

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

KYLE S.,
Appellant,

v.

ARIZONA DEPARTMENT OF ECONOMIC SECURITY AND A.G.,
Appellees.

No. 2 CA-JV 2013-0080
Filed December 19, 2013

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NOT FOR PUBLICATION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); Ariz. R. Civ. App. P. 28(c).

Appeal from the Superior Court in Pima County
No. J196545
The Honorable Jennifer Langford, Judge Pro Tempore

AFFIRMED

COUNSEL

Sarah Michèle Martin
Counsel for Appellant

Thomas C. Horne, Arizona Attorney General
By Erika Z. Alfred, Assistant Attorney General, Tucson
Counsel for Appellee Arizona Department of Economic Security

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Chief Judge Howard and Presiding Judge Vásquez concurred.

M I L L E R, Judge:

¶1 Appellant Kyle S. challenges the juvenile court’s order of July 15, 2013, terminating his parental rights to his daughter A.G. on the grounds that he was “unable to discharge parental responsibilities because of . . . mental deficiency” and that A.G. had been in court-ordered, out-of-home placement for more than fifteen months. *See* A.R.S. § 8-533(B)(3), (8). On appeal, Kyle challenges the sufficiency of the evidence to sustain either of those statutory grounds for severance or to establish that terminating his parental rights was in A.G.’s best interest.

¶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, 110 P.3d 1013, 1022 (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, ¶¶ 6, 10, 210 P.3d 1263, 1265, 1266 (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, 181 P.3d 1126, 1128 (App. 2008).

¶3 Child Protective Services (CPS), a division of the Arizona Department of Economic Services (ADES), first became involved with A.G. in February 2010, shortly after her birth, because of concerns about her mother’s “cognitive ability to provide

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appropriate care for” her. CPS provided services to the mother, and Kyle had no contact with A.G. at that time.

¶4 In November 2010, CPS received a report that A.G. “was being neglected by her mother” and was suffering from “failure to thrive.” A.G. was removed from her mother’s care, and Kyle had his first visit with her in January 2011. A.G. was subsequently adjudicated dependent as to Kyle after a contested dependency hearing in March 2011.

¶5 In December 2011, A.G. was placed with her mother, and both parents received services throughout the dependency. Specifically, CPS provided Kyle with supervised visitation, parent-child therapy, parenting classes, parent aide services, and substance abuse testing. He was also eligible for anger-management, individual therapy, and psychiatric services.

¶6 In July 2012, CPS received a report that A.G. had a bite mark, and each parent indicated it had happened while she was in the other’s care. A.G. was again placed in foster care.¹ In January 2013, ADES filed a motion to terminate both parents’ parental rights. As grounds for severance as to Kyle, it alleged that Kyle was “unable to discharge his parental responsibilities because of a mental deficiency” and that A.G. had been in out-of-home placement for fifteen months or longer and Kyle had been unable to remedy the circumstance that led to her placement. After a contested severance hearing, the juvenile court granted the motion

¹To the extent Kyle’s arguments present a challenge to the change of placement in which A.G. was removed from her mother’s home in July 2012, we lack jurisdiction to consider such a challenge. The juvenile court’s order changing physical custody of A.G. from her mother to ADES, issued on July 16, 2012, was a final, appealable order. *See Antonio P. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 402, ¶ 7, 187 P.3d 1115, 1117 (App. 2008). As such, an appeal from that order is now untimely. *See Ariz. R. P. Juv. Ct. 104(A)* (notice of appeal must be filed within fifteen days of final order); *Francisco F. v. Ariz. Dep’t of Econ. Sec.*, 228 Ariz. 379, ¶ 8, 266 P.3d 1075, 1077-78 (App. 2011).

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and ordered Kyle's parental rights to A.G. terminated. This appeal followed.

¶7 Kyle first argues the juvenile court "erred in finding grounds for termination of [his] parental rights pursuant to A.R.S. § 8-533(B)(3)." That ground for termination of parental rights required ADES to establish "[t]hat the parent is unable to discharge parental responsibilities because of . . . mental deficiency" and that "there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." § 8-533(B)(3). Evidence presented at the contested severance hearing established Kyle had been diagnosed with attention deficit hyperactivity disorder and mild mental retardation, had exhibited problems with anger management and destructiveness, and was unable to independently parent a child. Indeed, a psychologist who evaluated Kyle testified his problems would "hinder his ability to parent" in the future. And one of the family's case managers testified Kyle had never reached the point of being able to have unsupervised visits with A.G., something she testified she did not think "could change with services."

¶8 On appeal, Kyle's argument on this point focuses mainly on the propriety of A.G.'s removal from her mother's care after she received a bite mark. He does not address the evidence of his own mental deficiencies or his continued inability to properly parent A.G. At most, his argument amounts to a request to reweigh the evidence presented, something we will not do. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002).

¶9 Because we affirm the juvenile court's ruling on the above ground, we need not address Kyle's argument that the court "erred in finding grounds for termination of [his] parental rights" based on the length of time A.G. was in court-ordered, out-of-home placement. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 14, 83 P.3d 43, 49 (App. 2004). But, in any event, his argument on that point does not address the evidence of his failure to remedy the circumstances that led to A.G.'s being in care—specifically in his case the fact that he was unable to independently parent her—or the

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evidence, noted above, that his capability to parent is unlikely to improve.

¶10 Finally, Kyle argues the juvenile court wrongly concluded that termination of his parental rights was in A.G.'s best interests. But, one of the family's case managers agreed A.G. is "an adoptable child," her "current placement is willing to adopt" her, and she is "comfortable and familiar with" her placement, whom she has known her whole life. Caseworkers also testified they believed termination of Kyle's parental rights was in A.G.'s best interest and A.G. would benefit from permanency in her life. This was sufficient evidence from which the court could properly conclude severance was in A.G.'s best interest. *See Mary Lou C.*, 207 Ariz. 43, ¶ 19, 83 P.3d at 50 (evidence child adoptable and current placement meeting child's needs sufficient to find termination in child's best interest).

¶11 For the reasons stated, we affirm the juvenile court's order terminating Kyle's parental rights to A.G.