

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

MARK D., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, M.D. *Appellees*.

No. 1 CA-JV 16-0336
FILED 2-9-2017

Appeal from the Superior Court in Maricopa County
No. JD529439
The Honorable Timothy J. Ryan, Judge

AFFIRMED

COUNSEL

Robert D. Rosanelli, Phoenix
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Ashlee N. Hoffmann
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which
Presiding Judge Randall M. Howe and Judge Lawrence F. Winthrop joined.

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THOMPSON, Judge:

¶1 Mark D. (father) appeals from the juvenile court's finding of dependency as to his daughter, M.D. For the following reasons, we affirm the decision of the juvenile court.

FACTUAL AND PROCEDURAL HISTORY

¶2 M.D. was born in April 2014. In November 2015, DCS received a report that father tried to choke M.D.'s mother (mother) while she was holding M.D. and that M.D.'s arm was bruised in the incident.¹ The report further alleged that father had sexually abused M.D.² DCS and the Mesa police department investigated. Mother told DCS that father had threatened to kill her and M.D., and that she and father had been involved in "domestic violence incidents." Father told DCS that he smoked marijuana and admitted to having choked mother in the past. Father reported that he and mother had been involved in additional domestic violence incidents where he was the victim. Father told the DCS investigator that he had served prison time for extreme DUI, and the investigator observed that father smelled strongly of alcohol during the interview.

¶3 DCS took temporary custody of M.D. and filed a dependency petition in November 2015 alleging that M.D. was dependent as to father due to domestic violence, substance abuse, and neglect. M.D. was placed with a relative.

¶4 Father denied the allegations in the dependency petition, but agreed to participate in reunification services, including: 1) parent aide services (referral to be made after thirty days of demonstrated sobriety), 2) parenting classes, substance abuse assessment and treatment through TERROS, 3) random urinalysis testing, 4) domestic violence classes and counseling, and a psychological evaluation. The juvenile court held a contested dependency hearing in August 2016. The court found that M.D. was dependent as to father on the basis of domestic violence and substance

¹ The juvenile court found that M.D. was dependent as to mother; she is not a party to this appeal.

² The police department later closed its investigation into the sex abuse allegation, and the juvenile court did not base its dependency finding on the allegation.

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abuse. Father timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) §§ 8-235(A) (2014), 12-120.21(A)(1) (2016), and 12-2101(A)(1) (2016).³

DISCUSSION

¶7 On appeal, father asserts that the evidence was insufficient to support a finding that M.D. was dependent as to him. This court “will not disturb the juvenile court's ruling in a dependency action unless the findings upon which it is based are clearly erroneous and there is no reasonable evidence supporting them.” *Pima Cty. Juv. Dependency Action No. 118537*, 185 Ariz. 77, 79, 912 P.2d 1306, 1308 (App. 1994). The allegations of the dependency petition must be proven by a preponderance of the evidence. *Id.* (citation omitted). We defer to the juvenile court in resolving conflicting testimony, as that court “had the opportunity to assess the credibility, attitude and condition of the parties at trial.” *Pima County Severance Action No. S-1607*, 147 Ariz. 237, 239, 709 P.2d 871, 873 (1985).

¶8 Under A.R.S. § 8-201(15)(a)(i) (Supp. 2016), a dependent child is a child “[i]n need of proper and effective parental care and control and who has no parent or guardian, or one who has no parent or guardian willing to exercise or capable of exercising such care and control.” A child may also be adjudicated dependent if the child’s home is unfit due to abuse or neglect by a parent. A.R.S. § 8-201(15)(a)(iii). Here, the juvenile court found that M.D.’s home was unfit due to domestic violence, and that father had failed to remedy his substance abuse issues.

¶9 Reasonable evidence supported the juvenile court’s finding of dependency based on domestic violence. Although father argues that the only evidence of domestic violence came from out-of-court statements from mother and M.D.’s maternal grandmother, and that he made no admissions concerning domestic violence, father told the DCS investigator at the outset of the dependency that he had choked mother. The juvenile court was free to decide that father’s subsequent testimony at trial that he had never attacked mother was not credible. At the time of the dependency hearing father still needed to complete domestic violence classes and counseling.

¶10 Father further argues that the juvenile court erred by basing the dependency on his substance abuse because he had provided a medical marijuana card and evidence explaining his positive test for opiates, and

³ We cite the current version of the applicable statute unless revisions material to this decision have occurred since the events in question.

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was no longer testing positive for alcohol. Father maintains that he was not told he needed to abstain from alcohol until the summer of 2016. Reasonable evidence supports the juvenile court's conclusion that father had failed to remedy his substance abuse issues, however. The DCS case manager testified that he explained the substance abuse testing process to father, including that father was not allowed to drink alcohol. On November 19, 2015, father tested positive for marijuana. He did not obtain a medical marijuana card until November 23, 2015.⁴ Father tested positive for alcohol twice in March 2016, twice in April 2016, and twice in May 2016. He failed to call in for testing twice in March 2016 and three times in May 2016, and called in too late once in March and once in July.⁵ On April 20, 2016 father tested positive for hydrocodone. Although he did provide prescriptions for hydrocodone, they were dated approximately three months after the positive test. Because father had not yet demonstrated sustained sobriety by the time of the dependency hearing, the juvenile court's finding of dependency was not clearly erroneous.

CONCLUSION

¶11 For the foregoing reasons, we affirm the juvenile court's finding that M.D. was a dependent child.



AMY M. WOOD • Clerk of the Court
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⁴ Thereafter father continued to test positive for marijuana.

⁵ DCS counts missed tests and late calls as positive tests.