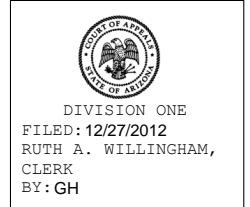


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

AMANDA C.,) 1 CA-JV 12-0134
)
Appellant,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Ariz.R.P.Juv.Ct.
SECURITY, LEA J.,) 103(G); ARCAP 28)
)
Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD21233

The Honorable Margaret R. Mahoney, Judge

AFFIRMED

Denise L. Carroll
Attorney for Appellant

Scottsdale

Thomas C. Horne, Attorney General
by Jamie R. Heller, Assistant Attorney General
Attorneys for Appellees

Phoenix

H O W E, Judge

¶1 Amanda C. ("Mother") appeals the finding of dependency of her child. Finding no error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Mother is the biological parent of L.J.¹ Child Protective Services ("CPS"), a division of the Arizona Department of Economic Security ("ADES"), received a report stating that Mother and her husband, L.J.'s step-father, lived with their children in a "hoarding home." CPS investigated and observed a filthy home filled with trash, rotting food, flies, multiple cats, and cat feces. The home smelled strongly of feces, urine, and rotting food and the bathrooms were inoperable. CPS removed L.J. and her step-siblings² from the home on October 12, 2011. Mother claimed that she has not been well enough to care for the home since 2010.

¶3 After the home had been cleaned and determined to be in livable condition, CPS returned the children on October 17. That day, both parents agreed to participate in family preservation services, but when CPS caseworkers attempted to meet with the family and assess the safety of the children and the condition of the home on December 22 and 23, they were denied access to the home. While at the home, a CPS caseworker alleged that Mother appeared intoxicated at 10:15 a.m. A

¹ Father is not a party to this appeal, and L.J. has been found dependent as to Father.

² The step-siblings are subject to another appeal currently at issue.

caseworker was able to observe through the window, cat feces, and trash on the floor of the home and a foul odor was emanating from the home. Accordingly, CPS became concerned that the children were in danger and that the home had returned to its previous unlivable condition.

¶4 Consequently, CPS filed a dependency petition alleging that L.J. was a dependent child. CPS specifically alleged that Mother had neglected L.J. due to substance abuse and that Mother provided an unfit home that presented health hazards. CPS removed L.J. again from the home on January 18, 2012. The Preliminary Protective Hearing Report to the juvenile court stated that, for reunification to occur, the parents needed to demonstrate the ability to keep a clean home, and Mother must participate in substance abuse testing.

¶5 On January 26, 2012, Glendale police arrested Mother for failure to return rental property, and during a search incident to her arrest, found a baggie of cocaine in her back pocket. Approximately one month later, Mother was arrested and police found that Mother possessed morphine pills without a prescription. That same day, Mother contested the dependency allegations, and the court scheduled the dependency adjudication. All parties agreed that they needed two half-days for trial.

¶6 On the first day of trial the court stated, "[T]wo half days is what I was told was needed. So, just from the outset, beware that's what everybody has said they needed to present evidence. And that's as much time as I have; we are completely booked." On the first day of trial, Mother's attorney told the court that she had two witnesses to present. The parties then discussed ADES's late disclosure of exhibits and step-father testified for the remainder of the day.

¶7 On the second day of trial, ADES offered in evidence a police report regarding a domestic violence dispute between Mother and her husband that alleged they appeared intoxicated. Mother's attorney objected because the report was not timely disclosed. The court received it for the limited purpose of demonstrating Mother's prior inconsistent statements. The court also admitted another police report of a similar event for the same purpose.

¶8 Mother then testified. During her testimony, the court stated "[Y]ou need to stay aware of the time, it is 4:12 right now." At 4:30, the court stated to Mother's attorney that the court was already past the time trial was due to end and that testimony should be limited to new facts. After Mother's testimony, the court heard closing arguments and notified the parties that it was taking the matter under advisement. At this time, Mother's attorney stated to the court that ADES took the

majority of time, and that she had witnesses who were prepared to testify for Mother but were not able to do so because of the time. The court responded that counsel knew that a certain amount of time was allotted for trial and that as trial proceeded, if counsel believed that trial was not progressing the way that she expected for Mother's witnesses to testify, that she needed to "speak up in time for the Court to deal with it" and that doing so now was too late.

¶9 The court found by a preponderance of the evidence that dependency had been established. The evidence showed that Mother had appeared under the influence on more than one occasion and has refused to participate in urinalysis testing, the home was in a state of extreme clutter, filth and strewn with feces from cats who had free run of the home. The court noted that while the parents argued that the home was clean, they had not allowed CPS to inspect the home. The court further stated that Mother was not a credible witness because she intentionally lied to CPS about the children's whereabouts.

¶10 Mother timely appeals. This Court has jurisdiction under Arizona Revised Statutes ("A.R.S.") sections 8-235 and 12-120.21 (Westlaw 2012).³

³ We cite to the current version of the applicable statutes because no revisions material to this decision have since occurred.

DISCUSSION

¶11 Mother appeals the finding of L.J.'s dependency. Specifically, Mother argues that (1) she was denied due process by the court's refusal to give her additional time to present two witnesses; (2) the court erroneously allowed ADES to proceed to trial without properly disclosing the two police reports; and (3) ADES failed to prove by a preponderance of the evidence that L.J. was dependent.

I. Failure to Present Witnesses

¶12 Mother claims that the court denied her due process because she was not allowed to call witnesses after the parties ran out of the time allotted for trial. Generally, we review the trial court's decision to impose time limits on trial for an abuse of discretion. *Brown v. U.S. Fidelity and Guar. Co.*, 194 Ariz. 85, 91, ¶ 30, 977 P.2d 807, 813 (App. 1998). Control of the courtroom and trial proceedings lies within the discretion of the trial judge. *Hales v. Pittman*, 118 Ariz. 305, 313, 576 P.2d 493, 501 (1978). Here, the trial court made clear to the parties that it was adhering to the parties' agreement for a two-day trial. The court reminded the parties of the time limit at the beginning of trial and throughout the proceedings. Mother not only agreed to that schedule but made no objection to the manner of the proceedings until after trial.

¶13 Because Mother did not object during trial, we review the record for fundamental error. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005). To prevail under fundamental error review, Mother must show both fundamental error and that the error caused her prejudice. *Id.* at ¶ 20.

¶14 We find no error because Mother agreed to the time limits that the court imposed. See *Gamboa v. Metzler*, 223 Ariz. 399, 402, ¶ 14, 224 P.3d 215, 218 (App. 2010) (affirming trial court's time limits when the party appealing the limits agreed to them). Further, Mother has not established prejudice because she has offered no proof of what the witnesses would have testified about. See *State v. Dunlap*, 187 Ariz. 441, 451, 930 P.2d 518, 528 (App. 1996) (To show actual prejudice, it must be shown that the testimony of the witness would have affected the outcome of the trial.). Therefore, Mother has failed to prove fundamental error.

II. Untimely Disclosure of Police Reports

¶15 Mother argues that the failure of ADES to timely disclose the police reports denied her a fair trial because it "limited her ability to provide evidence on her own." Mother also argues that her testimony was impeached without the chance for her to cross-examine the police officers. Generally, we review the trial court's evidentiary ruling for an abuse of discretion. *State v. Abdi*, 226 Ariz. 361, 368, ¶ 29, 248 P.3d

209, 216 (App. 2011). We find, however, that Mother did receive a fair trial and the trial court did not abuse its discretion. The record shows that the trial court had already found that Mother was not a credible witness before allowing the evidence. Even assuming, without deciding, that the trial court erred in permitting her to be impeached with the police reports, we find no reversible error because the evidence was merely cumulative. See *State v. Torres*, 127 Ariz. 309, 311-12, 620 P.2d 224, 226-27 (App. 1980) (assuming that witness testimony was erroneously admitted, any error is harmless if the evidence is cumulative); see also, e.g., *State v. Kemp*, 185 Ariz. 52, 61, 912 P.2d 1281, 1290 (1996) (holding error harmless when jury only learned minimal new information from evidence cumulative to properly admitted evidence).

¶16 The police reports were cumulative because they tended to show that Mother (1) was not credible and (2) had a substance abuse problem. The court already knew that, however, because Mother had admitted lying to CPS about her children's location. In its report made *after* the dependency hearing, the court noted that "Mother's credibility was also impeached by Mother's candid admission that she and/or Father intentionally and knowingly lied to CPS about the Children's whereabouts when CPS was trying to locate the Children." The court made no mention of Mother's impeachment through the police reports.

¶17 Other evidence aside from the police reports shows that Mother has a substance abuse problem. Mother's criminal history shows that she possessed cocaine and morphine pills. A CPS report noted that on December 22, 2011, a caseworker came to the home and observed Mother appearing intoxicated at 10:15 a.m. Further, another witness testified that one of the children had reported that Mother drank early in the morning while the children were getting ready for school. Mother failed to rebut these claims by refusing to participate in urinalysis testing. Because the information contained in the police reports was cumulative, any error was harmless.

III. Dependency

¶18 Finally, Mother argues that ADES did not prove dependency by a preponderance of the evidence. In reviewing an adjudication of dependency, we view the evidence in the light most favorable to sustaining the juvenile court's findings. *Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, 235, ¶ 21, 119 P.3d 1034, 1038 (App. 2005). We do not reweigh the evidence because the juvenile court, as the trier of fact, "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, 334, ¶ 4, 100 P.3d 943, 945 (App. 2004). We will not disturb a dependency

adjudication unless no reasonable evidence supports it. *Willie G.*, 211 Ariz. at 235, ¶ 21, 119 P.3d at 1038.

¶19 A child is dependent as defined in A.R.S. § 8-201(13)(a), if he (1) is adjudicated to be in need of proper and effective parental care and control has no parent or guardian willing to exercise or capable of exercising such care and control; or (2) lives in a home that is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian or any other person having custody or care of the child. A.R.S. § 8-201(13)(a)(i) and (iii). To establish dependency, a juvenile court must find by a preponderance of the evidence that the child is dependent as defined by statute. Ariz. R.P. Juv. Ct. 55(c).

¶20 Reasonable evidence supports the juvenile court's findings that L.J. was dependent as to Mother. Police officers and CPS caseworkers found the home in an extremely unsanitary condition. Once the home had been cleaned and L.J. returned to her mother, CPS caseworkers were denied access to the home to assess its condition. Caseworkers, however, were able to view through a window that the home had trash and feces on the floor.

¶21 Reasonable evidence also supports the court's findings regarding Mother's substance abuse. Numerous reports show that Mother appeared intoxicated or possessed illegal substances. Mother was also arrested for possessing morphine pills and

cocaine. While Mother denies that she drinks alcohol or uses non-prescription medication, Mother has refused to participate in urinalysis testing to corroborate her claims.

¶22 On this record, we affirm the juvenile court's order adjudicating L.J. dependent.

CONCLUSION

¶23 For these reasons, we affirm.

_____/s/_____
RANDALL M. HOWE, Judge

CONCURRING:

_____/s/_____
MAURICE PORTLEY, Presiding Judge

_____/s/_____
PATRICIA A. OROZCO, Judge