IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

WILLIE J., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, C.J., *Appellees*.

No. 1 CA-JV 16-0452
FILED 4-25-2017

Appeal from the Superior Court in Maricopa County
No. JD530094
The Honorable Arthur T. Anderson, Judge

REVERSED AND REMANDED

COUNSEL

Gates Law Firm LLC, Buckeye
By S. Marie Gates
Counsel for Appellant

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

MEMORANDUM DECISION

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

N O R R I S, Judge:

¶1 This appeal arises out of an order entered by the juvenile court finding, pursuant to Arizona Revised Statutes ("A.R.S.") section 8-201(15)(a) (Supp. 2016)[1], C.J. dependent as to her father, Appellant Willie J. ("Father"). On appeal, Father challenges the factual findings made by the juvenile court. Because the juvenile court's findings are, in part, unsupported by the evidence and, in part, inadequate, we reverse the juvenile court's order and remand to the juvenile court to determine, whether under the applicable legal standards, C.J. is dependent as to Father. *See infra* ¶ 11.

FACTS AND PROCEDURAL BACKGROUND

¶2 Father and Mother (who is not a party to this appeal) are the parents of C.J., who was born April 15, 2016. Mother has a long history of substance abuse and, at birth, C.J. tested positive for illegal drugs. On May 18, 2016, while C.J. was still in the hospital, Appellee, the Department of Child Safety ("DCS"), held a Team Decision Making (TDM) meeting with Father, and Father's sister, Rhonda, participating. At this May 18 TDM, the participants developed a "safety plan" for C.J. whereby Father would care for C.J. upon her discharge from the hospital. The safety plan stated Father was to "obtain an order of protection against" Mother, but also provided he was to supervise any contact between Mother and C.J.[2] The safety plan

[1]We cite to the current version of the statutes cited in this decision.

[2]At first blush, the safety plan's requirement that Father "obtain an order of protection" against Mother and its requirement that Father supervise any contact between Mother and C.J. may seem inconsistent. That is not necessarily the case, however. A party must petition a court for a protective order, and prove the statutory requirements before the court will issue the order. *See generally* A.R.S. § 13-3602 (Supp. 2016). A petitioning party has no absolute right to obtain a protective order,

further specified that Rhonda and other family members were "to help as much as possible" with C.J.'s care.

¶3 C.J. was discharged from the hospital on May 25 or May 26, 2016,[3] and placed with Father. Five or six days later, at the end of May, Father asked his aunt ("Aunt Ellen") to care for C.J. because he was physically unable to do so due to a pre-existing illness. Father "brought [C.J.] over" to Aunt Ellen's home the end of May, and Aunt Ellen, assisted by members of her family and Rhonda, began to care for C.J. on a full-time basis.

¶4 At a June 30, 2016 TDM, Father admitted Mother was living at and using drugs in his home. According to the DCS investigator who attended the June 30 TDM (and who testified at the dependency adjudication hearing), DCS decided to "remove" C.J. from Father's care because he was "allowing Mother to live in the home, allowing Mother to actively use substances," and allowing Mother to have contact with C.J. Accordingly, that same day DCS "removed" C.J. from Father's care. DCS allowed C.J. to remain with Aunt Ellen, as her placement, however.

¶5 On July 5, 2016, DCS petitioned the juvenile court to find C.J. dependent as to Father. As relevant here, DCS alleged Father was unable to parent C.J. "due to neglect and failure to protect" because he had admitted he had allowed Mother to stay and use drugs in his home after DCS had "advised" him at the May 18 TDM that he was not to allow Mother to have contact with C.J. DCS also alleged Father was unable to parent "due to neglect" because he "knew or should have known Mother was using heroin and methamphetamine while she was pregnant with [C.J.]."

¶6 After holding a contested dependency adjudication hearing, the juvenile court found DCS had proven by a preponderance of the evidence the allegations of the petition summarized above. The court found that after the May 18 TDM, C.J. had been placed with Father "with the understanding that Mother was not to have any contact with" C.J. The

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and thus the safety plan required Father to supervise any contact that might occur between Mother and C.J.

[3]A DCS report dated July 8, 2016 introduced into evidence by DCS at the dependency hearing stated C.J. had been discharged from the hospital on May 25, but at the hearing the DCS investigator testified C.J. had been discharged from the hospital on May 26, 2016.

court also found DCS had removed C.J. from Father's care when it "learned that Mother was in [his] home with C.J.,"[4] and,

> Clearly, Father knew of Mother's ongoing substance abuse. He agreed to keep Mother out of his home while [C.J.] was living with him. By allowing Mother to stay with him, Father placed his self-interest above the well-being of [C.J.].

DISCUSSION

¶7 As discussed above, Father challenges the factual findings of the juvenile court supporting its dependency order. Reviewing the record 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) (citation omitted), we have determined that certain findings made by the superior court are unsupported by the record evidence or are insufficient under Arizona Rule of Procedure for the Juvenile Court 55 (E)(3) (juvenile court shall set forth "specific findings of fact in support of a finding of dependency").

¶8 First, while DCS alleged in its petition "Mother was not [] to have any contact" with C.J. according to the safety plan, and the juvenile court found the parties had reached an "understanding" that Father was not to allow Mother to have any contact with C.J., the DCS investigator testified at the dependency adjudication hearing "it was agreed" at the May 18 TDM that "[Father] could allow the child to have contact with Mother." Further, the "summary report" from the May 18 TDM, which was introduced into evidence at the hearing, also stated, "[Father] to supervise any contact of [Mother] with [C.J.]." Given this evidence, the juvenile court's finding regarding the "understanding" governing C.J.'s placement with Father, is unsupported by the record evidence.

¶9 Second, although DCS alleged in its petition Father had "admitted that he [had] allowed Mother to have contact with" C.J. and also presented evidence Father had admitted on June 30 he allowed Mother to

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[4]The juvenile court also found DCS had removed C.J. from Father's care on June 30, 2016, because he had "not attended a scheduled urinalysis." The DCS investigator who testified at the hearing, however, did not testify DCS decided to remove C.J. from Father's care because he failed to attend a scheduled urinalysis. Further, although DCS alleged in its petition that Father was unable to parent due to substance abuse, the juvenile court found DCS had not proved "drug use by Father."

stay in his home, DCS did not present evidence supporting the juvenile court's factual finding that Father had allowed Mother to stay at his home when C.J. was living with him before C.J. began to live full-time with Aunt Ellen. S*ee supra* ¶ 3. Nevertheless, as DCS argues on appeal, under Arizona law, a voluntary placement of a child with a person under no legal obligation to provide for the child fails to negate the basis for the finding of dependency. *In re Matter Pima Cty. Juv. Dependency Action*, 161 Ariz. 231, 233, 778 P.2d 266, 268 (App. 1989). The juvenile court did not, however, address DCS's evidence that even though Father had allowed Aunt Ellen to begin caring for C.J. at the end of May, C.J. was nevertheless dependent as to him because he had allowed Mother to begin staying with him at least by June 30, knew she was using drugs in his home and, was therefore, either unable or unwilling to exercise "care and control" over C.J. *See generally* A.R.S. § 8-201(15) (a) (dependent child includes a child "[i]n need of proper and effective parental care and control" and who has "no parent or guardian . . . willing to exercise or capable of exercising such care and control").

¶10 Third, the juvenile court found DCS had proven C.J. was dependent as to Father because he "knew or should have known Mother was using heroin and methamphetamine while she was pregnant." The court did not explain the factual basis for its finding, however, and we are unable to determine from the record the specific evidence that would establish the basis for the juvenile court's conclusion.

¶11 In summary, on this record, certain of the juvenile court's factual findings supporting its dependency order are either unsupported by the record evidence or inadequate. Thus, we reverse the juvenile court's dependency order and remand to the juvenile court to determine whether C.J. is dependent as to Father. On remand, the juvenile court shall determine the issues based upon the circumstances then existing. *See generally Shella H. v. Dep't of Child Safety*, 239 Ariz. 47, 50, ¶ 12, 366 P.3d 106, 109 (App. 2016) (determination of dependency based on circumstances existing at time of adjudication hearing) (citation omitted).

CONCLUSION

¶12 For the forgoing reasons, we reverse the juvenile court's order finding C.J. dependent as to Father, and remand to the juvenile court for further proceedings consistent with this decision. *See supra* ¶ 11.

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