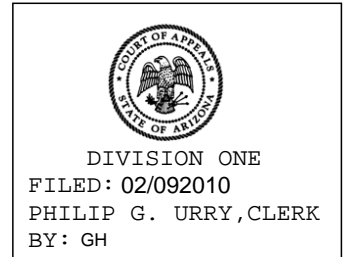


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



ERICA L.,) 1 CA-JV 09-0173
)
Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz.R.P. Juv.
SECURITY, JOSIE L.,) Ct.; Rule 28 ARCAP)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD17458

The Honorable Jo Lynn Gentry-Lewis, Judge

AFFIRMED

Terry Goddard, Attorney General Mesa
By Amanda Holguin, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

Robert D. Rosanelli Phoenix
Attorney for Appellant Erica L.

O R O Z C O, Judge

¶1 Erica L. (Mother) appeals from the juvenile court's order adjudicating Mother's daughter, Josie L. (Child), as dependent. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Mother gave birth to Child in 2005. Mother and Child moved to Arizona in August 2008. Prior to moving to Arizona, Mother and Child resided in Tennessee. While in Tennessee, the Child Protective Services (CPS) of Tennessee investigated Mother regarding allegations of: (1) nutritional neglect; (2) drug exposure at birth; and (3) physical abuse and environmental neglect.

¶3 On November 3, 2008, the Watkins Shelter (Shelter) reported to Arizona CPS that on the evening of November 2, 2008, Shelter clients saw and heard Mother "yelling and beating" Child. On November 5, 2008, CPS case manager Brandy G. (Case Manager G.) went to the Shelter to meet with Mother and Child. When Case Manager G. requested to speak with Child, Mother became very hostile. Case Manager G. observed that Child's left eye had "black, blue, purple, and green color bruising at the end of the eye lid, side of the eye and around the bottom of the eye." According to Mother, "the child had hit her 'cheek' on a metal bar on the playground." Mother advised Case Manager G. that Mother was mildly mentally retarded and bipolar. Mother also stated that Case Manager G. was a "Demon", and that she "'Fights Demons' like" Case Manager G. CPS ultimately took temporary custody of Child and implemented a case plan of family reunification. Additionally, CPS offered Mother supervised

visitation, behavioral health services, and a psychological evaluation.

¶14 On November 10, 2008, the Arizona Department of Economic Security (ADES) filed a dependency petition alleging Child was dependent as to Mother. Specifically, the petition alleged Mother was unable or unwilling to parent due to: (1) physical abuse towards Child; (2) Mother's mental deficiency; (3) unstable housing; and (4) Mother's mental illness.

¶15 On December 29, 2008, Dr. Connie P., Ph. D. (Dr. P.), conducted a psychological evaluation of Mother. Dr. P. found Mother was suffering from bipolar disorder with psychotic features, paranoia, a learning disability, and poor coping strategies that lead to Mother acting before she thinks. On July 21, 2009, Dr. Katrina B., Psy. D. (Dr. B.), performed a psychological evaluation of Mother. Dr. B.'s evaluation report referenced Mother's supervised visits with Child. Dr. B. reported that the parent aide who facilitated Mother's supervised visits suggested Mother was suffering from paranoia and delusions, and used passive-aggressive behavior. Dr. B. indicated that Child could be at risk with continued visits and recommended that visits "discontinue until Mother reaches mental health stability."

¶16 In August and September 2009, the juvenile court held a four-day contested dependency hearing on ADES's petition. At

trial, Dr. P. testified that Mother was suffering from a learning disability and bipolar disorder with psychotic features involving paranoia or delusions. Dr. P. also testified that she did not feel that Child would be safe in Mother's care.

¶17 Dr. B. testified that Child was suffering from emotional disturbances. Additionally, Dr. B. testified that if Child was placed in Mother's care "there would be risk for possible abuse and possible neglect and more emotional disturbance." One CPS case manager, Douglas D. (Case Manager D.), testified that he did not believe Mother was "emotionally stable enough to adequately take care of herself, much less a three-year-old almost four-year-old girl." Case Manager D. further testified that returning Child to Mother's care could potentially lead to abuse or neglect.

¶18 Case Manager G. testified that dependency was necessary based on Mother's mental health history and the inconsistencies surrounding Mother's explanation of the injuries Child suffered on November 2, 2008. The juvenile court took the matter under advisement and later issued a signed order adjudicating Child dependent as to Mother. The juvenile court found that ADES proved by a preponderance of the evidence that Child was a dependent child as defined by Arizona Revised Statutes (A.R.S.)

section 8-201.13 (Supp. 2009).¹ Mother filed a timely notice of appeal and we have jurisdiction pursuant to A.R.S. §§ 8-235 (2007), 12-120.21.A.1, and -2101.B (2003).

DISCUSSION

¶9 Mother raises one issue on appeal: whether reasonable evidence supports the juvenile court's finding that Child was a dependent child pursuant to A.R.S. § 8-201.13. "We 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 County Juv. Dependency Action No. 118537*, 185 Ariz. 77, 79, 912 P.2d 1306, 1308 (App. 1994).

¶10 Pursuant to A.R.S. § 8-201.13(a)(i) and (iii), a "dependent child" is a child adjudicated to be "[i]n need of proper and effective parental care and control and who has no parent . . . willing to exercise or capable of exercising such care and control," or "[a] child whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent." Mother offers three reasons why no reasonable evidence supported the juvenile court's finding: (1) no witness testified at trial to observing any abuse; (2) the only evidence of abuse is the case manager's opinion that Child's black eye was not consistent with

¹ We cite to the current version of the applicable statutes because no revisions material to this decision have since occurred.

Mother's explanation; and (3) the evidence of mental illness was inconclusive and insufficient because Mother's interactions during trial did not reveal her alleged mental disorders. However, Mother is asking us to reweigh the evidence. We have consistently held that the juvenile court is "in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings." *Pima County Dependency Action No. 93511*, 154 Ariz 543, 546, 744 P.2d 455, 458 (App. 1987).

¶11 In this case, reasonable evidence existed establishing ADES's allegations. First, Dr. P.'s testimony established evidence of Mother's mental deficiencies and illness. Additionally, Dr. P. testified that based on Mother's mental health she did not feel Child would be safe in Mother's care. Similarly, Dr. B. testified that if Child was placed in Mother's care "there would be risk for possible abuse and possible neglect and more emotional disturbance." Case Manager D. also testified that he did not believe Mother was "emotionally stable enough to adequately take care of herself, much less a three-year-old almost four-year-old girl."

¶12 Regarding evidence of the alleged abuse, ADES provided the juvenile court with: (1) Tennessee CPS reports investigating alleged abuse; (2) Arizona CPS reports investigating alleged abuse; and (3) the Shelter's report detailing the incident that

occurred on November 2, 2008. Although Mother denied that she physically abused Child, there was sufficient reasonable evidence for the juvenile court to make such a finding.

CONCLUSION

¶13 Because reasonable evidence supported the juvenile court's finding that Child was a dependent child pursuant to A.R.S. § 8-201.13, we affirm the juvenile court's order adjudicating Child dependent as to Mother.

/S/

PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

DIANE M. JOHNSEN, Judge

/S/

JON W. THOMPSON, Judge