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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ROBERT S., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and WAYLAND S. and MICHAEL S., Appellees.	2 CA-JV 2010-0063 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100JD200700135

Honorable Joseph R. Georgini, Judge

AFFIRMED

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K E L L Y, Judge.

¶1 Robert S. appeals from the juvenile court's May 2010 order terminating his parental rights to six-year-old Wayland S. and four-year-old Michael S. on time-in-care grounds. *See* A.R.S. § 8-533(B)(8)(a),(c). Robert argues the evidence was insufficient to establish that the Arizona Department of Economic Security (ADES) had made a diligent effort to provide him with appropriate reunification services, as required by § 8-533(B)(8). He also maintains the court erred in finding he had willfully refused, substantially neglected, or been unable to remedy the circumstances that caused the children to be in out-of-home care because, he alleges, such findings were based on his refusal to participate in services that required him to admit to the commission of a crime, in violation of his Fifth Amendment privilege against compulsory self-incrimination.[1]

¶2 We view the evidence and reasonable inferences to be drawn therefrom in the light most favorable to sustaining the juvenile court's ruling, 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). That is, 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

[1]Although Robert identifies other findings and conclusions by the juvenile court that he "dispute[s] in this appeal," including the court's finding that termination is in the children's best interests, he develops no argument as to why the court erred; consequently, we decline to review these unsupported assertions. *See* Ariz. R. Civ. App. P. 13(a)(6) (argument in opening brief "shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on"); Ariz. R. P. Juv. Ct. 106(A) (adopting Rule 13, Ariz. R. Civ. App. P., for juvenile court appeals); *Manuel M. v. Ariz. Dep't of Econ. Sec*., 218 Ariz. 205, n.8, 181 P.3d 1126, 1131 n.8 (App. 2008) (declining to address argument not "meaningfully develop[ed]" in opening brief).

proof. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). But we review constitutional issues de novo. *In re Andrew C.*, 215 Ariz. 366, ¶ 6, 160 P.3d 687, 688 (App. 2007).

¶3 The evidence establishes the following. In August 2007, after learning Robert's then eight-year-old stepdaughter Selena had told police Robert had sexually abused her and other children, ADES filed a petition alleging Wayland, Michael, and Selena were dependent children. In September, the juvenile court adjudicated Wayland and Michael dependent as to Robert and all three children dependent as to their mother, and Robert's wife, Esther M.[2] The couple had separated and the children remained in Esther's physical custody until November 2007, when they were placed in foster care.

¶4 The juvenile court initially approved a case plan goal of reunification. After conducting an evaluation, psychologist Carlos Vega recommended "that Robert be referred for individual psychotherapy with at least a master's-level clinician familiar with the treatment of personality disorders, substance abuse disorders, and sexual disorders," that visits with his sons be supervised by a therapist, and that "[f]urther reunification efforts . . . be made contingent on progress (or lack thereof) . . . [during] Robert's participation in the treatment process." According to Child Protective Services (CPS) case manager Lee Eastman, Vega also recommended that Robert undergo a psychosexual evaluation. Eastman testified that both Vega and psychologist Steven Gray, who conducted Robert's subsequent psychophysiological evaluation, recommended that

[2]Esther's parental rights to Selena, Wayland, and Michael also have been terminated. Neither Esther nor Selena is a party to this appeal.

Robert participate in a sex offender treatment program. Eastman referred Robert to an agency that offered such treatment as well as other required components of Robert's case plan, including family therapy and services to address anger management and domestic violence. Because Robert had been accused of child sexual abuse, Eastman explained, several agencies had declined to accept Robert as a client as a matter of risk management, and the agency that had agreed to provide services would do so "under the assumption" that he was a perpetrator, and only if an assessment of and services addressing Robert's sexuality were "incorporated into his treatment plan, because the allegations were there."

¶5 These services were delayed because Robert initially had refused to participate in the polygraph portion of the psychophysiological evaluation, and the service provider had insisted that test was necessary for a full assessment of Robert's treatment needs. Robert eventually submitted to polygraph testing in August 2008 but, during the agency intake process that followed, he refused to acknowledge that he would be provided services "under the assumption" that he was a sex offender. At Robert's request, Eastman arranged for a meeting with Robert, his attorney, and a representative from the service provider, but Robert told her he had changed his mind and did not want to discuss the services CPS had arranged. He did not participate in any of the individual or family counseling services CPS had offered.

¶6 In finding that ADES had made a diligent effort to provide appropriate reunification services to Robert, the juvenile court relied on evidence that he had been offered psychological and psychophysiological evaluations; random drug testing and substance abuse assessment; individual and family counseling; and domestic violence,

anger management, and sex offender treatment services. The court further found Robert had "substantially neglected or willfully refused to remedy the circumstances which cause the children to be in out-of-home placement"; had failed to address the issues identified by Vega and Grey as obstacles to effective parenting; and had "failed to participate in good faith" in the services offered, which had been exhausted. In addition, the court found there was a substantial likelihood that Robert would be unable to parent effectively in the near future, that further attempts to reunify Robert and his sons would be futile, and that termination of his parental rights was in the children's best interests.

¶7 On appeal, Robert maintains the juvenile court erred in finding he had willfully refused or failed to remedy the circumstances causing his sons to remain in an out-of-home placement because his refusal to participate in the services was grounded in his Fifth Amendment privilege against self-incrimination. Citing *Minh T. v. Arizona Department of Economic Security*, 202 Ariz. 76, ¶¶ 13-16, 41 P.3d 614, 617-18 (App. 2001), Robert contends, "Services that require a parent to admit to a crime, . . . as a condition of participation, cannot be considered to be appropriate [reunification] services." Robert has not cited, nor have we found, any evidence that this constitutional argument was squarely raised and ruled upon below. Generally, issues not raised in the juvenile court may not be asserted on appeal. *See Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 21, 153 P.3d 1074, 1081 (App. 2007).

¶8 Moreover, as Robert tacitly concedes, there was evidence at the termination hearing that the service provider had not required Robert to admit he had sexually abused a child, but only to acknowledge services would be provided "under the assumption" that

he was a sex offender, based on Selena's allegations.[3] In *Minh T.*, the court noted the "distinction between a treatment order that requires parents to admit criminal misconduct and one that merely orders participation in family reunification services," and held the latter did not compel self-incrimination in violation of the Fifth Amendment. *Id.* ¶ 15. As another court has explained,

> [T]here is a very fine, although very important, distinction between terminating parental rights based specifically upon a refusal to waive protections against self-incrimination and terminating parental rights based upon a parent's failure to comply with an order to obtain meaningful therapy or rehabilitation, perhaps in part because a parent's failure to acknowledge past wrongdoing inhibits meaningful therapy. The latter is constitutionally permissible; the former is not.

In re Clifford M., 577 N.W.2d 547, 554 (Neb. Ct. App. 1998), *see also In re A.W.*, 896 N.E.2d 316, 324-26 (Ill. 2008) (finding of parental unfitness based on father's failure to complete sex offender treatment did not violate Fifth Amendment). Viewing the facts in the light most favorable to affirming the juvenile court's ruling, *see Jordan C.*, 223 Ariz. 86, ¶ 18, 219 P.3d at 303, we conclude requiring Robert to participate in sex offender treatment "under the assumption" that he was a sex offender did not implicate the Fifth Amendment.

¶9 Nor are we persuaded by Robert's argument that the sex offender treatment CPS offered was not an appropriate reunification service because it had not been

[3]In contrast, Robert testified that the agency had refused to provide services because he would not admit he was a sex offender. But the juvenile court "is in the best position 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 do not reweigh the evidence. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 927 (App. 2005).

expressly recommended in reports prepared by Vega and Grey and because Robert had denied Selena's allegations. This argument ignores Eastman's testimony that she had spoken with Vega and Grey after receiving their evaluations, and both had recommended that CPS refer Robert to a sex offender treatment program. And Robert's related assertion, that CPS could have arranged alternative treatment with a provider who served only adults—and who could thereby avoid potential liability to child clients—ignores the case plan components of family therapy and therapeutic visitation, tasks that necessarily required the participation of his own children.

¶10 We conclude that reasonable evidence supports the juvenile court's factual findings and that Robert's constitutional claim, if not waived, is without merit. Accordingly, we affirm the court's order terminating Robert's parental rights.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge