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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

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| ARTHUR J.,<br><br>Appellant,<br><br>v.<br><br>ARIZONA DEPARTMENT OF ECONOMIC SECURITY, ELIJAH S., and ANAEJAH J.,<br><br>Appellees. | 2 CA-JV 2010-0075<br>DEPARTMENT A<br><br>MEMORANDUM DECISION<br>Not for Publication<br>Rule 28, Rules of Civil Appellate Procedure |

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J18816300

Honorable Leslie Miller, Judge

AFFIRMED

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Sarah Michèle Martin — Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Pennie J. Wamboldt — Prescott
Attorneys for Appellee Arizona Department of Economic Security

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B R A M M E R, Presiding Judge.

**¶1** Appellant Arthur J. appeals the juvenile court's July 2010 order terminating his parental rights to his son Elijah, born in 1994, and daughter Anaejah, born in 2008, on the grounds he had neglected them, *see* § 8-533(B)(2), and had failed to remedy the circumstances that had caused them to remain in court-ordered, out-of-home care for more than fifteen months, *see* § 8-533(B)(8)(c). On appeal, Arthur argues the evidence was insufficient to sustain either of those statutory grounds for severance or to establish that terminating his parental rights was in the children's best interests.

**¶2** To terminate parental rights, a juvenile court must find the existence of at least one of the statutory grounds for termination enumerated in § 8-533(B) and "shall also consider the best interests of the child." *Id.* Although statutory grounds for termination must be proven by clear and convincing evidence, only a preponderance of the evidence is required to establish that severance will serve the child's best interests. *See* 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 an order terminating parental rights unless we can say as a matter of law no reasonable person could find the essential elements proven by the applicable evidentiary standard. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶¶ 9-10, 210 P.3d 1263, 1265-66 (App. 2009). We view the evidence in the light most favorable to upholding the court's order. *Id.* ¶ 10.

**¶3** In a lengthy, under-advisement ruling issued after a contested termination hearing, the juvenile court detailed Arthur's "failing to protect the children from their mother's substantial substance abuse," despite multiple interventions by Child Protective

Service (CPS) agencies in Arizona and Kansas and the previous termination of his parental rights to another of the couple's children.[1] The court acknowledged Arthur had made strides in demonstrating appropriate behavior with the children during supervised visitation, but it also found "he continues to minimize his own behavior and fails to recognize his conduct that brought the children into CPS care." The court noted the testimony of Cedar Stegnar, who had provided individual counseling for Arthur and opined he had made limited progress due to his inconsistent participation.[2] As the court summarized Stegnar's testimony, Arthur had reached only the second of five stages of therapeutic progress and "had not yet learned to apply the skills learned in counseling to his personal life." Based on this and other evidence, including Arthur's "defensive and deceptive" responses to CPS supervision, the court found Arthur lacked sufficient understanding of "the issues that led to out of home care" and therefore would be unable to parent his children effectively "in the reasonably foreseeable future." In finding termination to be in the children's best interests, the court cited evidence that the children "are well settled in a potentially adoptive home that is responsive to their needs."

[1]In September 2008, the children's mother, Catina S., acknowledged she had been under the influence of alcohol or drugs when she dropped three-day-old Anaejah in a department store, causing the child to suffer a skull fracture, a subdural hematoma, and conjunctival hemorrhages. ADES assumed temporary custody after discovering both parents had given false addresses to the police and previously had been subject to dependency and domestic violence proceedings in Kansas. The children were adjudicated dependent as to Arthur in October 2008.

[2]Stegnar testified Arthur had missed eighteen of the thirty-six scheduled sessions.

**¶4** Although his argument is not entirely clear, Arthur appears to maintain the juvenile court's finding that he had failed to protect the children is insufficient to justify termination because he "is no longer involved with the children's mother." But termination pursuant to § 8-533(B)(2) requires only that "the parent has neglected or willfully abused a child."[3] Arthur cites no authority suggesting a court also must find an ongoing risk of neglect before terminating a parent's rights on this ground, and we are aware of none. Moreover, even if such a finding were required, reasonable evidence would support it. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 17, 83 P.3d 43, 50 (App. 2004) (presumption juvenile court made every finding necessary to support judgment, if supported by reasonable evidence). As the court noted in its order, after the children's mother, Catina, left Arizona in July 2009, Arthur became involved with a woman who "had a significant CPS history and an open CPS case involving substance abuse and mental health issues" and allowed her to live in his home. For several months, Arthur failed to tell CPS about these living arrangements, even though they potentially could have placed his children at risk. Indeed, CPS case manager Andria Ayon opined the children continued to be at risk of neglect if returned to Arthur's care. We therefore cannot agree with Arthur that there was "no evidence" he would be unable to protect his children.

[3]As with each of the enumerated grounds for termination, "the court shall also consider the best interests of the child" before terminating parental rights. § 8-533(B).

**¶5** Similarly, in challenging the juvenile court's finding he had been unable to remedy the circumstances causing his children to remain in out-of-home care for more than fifteen months, Arthur relies on favorable testimony but does not address the contrary evidence cited by the court. But we do not reweigh the evidence, *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002), and will defer to the court's resolution of conflicting inferences if supported by the record, *In re Pima County Adoption of B-6355 & H-533*, 118 Ariz. 111, 115, 575 P.2d 310, 314 (1978).

**¶6** We also are unpersuaded by Arthur's arguments that the juvenile court erred in finding ADES had made a diligent effort to provide appropriate reunification services, as statutorily required for termination pursuant to § 8-533(B)(8), and that he was denied substantive due process because ADES failed to make a good faith effort to preserve his family before seeking to terminate his parental rights. We agree with ADES that these claims represent the same challenge to the sufficiency of its efforts to provide reunification services. *Compare* § 8-533(B)(8) (requiring "diligent effort to provide appropriate reunification services" before termination based on time in care) *with* A.R.S. § 8-846 (requiring "reasonable efforts to provide services" if child removed from home; reunification services not required if court finds specified aggravating circumstances by clear and convincing evidence).[4] We therefore address them together.

[4]We assume, without deciding, that § 8-846 required ADES to provide appropriate reunification services to Arthur, because the court did not explicitly make the findings

**¶7** According to Arthur, his limited progress in therapy "was due to [ADES]'s failure to provide [him], a forty-two year old African American male, an appropriate therapist." This contention was fully addressed in the juvenile court's order. The court noted Arthur testified "that he was not comfortable with his counselor, a white female, and would have made further progress with a black male counselor"; but, also, prior to the termination hearing, he had "never indicated a lack of ability to relate to the counselor or requested a change of counselor." The court was in the best position to weigh Arthur's testimony against Stagner's opinion that Arthur's lack of attendance impeded his progress, not the counselor's race or gender, and we will not disturb the court's finding that ADES made sufficient efforts to provide appropriate reunification services.

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required to relieve ADES of such an obligation during these proceedings. *But cf. Toni W. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 61, ¶¶ 10-12, 993 P.2d 462, 465-66 (App. 1999) (finding, under statutes then in force, no statutory duty to provide reunification services to parent alleged to have abandoned child). Accordingly, we need not address Arthur's constitutional argument. Arthur's suggestion that ADES was required to use its "best efforts" to reunify the family is without legal support. *See In re Yuma County Juv. Action Nos. J-88-201, J-88-202, J-88-203*, 172 Ariz. 50, 54, 833 P.2d 721, 725 (App. 1992) (opining, "[A] 'best efforts' standard would be impossible to define and equally impossible to fulfill").

**¶8** Finally, Arthur argues there was insufficient evidence for the juvenile court to conclude termination of his parental rights was in his children's best interests, citing his steady employment and housing, his completion of a parenting and resources education program, and reports he had behaved appropriately with the children during supervised visitation. To establish that terminating Arthur's parental rights was in the children's best interests, ADES was required to show the children "would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship." *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d 943, 945 (App. 2004). Here, the juvenile court found "the children are well settled in a potentially adoptive home that is responsive to their needs," and the evidence established that Anaejah had been in that same placement "for all but 17 days of her life." The record amply supports the court's finding regarding best interests, as detailed in the termination order. *See In re Maricopa County Juv. Action No. JS-500274*, 167 Ariz. 1, 6, 804 P.2d 730, 735 (1990) (to establish best interests, "petitioner might prove that there is a current adoptive plan for the child *or* that the child will be freed from an abusive parent").

**¶9** In its termination order, the juvenile court clearly identified the factual basis for its ruling and correctly applied the law, and its findings are well-supported by the record. We need not repeat that analysis here; rather we adopt the court's findings of fact and approve its conclusions of law. *See Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at

207-08, *citing State v. Whipple*, 177 Ariz. 272, 866 P.2d 1358 (App. 1994). Accordingly, we affirm the order terminating Arthur's parental rights to Elijah and Anaejah.

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

CONCURRING:

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

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