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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

DON D., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and BRANDON P.-D., Appellees.	2 CA-JV 2010-0046 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J12507300

Honorable Joan L. Wagener, Judge Pro Tempore

AFFIRMED

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H O W A R D, Chief Judge.

¶1 Don D. challenges the juvenile court's order appointing a permanent guardian for his son, Brandon P.-D., born in 1993.[1] Don contends the Arizona Department of Economic Security (ADES) did not make reasonable efforts to reunify the family and there was insufficient evidence that further efforts would have been unproductive. *See* A.R.S. § 8-871(A)(3). For the reasons set forth below, we affirm.

¶2 The party moving for the appointment of a permanent guardian "has the burden of proof by clear and convincing evidence." A.R.S. § 8-872(F). On review, we will affirm the juvenile court's order "'unless we must say as a matter of law that no one could reasonably find the evidence to be clear and convincing.'" *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 7, 210 P.3d 1263, 1265 (App. 2009), *quoting Murillo v. Hernandez*, 79 Ariz. 1, 9, 281 P.2d 786, 791 (1955); *see also Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997). Section 8-871(A)(3), permits the juvenile court to establish a permanent guardianship for a child in ADES's custody if, inter alia, the guardianship is in the child's best interests and:

> [ADES] has made reasonable efforts to reunite the parent and child and further efforts would be unproductive. The court may waive this requirement if it finds that reunification efforts are not required by law or if reunification of the parent and child is not in the child's best interests because the parent is unwilling or unable to properly care for the child.

¶3 Viewed in the light most favorable to sustaining the juvenile court's ruling, *see Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 928 (App. 2005), the evidence established that Don had cared for fourteen-year-old Brandon from the time he was an infant until Don was arrested in 2008. At that time, Don

[1]Brandon's mother, who has been unable to care for him since he was an infant, is not a party to this appeal.

consented to Brandon's adult sister, Carrie, becoming Brandon's temporary guardian. Upon his release from jail later that year, Don revoked the temporary guardianship, but did not resume caring for Brandon, physically or financially. In March 2009, Carrie filed a dependency petition alleging that Brandon was a dependent child. Carrie reported to Child Protective Services (CPS) that Don's home had been without electricity for a few months, Don was using crack cocaine, and Don had encouraged Brandon to make telephone calls to help Don obtain illegal drugs. During CPS's ensuing investigation, Brandon reported he had observed "crack pipes" in Don's bedroom and that Don had used crack cocaine. Brandon also reported that his grades had improved since he had been living with Carrie, and told CPS, "[H]ands down, I want to live with Carrie."

¶4 In April 2009, the juvenile court ordered ADES be substituted as the petitioner in the dependency matter. At the initial dependency and temporary custody hearing, held that same month, Don's attorney told the court "[Don] does not want to . . . participate in services." In May 2009, ADES filed a petition alleging Brandon was a dependent child. At a status hearing later that month, which Don failed to attend, the juvenile court adjudicated Brandon dependent as to Don, and also relieved ADES of any further responsibility in providing reunification services to the parents; Don did not challenge that order. At the September 2009 dependency review hearing, the court changed the case plan goal to permanent guardianship with Carrie, noting that Brandon and Carrie wanted that arrangement. At the court's direction, ADES filed a motion for appointment of Carrie as Brandon's permanent guardian.

¶5 A contested guardianship hearing took place in December 2009 and February 2010. At the hearing, Don testified that although he would like Brandon to live with him, he did not "necessarily want to fight Brandon's wishes" to live with Carrie

because he wanted Brandon to be happy. CPS case investigator Catherine Pestonjee testified that when she had attempted to offer reunification services to Don in April 2009, "he cut [her] off and walked away from [her]," and he did not call CPS to request services at a later date. Don acknowledged this and testified he had refused to participate in services CPS initially had offered to him because he was "so angry at the time." CPS case manager Diane McGovern testified she believed Brandon wanted to live with Carrie and it was in his best interests to do so because it provided him with a safe and stable environment. Taking the matter under advisement, the juvenile court subsequently granted ADES's motion. In its minute entry order, the court found the statutory criteria for establishing a permanent guardianship had been proven by clear and convincing evidence and appointed Carrie as Brandon's permanent guardian in April 2010. As directed, ADES prepared and the court signed formal findings of fact and an order appointing a permanent guardian.

¶6 On appeal, Don contends the juvenile court abused its discretion by establishing a permanent guardianship for Brandon, arguing the evidence showed ADES had made only minimal efforts to provide him with reunification services. He also asserts ADES failed to establish further reunification efforts would have been unproductive. Based on the court's ultimate finding that it was not in Brandon's best interests to provide reunification services because Don was unable to care for him, together with the court's earlier ruling during the dependency that ADES was not required to provide further reunification services, we infer the court waived the requirement that reunification services be provided, as permitted by § 8-871(A)(3). Moreover, we interpret Don's assertions on appeal as a request that we reweigh the evidence, something this court does not do. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*,

203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002) (we defer to juvenile court to determine witness credibility, evaluate evidence, and resolve conflicts). In fact, in its ruling appointing Carrie as Brandon's permanent guardian, the court expressly noted it had considered "the demeanor of witnesses as they testified." Our function is only to ensure that the record supports the lower court's findings. *See Lashonda M.*, 210 Ariz. 77, ¶ 13, 107 P.3d at 927 (appellate court does not reweigh evidence but determines only if judgment supported by substantial evidence). Having reviewed the record, we are satisfied it contains ample evidence to support the juvenile court's factual findings.

¶7 No purpose would be served by restating the juvenile court's ruling in its entirety. Rather, because there is reasonable evidence to support the court's detailed findings of fact and because we see no error of law in its order, we adopt it. *See Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08. Don has not sustained his burden of establishing the court erred when it appointed Carrie as permanent guardian of Brandon. We therefore affirm its order.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

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