

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

KIMBERLY W., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, P.W., *Appellees*.

No. 1 CA-JV 16-0201
FILED 12-13-2016

Appeal from the Superior Court in Maricopa County
No. JD28834
The Honorable Kristin C. Hoffman, Judge, Retired

AFFIRMED

COUNSEL

Law Office of H. Clark Jones LLC, Mesa
By Clark Jones
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Nicholas Chapman-Hushek
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Andrew W. Gould delivered the decision of the Court, in which Judge Peter B. Swann and Judge Patricia A. Orozco joined.

G O U L D, Judge:

¶1 Kimberly W. (“Mother”) appeals the juvenile court’s order finding P.W. dependent as to Mother. Because the record contains reasonable evidence to support the juvenile court’s order, we affirm.

FACTS AND PROCEDURAL HISTORY¹

¶2 Mother and Eugene W. (“Father”) are the parents of P.W. In July 2014, the Department of Child Safety (“DCS”) received a report of domestic violence involving Father and Mother; as a result, P.W. and the parents’ four other children were removed from the home.²

¶3 In August 2014, DCS filed a petition to adjudicate P.W. dependent as to Father and Mother based on domestic violence. In May 2016, the juvenile court determined that P.W. was dependent as to Mother.³ Specifically, the juvenile court found that DCS proved by “a preponderance of the evidence that Father has committed acts of domestic violence against Mother in the presence of P[W.] and that Mother is unable to properly and effectively care for P[W.] because the home in which Mother and Father

¹ We review the dependency order in the light most favorable to sustaining the juvenile court’s findings. *Willie G. v. Arizona Dep’t. of Econ. Sec.*, 211 Ariz. 231, 235, ¶ 21 (App. 2005) (citations omitted).

² The four other children were: I.W. (born 2005) and F.W. (born 2002), the natural children of Susanne W. and Father; Ke.C. (born 2000) and Kh.C. (born 1997), the natural children of Dwayne C. and Mother. I.W. and F.W. are currently in the care of DCS, and Ke.C. and Kh.C. live with their father, Dwayne C.

³ In July 2015, the juvenile court adjudicated P.W. dependent as to Father on the grounds of domestic violence; we affirmed the dependency order in *Eugene W. v. Dep’t of Child Safety*, 1 CA-JV 15-0249, 2016 WL 739281, at *1, ¶ 1 (Ariz. App. Feb. 25, 2016) (mem. decision).

KIMBERLY W. v. DCS, P.W.
Decision of the Court

reside is unfit by reason of abuse and failure to protect.” Mother timely appeals.

DISCUSSION

¶4 Mother challenges the sufficiency of the evidence supporting the juvenile court’s dependency order. She argues there was insufficient evidence to prove domestic violence occurred between her and Father. In addition, she asserts the evidence shows that she has the ability to parent P.W. safely.

¶5 We review a dependency adjudication for abuse of discretion. *Shella H. v. Dep’t of Child Safety*, 239 Ariz. 47, 50, ¶ 13 (App. 2016) (citation omitted). As the trier of fact in a dependency proceeding, the juvenile court “is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings.” *See Jesus M. v. Arizona Dep’t. of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4 (App. 2002). Therefore, we will not disturb a dependency adjudication unless it is not supported by reasonable evidence. *Willie G. v. Arizona Dep’t. of Econ. Sec.*, 211 Ariz. 231, 235, ¶ 21 (App. 2005) (citations omitted).

¶6 A dependent child is defined as a child “[i]n need of proper and effective parental care and control . . . who has no parent . . . willing to exercise or capable of exercising such care and control,” as well as one whose “home is unfit by reason of abuse, neglect, cruelty or depravity by a parent.” Ariz. Rev. Stat. (“A.R.S.”) section 8–201(15)(a)(i), (iii); *See Louis C. v. Dep’t of Child Safety*, 237 Ariz. 484, 488, ¶ 13 (App. 2015). A child is dependent if DCS shows, by a preponderance of the evidence, that the parent is unwilling or unable to protect the child from abuse, including domestic violence committed by one parent against another in the presence of the child. *See Shella H.*, 239 Ariz. at 50-51, ¶¶ 14, 17 (App. 2016) (citations omitted); *see* A.R.S. § 8-844(C)(1) (2016) (juvenile court findings at dependency adjudication hearing must be made by a preponderance of the evidence).

¶7 Here, the juvenile court’s finding that domestic violence occurred in the home and placed P.W. at risk is supported by the record. Before the dependency petition was filed, all of the children living in the home, including P.W., were interviewed by DCS. I.W. stated that Father and Mother fight and Mother gets hurt a lot; once, Father choked Mother and left marks on her neck, and another time there was blood on Mother’s face and she needed to get stitches. F.W. stated that she does not feel safe when Father and Mother are fighting, and that she was fearful when Father

KIMBERLY W. v. DCS, P.W.
Decision of the Court

choked Mother. Kh.C. remembered seeing Mother in a pool of blood from a fight with Father, and stated she was afraid for Mother because she fears Father is going to kill her. Ke.C. stated that Father and Mother fight nonstop, and that he does not feel safe when they fight. Finally, P.W. stated that Father and Mother fight a lot, she recalled seeing Father choke Mother, and she once thought Mother was dead when she found her on the ground in a pool of blood.

¶8 In addition to the reports from the children, Mother disclosed to her sister that she had experienced domestic violence at the hands of Father. In 2012, Mother sent a message to her sister on Facebook describing how Father had kicked and choked her during a fight; she hit her head on the ground, passed out, and woke up with blood dripping everywhere. Mother sent her sister a picture of her injuries showing a bleeding gash above her left eye and bruising on the neck, consistent with choking. In 2014, Mother sent her sister an email stating, after one of her fights with Father, she was “scared to come home. Im (sic) scared of it getting out of hand and us getting physical.”

¶9 While Mother testified that no domestic violence occurred in the home, the juvenile court determined that her testimony was not credible. We defer to the juvenile court’s determination regarding Mother’s lack of credibility. *See Jesus M.*, 203 Ariz. at 280, ¶ 4 (stating appellate court defers to juvenile court’s credibility assessments). Accordingly, we find no error.

¶10 The record also supports the juvenile court’s finding that the domestic violence has had an adverse effect on P.W. P.W. once told DCS agent Harrison that she was afraid of Father when he gets angry, and that she wanted to live with her foster parents rather than with Father and Mother. At Father’s dependency hearing, DCS agent Harrison testified that P.W. has been affected negatively by exposure to her parents’ domestic violence. Harrison stated that P.W. has regression and reverts into baby talk, chronically leaves her bed at night looking for her foster parent, constantly has nightmares and screams in her sleep, and does not interact with her peers at her preschool.

¶11 Finally, despite Mother’s participation in counseling and parenting classes, she has failed to make the changes necessary to remedy the circumstances leading to P.W.’s removal. Specifically, instead of addressing her domestic violence issues with Father, Mother continues to deny that any domestic violence has occurred between her and Father. At the dependency hearing, Dr. Azzi testified that if the “significant issues of

KIMBERLY W. v. DCS, P.W.
Decision of the Court

domestic violence have not been sufficiently addressed,” there would be “serious ongoing risk” to P.W. if placed back in the home with Mother and Father.

¶12 Accordingly, we conclude the juvenile court’s findings are supported by reasonable evidence. *See Willie G.*, 211 Ariz. at 235, ¶ 21 (citations omitted).

CONCLUSION

¶13 For the reasons above, we affirm the juvenile court’s ruling finding P.W. dependent as to Mother.



AMY M. WOOD • Clerk of the Court
FILED: AA