IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

ARTHUR T.,
Appellant,

v.

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

No. 2 CA-JV 2020-0114
Filed March 5, 2021

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NOT FOR PUBLICATION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. JD172947
The Honorable Susan A. Kettlewell, Judge Pro Tempore

AFFIRMED

COUNSEL

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Counsel for Appellant

Mark Brnovich, Arizona Attorney General
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Counsel for Minor

MEMORANDUM DECISION

Presiding Judge Eppich authored the decision of the Court, in which Chief Judge Vásquez and Judge Brearcliffe concurred.

E P P I C H, Presiding Judge:

¶1 Arthur T. appeals from the juvenile court's October 2020 order terminating his parental rights to his son B.T., born in January 2017, based on the ground of length of time in court-ordered care.[1] *See* A.R.S. § 8-533(B)(8)(c). He argues the court erred in finding the Department of Child Safety (DCS) had made a reasonable effort to provide him with appropriate reunification services. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to affirming the juvenile court's order. *See Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, ¶ 13 (App. 2011). In January 2019, officers responded to a hotel parking lot in Marana, where they found B.T.; his parents, Arthur and Erin T.; his two half-sisters, one adult and one minor; and his adult half-sister's boyfriend in a sports utility vehicle. B.T., who was inappropriately clothed for the winter weather, was crawling around the backseat within reach of drugs and drug paraphernalia. DCS took temporary custody of B.T. after his parents were arrested.[2] DCS also filed a dependency petition, alleging B.T. was dependent due, in part, to Arthur's neglect, lack of stable housing, and substance abuse.

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[1] The juvenile court also terminated the parental rights of B.T.'s mother, Erin T. She is not a party to this appeal.

[2] Arthur later pled guilty to facilitation of aggravated taking the identity of another based on the multiple forms of identification for different people found in the vehicle. The trial court suspended the imposition of sentence and placed Arthur on two years' probation.

¶3 The following month, Arthur waived his right to a dependency trial, and the juvenile court adjudicated B.T. dependent. The court ordered a case plan of family reunification. To effectuate that plan, DCS provided the following services: team decision making meetings, rapid response assessment, professional case management, random drug testing, supervised visitation, substance abuse and relapse prevention education, parenting classes, anger management, individual therapy, and healthy relationship classes. The case plan also specified that Arthur should "engage in healthy romantic relationships with an individual who does not abuse substances or engage in criminal activity."

¶4 During the dependency review hearings over the next year, the juvenile court consistently found DCS had "made reasonable efforts to effectuate the permanent plan goal" of family reunification by offering "services such as are set forth in the various reports." The court also found Arthur's participation in the services varied from "noncompliant" and "partially compliant" to "compliant." He was hospitalized several times for mental health issues. Arthur did not request additional services or object to those provided.

¶5 In December 2019, based on a "lack of progress" by Arthur, DCS filed a motion for termination of the parent-child relationship, alleging the grounds of neglect, mental illness, and length of time in court-ordered care.[3] Arthur was again hospitalized at that time, but the juvenile court encouraged him in March 2020 to participate in "whatever [services are] available." At a May 2020 hearing, DCS reported that Arthur "had been doing well up until very recently," when he left his treatment facility, stopped participating in services, and apparently reconnected with Erin. DCS pointed out that Arthur "does well" when he "distances himself from [Erin]" but observed that he appeared "tied to that relationship." The court affirmed the case plan of severance and adoption.

¶6 After a seven-part severance trial in June, July, and September 2020, the juvenile court granted the motion for termination, finding DCS had established the ground of fifteen months in court-ordered care and termination of Arthur's parental rights was in B.T.'s best interests. This appeal followed.

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[3]DCS initially alleged the ground of six months in court-ordered care but, after delays during the severance trial, later amended its motion to reflect fifteen months in court-ordered care. *See* § 8-533(B)(8)(b), (c).

Discussion

¶7 Arthur contends the juvenile court erred in granting the motion for termination because DCS had failed to make a reasonable effort to provide him with appropriate reunification services. "[W]e will affirm a termination order that is supported by reasonable evidence." *Jordan C. v. Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, ¶ 18 (App. 2009). In conducting our review, we defer to the juvenile court, as the finder of fact, to determine witness credibility and resolve conflicts in the evidence. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002).

¶8 As a preliminary matter, because Arthur did not request additional services or object to those provided below, we may consider any such challenge waived on appeal. *See Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, ¶ 16 (App. 2014); *see also Trantor v. Fredrikson*, 179 Ariz. 299, 300 (1994) ("Because a trial court and opposing counsel should be afforded the opportunity to correct any asserted defects before error may be raised on appeal, absent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal."). However, even assuming the argument were not waived, no error occurred.[4]

¶9 The juvenile court may terminate a parent's rights if it finds by clear and convincing evidence that at least one of the statutory grounds for termination exists and by a preponderance of the 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 (2005). In addition, DCS must prove by clear and convincing evidence that it made "a diligent effort to provide appropriate reunification services." § 8-533(B)(8); *see Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 42 (App. 1999). To satisfy this requirement, DCS must provide a parent with "the time and opportunity to participate in programs designed to help her become an effective parent." *In re Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz.

[4]We decline to apply the waiver doctrine here, in part, because Arthur asserted in closing arguments at the severance trial—albeit for the first and only time below—that he "was not receiving adequate [domestic violence] services from" DCS. *See Christina G.*, 227 Ariz. 231, n.8 (application of waiver discretionary). And because we conclude no error occurred regardless of waiver, we need not address Arthur's alternate arguments that we reconsider *Shawanee*, which he maintains was "under[]cut by superseding cases," and that the court's error was "fundamental and prejudicial."

348, 353 (App. 1994); *see also Donald W. v. Dep't of Child Safety*, 247 Ariz. 9, ¶ 50 (App. 2019) (what constitutes "diligent effort will vary by case based on the family's unique circumstances"). Although DCS "is not obliged to undertake futile rehabilitative measures, it is obliged to undertake those which offer a reasonable possibility of success." *Mary Ellen C.*, 193 Ariz. 185, ¶ 1; *see also In re Pima Cnty. Severance Action No. S-2397*, 161 Ariz. 574, 577 (App. 1989) (DCS "clearly not obligated to provide services which are futile").

¶10 Arthur first contends the juvenile court's findings that DCS made a reasonable effort to provide appropriate reunification services "do[] not count" and "should be afforded no deference" because the court was "[r]eading a rote script." In particular, he challenges the court's finding at the September 2019 dependency review hearing, reasoning that "the court made that finding before DCS even stated which services had been provided."

¶11 Although case-specific findings may be preferable, we are aware of no authority—and Arthur has directed us to none—indicating that they are required in this context. *See* Ariz. R. P. Juv. Ct. 50(C), 52(D), 55(E), 65(D), 66(F). Moreover, Arthur's characterization of the September 2019 hearing is disingenuous. The juvenile court made its finding of reasonable efforts based on "the various reports" and then asked DCS whether it "wish[ed] to elaborate" on the services provided.[5] We therefore defer to the court's findings that DCS had made a reasonable effort to provide appropriate reunification services, provided they are supported by reasonable evidence. *See Jordan C.*, 223 Ariz. 86, ¶ 18; *Jesus M.*, 203 Ariz. 278, ¶ 12.

¶12 Arthur second maintains that the services provided to him "in 2019 and early 2020" were not reasonable because neither he nor the juvenile court knew "DCS was in fact failing to provide proper services." He argues that the "root" of his problems was "his need for domestic violence education and counseling," which he was not provided because his DCS case manager "had [n]ever identified the relationship between Arthur and Erin as domestic violence." We again disagree with Arthur's characterization of the record.

[5]The court employed a similar procedure at other review hearings in this case.

¶13 In March 2019, Arthur was hospitalized for depression and tested positive for methamphetamine and amphetamine. During his stay, Arthur stated that Erin was "manipulative and demeaning," which caused him "severe emotional distress," and that he wanted to divorce her "to avoid her negative impact on his life." He therefore recognized at that time—shortly after B.T. was adjudicated dependent—the effects of his relationship with Erin on his mental health. Moreover, Arthur testified at the severance trial that the "root" of his problems was his parents and Erin, "compounded together." He explained that his mother "beat [him] when [he] was a kid." And he stated that his mental illness was "all due to the loss of both of [his] parents."

¶14 Even assuming Arthur's relationship with Erin and any domestic violence he endured as a result was the "root" of his problems, the record nonetheless supports the juvenile court's finding that DCS made a reasonable effort to provide appropriate reunification services.[6] As stated above, DCS provided Arthur with team decision making meetings, rapid response assessment, professional case management, random drug testing, supervised visitation, substance abuse and relapse prevention education, parenting classes, anger management, individual therapy, and healthy relationship classes. From the beginning of the dependency, DCS also recognized the need for Arthur to identify and avoid unhealthy romantic relationships.

¶15 As Arthur points out, the DCS case manager recognized that he would have benefitted from a domestic violence program, but she explained that those programs are hard to find for a male victim. She advised Arthur to take healthy relationship classes for the time being, while she continued to look for an appropriate domestic violence program, although she was ultimately unsuccessful. *See* § 8-533(B)(8) (requiring DCS

[6]Arthur suggests the juvenile court "made no finding as to whether DCS made reasonable efforts toward reunification" in its October 2020 order. But the court noted that DCS needed to prove it "made diligent efforts to provide the parents with appropriate reunification services." The court then summarized the services in this case and found they were "geared toward assisting the parents with reunifying with [B.T.]" This language is most reasonably interpreted as a finding that DCS made reasonable efforts. *See Logan B. v. Dep't of Child Safety*, 244 Ariz. 532, n.6 (App. 2018) (appellate court presumes juvenile court made every finding necessary to support termination order, provided implicit finding is supported by reasonable evidence).

to make "diligent," not perfect, effort). Notably, as the case manager pointed out, Arthur had previously attended domestic violence classes as part of a diversion program for criminal charges. Yet, he continued his relationship with Erin afterward. *See Mary Ellen C.*, 193 Ariz. 185, ¶ 1 (DCS need only provide services with reasonable chance of success). Arthur also failed to consistently participate in other services, including individual therapy and a psychological evaluation, that may have helped address issues stemming from Erin's domestic violence. *See Maricopa Cnty. No. JS-501904*, 180 Ariz. at 353 (DCS "not required to provide every conceivable service or to ensure that a parent participates in each service it offers").

¶16 Moreover, Arthur admitted at the severance trial that he recognized in early 2020 that his relationship was Erin was "domestically violent" and "unhealthy." But he nonetheless continued to communicate with her. For example, in June 2020, during the trial, while he was in a drug rehabilitation facility, Arthur asked Erin to bring him cigarettes and clothing. And the case manager testified in September 2020 that Arthur seemed to be having "pretty frequent" contact with her. Reasonable evidence therefore supports the juvenile court's finding. *See Jordan C.*, 223 Ariz. 86, ¶ 18.

Disposition

¶17 For the foregoing reasons, we affirm the juvenile court's order terminating Arthur's parental rights to B.T.