

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



DIVISION ONE
FILED: 03/15/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN RE FLOR G.,) 1 CA-JV 11-0158
)
) DEPARTMENT C
)
) **MEMORANDUM DECISION**
) (Not for Publication -
) Ariz. R.P. Juv. Ct. 103(G);
) ARCAP 28)
)
)
)

Appeal from the Superior Court in Yuma County

Cause No. S1400JV20110277

The Honorable Kathryn E. Stocking-Tate, Commissioner

AFFIRMED

Jon R. Smith, Yuma County Attorney Yuma
By Mark Edward Hessinger, Deputy County Attorney
Attorneys for Appellee

The Law Offices of Kelly A. Smith Yuma
By Kelly A. Smith
Attorneys for Appellant

N O R R I S, Judge

¶1 Flor G. timely appeals the juvenile court's order finding her incorrigible for habitual truancy, and argues, first, the court's findings were "clearly erroneous" because there was "no evidence at all . . . that [she] was not

accompanied by . . . her mother at all times when she was absent from school," and second, the court "misinterpreted the law" by using the wrong standard to calculate the number of unexcused absences Flor had on school days. For the reasons discussed below, we disagree and affirm the juvenile court's order.

FACTS AND PROCEDURAL BACKGROUND¹

¶12 In its "juvenile court petition," the State alleged Flor was incorrigible and habitually truant because she had 18 unexcused absences from school from August 20, 2010 through May 24, 2011. At the juvenile court adjudication, Flor presented doctors' notes "excusing" all but four of those absences (the "four unexcused days"). One of the notes, addressed to "whom it may concern," requested, "[p]lease excuse my patient from any absences that may have occurred from April 9, 2011 to May 31, 2011," (the "blanket excuse"), and was dated June 24, 2011, apparently "after school ha[d] been out for almost a month." The record reflects Flor was not absent on all of the days covered by the blanket excuse.

¶13 Flor's mother also testified she had kept Flor home from school on the four unexcused days because of various

¹We view the facts in the light most favorable to upholding the juvenile court's findings. See *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, 285, ¶ 12, 257 P.3d 1162, 1165 (App. 2011).

illnesses. She acknowledged, however, she had not called the school each time to report Flor was sick.

¶4 After hearing this testimony and admitting Flor's school attendance records and doctors' notes as evidence, the juvenile court found "the State [had] met its burden beyond a reasonable doubt . . . that Flor [was] habitually truant in that she did miss at least five school days without lawful excuse."

DISCUSSION

¶5 When a juvenile "is habitually truant," he or she may "be adjudicated an incorrigible child." Ariz. Rev. Stat. ("A.R.S.") § 15-803(B) (Supp. 2011); see also A.R.S. § 8-201(16)(b) (Supp. 2011). "Habitually truant" means a juvenile has had "unexcused absence[s]" for "at least five school days within a year." A.R.S. § 15-803(C).

¶6 Here, the record reflects the juvenile court found the blanket excuse and Flor's mother's testimony not credible. The court explained,

for whatever reason [the doctor] sign[ed]
. . . she's excused from everything, all
these days. He does this in June after
school has been out almost a month. . . .
[I]t would seem to me that there would be a
little more investigation done before he
. . . did that. I don't know, but obviously
he didn't.

. . .

[I]t seems to me that if Flor's mom got home
[from work] at 7:30 [in the morning] she's

not just going to [go] directly to bed. She can pick up the phone and call the school and say Flor is sick. . . . She obviously knew she had to do that because she did it some of the time. And so I find the testimony by Flor's mom that she . . . [simply] didn't call . . . to be, you know, not credible.

. . .

I think that the evidence when weighed in -- in its totality, I think that Flor did have at least five school days unexcused absence from school during the last school year.

These credibility determinations were the juvenile court's to make. See *Mario G.*, 227 Ariz. at 287-88, ¶ 24, 257 P.3d at 1167-68 (citation omitted). Considering only the four unexcused days and the ten days of absence covered only by the blanket excuse,² Flor had more than the statutorily-required five days of unexcused absence. Thus, the court did not abuse its discretion in finding Flor incorrigible. See *Maricopa Cnty. Juv. Action No. JV-510312*, 183 Ariz. 116, 118, 901 P.2d 464, 466 (App. 1995) (appellate court reviews juvenile court dispositions for abuse of discretion); *Rachelle S. v. Ariz. Dep't of Econ. Sec.*, 191 Ariz. 518, 519, ¶ 9, 958 P.2d 459, 460 (App. 1998) (juvenile court decisions "regarding the weight and effect of evidence will not be disturbed on appeal" unless clearly erroneous).

²Although the blanket excuse covered 12 of the days alleged, Flor produced an additional note for two of the same days covered by the blanket excuse. Thus, ten days were supported *only* by the blanket excuse and Flor's mother's testimony.

¶17 Despite the foregoing, Flor argues the juvenile court misinterpreted the law by counting each missed class period as constituting an unexcused absence on a "school day[]." The interpretation given to the applicable statute, A.R.S. § 15-803(C)(1), on appeal -- that, for the purposes of calculating unexcused absences, one school day is the same as "one [full] calendar day" -- is both incorrect and flies in the face of the interpretation offered by Flor's counsel and the State at the adjudication, which the court accepted. Although we acknowledge the court initially made some confusing comments -- noting that even if it believed all of the doctor's notes, there were days for which "there's no doctor's slip, the school didn't excuse the absen[ce], and I don't know how many class periods there are in a day. I think there's probably five or six" -- both the State and Flor's counsel agreed "habitual truancy" means unexcused absences on "[f]ive different days . . . but truant . . . means unexcused absence for *at least* [one] class period during the day." (Emphasis added.) As noted, once the parties agreed, the court accepted this interpretation. Thus, the court did not misinterpret the law.

