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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

AMY H., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, D.H., J.H., E.H., L.H., T.H., *Appellees*.

No. 1 CA-JV 16-0421
FILED 4-25-2017

Appeal from the Superior Court in Maricopa County
No. JD529593
The Honorable Timothy J. Ryan, Judge

AFFIRMED

COUNSEL

The Lara Group PLC, Mesa
By Matthew Lara
Counsel for Appellant

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

MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge Patricia K. Norris joined.

M c M U R D I E, Judge:

¶1 Appellant Amy H. (“Mother”) appeals the superior court’s order adjudicating her children D.H., J.H., E.H., L.H., and T.H. (“the Children”) dependent pursuant to Arizona Revised Statutes (“A.R.S.”) sections 8-201(15) and -844.¹ Mother argues she was denied due process and the order was not supported by the preponderance of the evidence. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Mother and David H. (“Father”) are the biological parents of D.H. (born in 2005), J.H. (born in 2006), E.H. (born in 2008), L.H. (born in 2010), and T.H. (born in 2012).² Mother and Father divorced in July 2015.

¶3 The Department of Child Safety (“DCS”) placed the Children into temporary physical custody on January 4, 2016. DCS filed a dependency petition in January, which it amended in May 2016, alleging Mother was unable to parent due to neglect and emotional abuse caused by Mother’s mental health. DCS alleged Father was unable to parent due to “parental alienation by Mother.” The Children were placed with a grandparent and another member of the Children’s extended family. Mother was denied visitation, a decision that was reaffirmed in April, May, and August 2016.

¶4 In a preliminary order in January 2016, the superior court adjudicated the Children temporarily dependent as to Mother, and

¹ We cite to the current version of applicable statutes or rules when no revision material to this case has occurred.

² Father is not a party to this appeal.

ordered family reunification as the case plan. Mother contested the dependency finding, and a hearing was held on September 20, 2016.

¶5 A psychologist, Dr. James Thal, testified at the hearing. Dr. Thal had diagnosed Mother in March 2016 with an unspecified delusional disorder due to her strongly held beliefs, without bases in fact.³ Mother maintained that her Children were being extensively molested by Father, their paternal grandmother, and other individuals, whom Mother believed belonged to a satanic cult engaged in murdering and molesting children and other bizarre activities. In diagnosing Mother, Dr. Thal relied upon a personal interview with Mother in March, on six psychological assessments, including a computer-generated general mental health profile, two Mesa Police Department reports, DCS's petition, and the court's preliminary protective order. Dr. Thal testified Mother's beliefs were deeply entrenched and unshakeable. Dr. Thal described how Mother coached the Children in advance of the abuse investigation, including her applying pressure and strength to the Children's arms to elicit "credible responses" from them.⁴ Dr. Thal opined Mother could visit with the Children in a controlled, supervised, therapeutic setting, if the Children's therapist would find it beneficial for the Children.

¶6 Mother's most recent therapist, Michelle Berlin, was referred by DCS in August. Although she conducted only three hours of therapy with Mother prior to the September hearing, Berlin testified she has "not seen any evidence of delusional disorder" and noted no "alarming or concerning behaviors" indicating her being a threat to the Children. Yet, Mother told Berlin she "had to" believe what the Children told her about

³ Mesa Police Department interviewed Father regarding allegations of satanic rituals, sacrificial murders, kidnapping babies, and forcing children to have sex with one another. Father denied the allegations, and a stress analysis test indicated "no deception." Similarly, the Children submitted to forensic interviews and the four oldest children submitted to forensic medical examinations. The results of the medical examinations indicated "no signs or evidence of trauma or abuse" despite the extreme abuse alleged to have occurred.

⁴ Pursuant to DCS's reports, Mother would conduct a "muscle tension" test with E.H. and J.H., where she would "emotionally connect with Heavenly Father and ask questions," while putting pressure on the child's arm, trying to elicit information about possible sexual abuse.

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Father's alleged behaviors, and that she did not coach the Children. Berlin also noted she believes Mother is open to changing her persuasion.

¶7 Jillian McCarthy, the ongoing DCS case manager, also testified DCS provided Mother with individual therapy in August, as soon as DCS learned Mother's private counselor lacked current Arizona licensure. The case manager expressed concerns about Mother having denied the Children's version of events and her delusions, and agreed Mother should have therapeutic, well controlled visits with the Children. McCarthy confirmed no visitation between the Children and Mother occurred prior to the hearing, as the psychological evaluation forbade it.

¶8 Mother's initial marital therapist, and then individual therapist, Ingrid Smith, testified she did not believe Mother had a delusional disorder. Ms. Smith had recently retired and did not hold a current Arizona therapist's license. She admitted she did not review, although she requested to do so, any formal DCS or court documents prior to or during Mother's therapy. Smith had no concerns about Mother's ability to parent.

¶9 Mother testified the Children informed her about Father's abuse and other allegations. Mother admitted she coached E.H. about events that did not happen, because she used the "muscle testing" method incorrectly. Mother conveyed she believed the Children when they said the acts did not happen; and would "not sa[y] bad things" about the Father in front of the Children.

¶10 Benjamin Rogers, the Children's trauma therapist during the six months preceding the hearing, testified he would not recommend the Children visit with Mother prior to the date of the hearing. Father's professional counselor, Mr. Lofgreen, testified he had conducted therapeutic visitations between Father and the Children since June 2016. In September, he recommended Mother begin visiting with the Children in a therapeutic setting.

¶11 After the hearing, the superior court found DCS had proved the allegations of the petition by a preponderance of the evidence and the Children were dependent as to Mother because "Mother recklessly engaged in conduct that is tantamount to emotional abuse of the children." The court ordered expedited therapeutic visitations between Mother and the Children. Mother timely appealed as to all Children. We have jurisdiction pursuant to A.R.S. §§ 8-235(A), 12-120.21(A)(1), and 12-2101(A)(1).

DISCUSSION

¶12 “A parent has a constitutional right to raise his or her child without governmental intervention.” *Carolina H. v. ADES*, 232 Ariz. 569, 571, ¶ 6 (App. 2013) “The government may not interfere with that fundamental right unless a court finds that: (1) the parent is unable to parent the child for any reason defined by statute; and (2) the parent has been afforded due process.” *Id.* But “[t]he primary consideration in a dependency case is always the best interest of the child.” *ADES v. Super. Ct. In and For County of Maricopa*, 178 Ariz. 236, 239 (App. 1994). Therefore, the superior court “is vested with a great deal of discretion.” *Id.* (quotation omitted).

¶13 “On review of an adjudication of dependency, we view the evidence in the light most favorable to sustaining the juvenile court’s findings.” *Willie G. v. ADES*, 211 Ariz. 231, 235, ¶ 21 (App. 2005). “We generally will not disturb a dependency adjudication unless *no* reasonable evidence supports it.” *Id.* (emphasis added); see *In re Maricopa County Juv. Action No. J-75482*, 111 Ariz. 588, 591 (1975) (“Generally, the decision of the trial court as to the weight and effect of evidence will not be disturbed unless it is clearly erroneous. All reasonable inferences must be taken in favor of supporting the findings of the trial court, and if there is any evidence to support the judgment, it must be affirmed.”).

A. Mother’s Due Process Rights Were Not Violated.

¶14 Mother argues she was denied her right to a fair trial because DCS failed to disclose and to “provide to the Court” the police reports reviewed by Dr. Thal in compiling his psychological evaluation. Mother asserts that this failure denied Mother’s attorney “the opportunity to adequately prepare Mother for the dependency trial.” Mother contends the non-disclosure violated Arizona Rule of Procedure for the Juvenile Court 44, and the superior court erred by not granting Mother’s motion to strike Dr. Thal’s trial testimony as well as his conclusions.

¶15 Due process requires a party be provided “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections.” *Maricopa County Juv. Action No. JS-734*, 25 Ariz. App. 333, 339 (1975) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Disclosure rules facilitate the purpose of preventing an unfair surprise. See *Zimmerman v. Super. Ct. In and For County of Maricopa*, 98 Ariz. 85, 91 (1965). The superior court has broad discretion in deciding

disclosure and discovery issues. *Marquez v. Ortega*, 231 Ariz. 437, 441, ¶ 14 (App. 2013).

¶16 We review evidentiary decisions for an abuse of discretion and will not reverse the superior court, unless it misapplied the law or caused unfair prejudice to a party. *Larsen v. Decker*, 196 Ariz. 239, 241, ¶ 6 (App. 2000). We review the interpretation and application of procedural rules *de novo*. *Alice M. v. DCS*, 237 Ariz. 70, 72, ¶ 7 (App. 2015). Rule 44 requires each party to provide “[a] list of and copies of all exhibits which the party intends to use at trial.” Ariz. R.P. Juv. Ct. 44(B)(2)(e), (D)(2).

¶17 DCS listed Dr. Thal’s psychological evaluation in its initial disclosure statement pursuant to Rule 44. The report was properly noticed as an exhibit to be used at the contested hearing, and Mother could not, therefore, have been taken by surprise when the report was offered into evidence. Dr. Thal’s evaluation listed two police reports as sources of information utilized in the development of Mother’s diagnoses. With that information having been disclosed, Mother could have conducted further discovery regarding the reports had she wished to do so.

¶18 At the contested hearing, Dr. Thal testified consistently with his previously disclosed evaluation, which relied upon several other sources of information, including a personal interview with Mother and the results of objective psychological tests. Mother had ample opportunity to cross-examine Dr. Thal about his reliance upon the police reports, but failed to do so.

¶19 The court did not abuse its discretion in considering Dr. Thal’s psychological evaluation and testimony in its entirety. Even if the superior court should have stricken Dr. Thal’s testimony and evaluation, as Mother argues, any conceivable error was harmless because the record is replete with substantial evidence of Mother’s mental illness, including the testimony of other expert witnesses. *See Alice M.*, 237 Ariz. at 73, ¶ 12 (court addressed a harmless error argument and considered whether the court’s error in admitting exhibits would have changed the superior court’s conclusions).

B. Reasonable Evidence Supported the Superior Court’s Order of Dependency.

¶20 Mother argues insufficient evidence existed to find the Children dependent because DCS (1) failed to prove her condition remained without improvement, (2) failed to provide her with “reasonable reunification efforts delaying [her] progress,” and (3) denied

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her visits with the children for an “excessive” period of nine months after her Children were removed. Mother further argues she made “good faith efforts towards completing all requirements and recommendations of psychological evaluations, continuous counseling and therapy,” and “demonstrate[d] her concern for the welfare and health of her children.”

¶21 In a dependency adjudication, DCS must prove by a preponderance of the evidence one of the grounds found in A.R.S. §§ 8-201(15)(a) and -844. The grounds for dependency include ineffective parental care and control and the child’s home being determined unfit by reason of neglect. A.R.S. § 8-201(15)(a). Abuse means “the infliction of . . . serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior.” A.R.S. § 8-201(2).

¶22 A parent’s present denial of past abuse or neglect is sufficient to affirm a dependency finding “for the obvious reason that such denial of responsibility supports a finding that their children do not have parents presently willing to or capable of exercising proper and effective parental care and control.” *Shella H. v. DCS*, 239 Ariz. 47, 51, ¶ 16 (App. 2016) (quoting *Pima County Juv. Dependency Action No. 96290*, 162 Ariz. 601, 604 (App. 1990)). “To hold otherwise would permit an abusive or neglectful parent to defeat an allegation of dependency by the mere passage of time.” *Id.*

¶23 At trial, Mother testified it was the Children who informed her about Father’s abuse and that she was “open to believe” the abuse did not happen. Mother admitted to having coached E.H. about events that did not happen because she used the “muscle testing” method incorrectly. As late as September, just days before the dependency hearing, Mother also conveyed to her new therapist that she had to believe what the Children told her, not that she had coached the Children. Dr. Thal testified Mother’s beliefs were deeply entrenched and unshakeable. The case manager was concerned that Mother denied the Children’s narrative and her own delusions. Although Mother’s original therapist did not conclude Mother had a delusional disorder and had no concerns about Mother’s ability to parent, which coincided with the observations of Mother’s new therapist, the record provides sufficient evidence to support the superior court’s conclusion.

¶24 Mother further argues she was not provided with appropriate reunification services, “delaying [her] progress.” In making her argument, Mother relies on A.R.S. § 8-533(B)(8)(3). However, section 8-533 does not direct dependency actions, but governs proceedings

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terminating parental rights. Unlike termination proceedings, DCS is not obligated to provide reunification efforts prior to the juvenile court adjudicating a child dependent. *See* A.R.S. § 8-201(15). *But cf.* A.R.S. § 8-533(B).

¶25 While DCS is not required to make a “diligent effort to provide appropriate reunification services,” it has provided services in response to Mother’s situation. A.R.S. § 8-533(B)(8). DCS initially offered Mother individual therapy, but Mother reported she participated in private therapy. Subsequently, DCS provided Mother with individual therapy once it was learned Mother’s private counselor lacked current Arizona licensure. DCS also provided Mother with other services, such as a psychological evaluation, substance abuse testing to rule out substance abuse issues, and a referral to a therapist specializing in delusional disorders.

¶26 Mother argues she should have been reunited with her Children long before the court approved supervised visitation in September. However, the Children’s and Father’s therapists did not recommend visitations until September, not long before the dependency hearing. At the hearing, Dr. Thal opined delaying the visitations was appropriate to protect the Children. The court did not subsequently delay ordering Mother’s visitations, thereby acting within its discretion.

¶27 Mother further argues she made “good faith efforts towards completing all requirements and recommendations of psychological evaluations, continuous counseling and therapy,” and “demonstrate[d] her concern for the welfare and health of her children.” Dependency adjudication, however, does not focus “on the conduct of the parents but rather [on] the status of the child.” *Santa Cruz County Juv. Action No. JD-89-006 & JD-89-007*, 167 Ariz. 98, 102 (App. 1990).

¶28 In considering whether Mother can provide “proper and effective parental care and control,” Mother’s participation in therapy is important, but it is the results of the therapy that inform the court’s determination. A.R.S. § 8-201(15). Because the superior court was in the best position to weigh Mother’s and Smith’s testimony against the testimony of other witnesses, and to judge their credibility and observe their demeanor, we accept the superior court’s findings of fact. *See Matter of Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546 (App. 1987).

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¶29 We conclude that reasonable evidence supported the superior court's finding and will not disturb it. *Willie G.*, 211 Ariz. at 235, ¶ 21.

CONCLUSION

¶30 Because Mother's due process rights were not violated and sufficient evidence exists to support the superior court's findings of fact, we affirm its order adjudicating D.H., J.H., E.H., L.H., and T.H. dependent as to their Mother.



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