statutory grounds for termination by clear and convincing evidence." *Kent K.*, 210 Ariz. 279, ¶ 35. "Once a juvenile court finds that a parent is unfit, the focus shifts to the child's interests." *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, ¶ 15 (2016). "Thus, in considering best interests, the court must balance the unfit parent's 'diluted' interest 'against the independent and often adverse interests of the child in a safe and stable home life.'" *Id.*, *quoting Kent K.*, 210 Ariz. 279, ¶¶ 31, 37.

¶9 "Of foremost concern in that regard is 'protect[ing] a child's interest in stability and security.'" *Id.*, *quoting Kent K.*, 210 Ariz. 279, ¶ 34 (alteration in *Kent K.*). But, "a finding of one of the statutory grounds under section 8-533, standing alone, does not permit termination of parental rights." *In re Maricopa Cty. Juv. Action No. JS-501568*, 177 Ariz. 571, 579 (App. 1994). "Though severance grounds usually have a negative impact on the child, the existence of a ground is not itself a basis for an adverse best-interests finding—something more is required." *Alma S. v. Dep't of Child Safety*, 778 Ariz. Adv. Rep. 24, ¶ 14 (Ct. App. Nov. 14, 2017). In this case, the juvenile court cited William's drug use and "domestic violence history" as "detrimental" to C.C. and found that C.C. was "an adoptable child."

¶10 The juvenile court cited C.C.'s adoptability as a benefit. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19 (App. 2004). As noted above, William did not challenge this finding on appeal and thereby waived a claim of error; but in our discretion, we elect to address it. *See Azore, LLC v. Bassett*, 236 Ariz. 424, ¶ 7 (App. 2014) ("[W]aiver is a procedural concept that we do not rigidly employ in a mechanical fashion, and we may use our discretion in determining whether to address waived issues."). As the guardian ad litem in this case observed, Vanessa did not testify that her current significant other was in a position to adopt C.C. Rather, Vanessa merely acknowledged that she was currently in a relationship with someone she "hope[d] . . . would be a father figure to C[.C]." *See Maricopa Cty. Juv. Action No. JS-500274*, 167 Ariz. at 7 (testimony that mother might get married and future husband might wish to adopt too speculative to establish best interests); *see also Demetrius L.*, 239 Ariz. 1, ¶12 ("When . . . the child's prospective adoption is otherwise legally possible and likely, a juvenile court may find that termination of parental rights, so

as to permit adoption, is in the child's best interests."). She indicated only that her own father would be willing to adopt the child, which is legally impossible on the facts before us. *See* A.R.S. § 8-103(A) (providing joint adoption eligibility only to spouses), A.R.S. § 8-117(B) (severing relationship with former parents upon adoption); *In re Pima Cty. Juv. Adoption Action No. B-13795*, 176 Ariz. 210, 211 (App. 1993). Thus, the evidence on the record before us is insufficient to support a finding that C.C.'s adoption is both legally possible and likely, and thus it is insufficient to support the court's conclusion that severance was in C.C.'s best interests.

¶11 Though there was insufficient evidence to find adoptability as a benefit to C.C., the court also found severance to be in C.C.'s best interests because of William's drug abuse and history of domestic violence involving C.C. Vanessa testified that William had assaulted her in the past and that she was generally fearful of him "because of the way that he lives his life." She explained that he was "not in the right state of mind" when he used drugs.

¶12 As we recently noted in *Titus S. v. Department of Child Safety*, "the same evidence that proves a statutory ground [for severance] may sometimes provide a basis for a best-interests finding, such as evidence that, as a result of termination, 'the child will be freed from an abusive parent.'" No. 2 CA-JV 2017-0176, ¶ 31, 2018 WL 1704120 (Ariz. Ct. App. Apr. 9, 2018). Nothing in the statutes or case law prevents a court from considering the same evidence that supported the finding of unfitness in a best-interests inquiry. *See e.g., Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, ¶ 17 (2005) (parent's rights severed on ground of willful abuse and because abuse was likely to recur termination was in child's best interests); *In re Pima Cty. Juv. Severance Action No. S-113432*, 178 Ariz. 288, 293 (App. 1993) (father's violent, abusive behavior supported both severance and best-interests); *In re Pima Cty. Juv. Severance Action No. S-2462*, 162 Ariz. 536, 539 (App. 1989) (evidence of abuse which supported severance primary evidence supporting best interests finding).

¶13 In this case, the court found two distinct detriments to C.C. should his relationship with William continue—William's chronic drug abuse, as discussed above, and his domestic violence history. As to William's domestic violence history, the evidence showed that Vanessa sought and received an *ex parte* order of protection, which was later affirmed when William secured a hearing to contest it but then failed to appear. This order of protection, arising from an allegation of an assault in April 2017, barred William from having any contact with Vanessa or C.C.

As testified to by Vanessa's mother, while at Vanessa's home in April 2017, William had C.C. in his arms, and refused to give him back to Vanessa when the visit ended. With C.C. in his arms, William, with a closed fist, punched Vanessa in the face sending her "flying." William was also charged with and convicted of assault for the same act. Vanessa herself testified to this and other domestic violence incidents between herself and William, some of which her other children witnessed.

¶14 Therefore, the juvenile court was presented with evidence of William's chronic use of dangerous drugs, which also supported the finding of his unfitness, and evidence of William's physical assault of C.C.'s mother, which was sufficient to support an order of protection barring William from having any contact with C.C. The court's finding was that William's past violent conduct endangered C.C. There was evidence that he became violent when using dangerous drugs. The court explicitly further found that William's chronic drug use is likely to continue "for a prolonged indeterminate period of time." Inherent in all of this is that William is likely to be a detriment to C.C.'s safety and welfare for a prolonged and indeterminate period of time. "Because the juvenile court is in the best position to weigh evidence and assess witness credibility, we accept the juvenile court's findings of fact if reasonable evidence and inferences support them." *Demetrius L.*, 239 Ariz. 1, ¶ 9. And we must affirm the severance "unless it is clearly erroneous." *Id.* Though not overwhelming, the evidence was sufficient to support the conclusion that C.C.'s safety and welfare were endangered by any ongoing relationship with William.

¶15 The juvenile court made separate, independent determinations of both the ground for severance and whether or not severance would be in C.C's best interests. These findings were not clearly erroneous, they are supported by reasonable evidence, and we are bound, therefore, to uphold the court's decision. C.C.'s interest in being free of harm—his interest in a safe and stable home life—greatly outweighs William's "diluted interest" in maintaining the parental relationship given his unfitness.

¶16 Therefore, we affirm the juvenile court's order terminating William's parental rights.