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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

RIKKI G., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, CRYSTAL G., and CORTNEY G., Appellee.	2 CA-JV 2011-0101 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J18854000

Honorable Gus Aragón, Judge

AFFIRMED

Ann Nicholson Haralambie, Attorneys, P.C.
By Ann M. Haralambie
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V Á S Q U E Z, Presiding Judge.

¶1 In this appeal, Appellant Rikki G., mother of Crystal G. and Cortney G., challenges the juvenile court's order adjudicating Crystal and Cortney dependent under

A.R.S. § 8-201(13)(a), based on a waiver of rights pursuant to A.R.S. § 8-844(F). Because the issues she raises are either waived or without merit, we affirm the court's order.

¶2 Viewed in the light most favorable to sustaining the court's order, *see Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 12, 153 P.3d 1074, 1078 (App. 2007), the evidence established the following. In June 2011, Rikki woke then sixteen-year-old Crystal at 1:00 a.m. to clean up "garbage" she had left in Cortney's closet. This led to an argument between Rikki and Crystal, and Rikki ultimately took Cortney to a motel, leaving Crystal home. Crystal called the police department saying she was alone and needed medical attention. An officer called Rikki who stated she would return home. But, at 5:00 a.m. Crystal again called law enforcement to report that Rikki had not returned, and an officer ultimately brought Crystal to the hospital and contacted child protective services (CPS). The hospital attempted to reach Rikki so that Crystal could be admitted, but was unable to reach her. A CPS caseworker finally contacted Rikki at 1 p.m., but Rikki stated she could not talk to or meet with her and their call was cut off. The caseworker could not reach Rikki again and later found she had been at a hair appointment.

¶3 Crystal, who suffers from mental illness, reported that Rikki had been gone for three days before the incident and Rikki had left her home overnight on numerous occasions with Rikki's boyfriend, who is a registered sex offender. Crystal also told the caseworker that she had been raped twice by another man and that when she told her mother, Rikki had not sought medical attention or contacted law enforcement. Similarly,

Cortney reported that she has been living with her former stepfather for approximately two years. He claimed Cortney as a dependent for tax purposes in 2010. Although Rikki has not provided the stepfather with any legal authority to provide medical or educational services for Cortney, the caseworker indicated he has been her primary caregiver.

¶4 A waiver of rights or default in dependency adjudications is authorized by A.R.S. § 8-844(F) and Rule 54(C)(2), Ariz. R. P. Juv. Ct., which provide that if a parent does not appear at certain proceedings after he or she has received notice of those proceedings and the consequences of failing to appear, the juvenile court may deem that failure to appear an admission to the allegations made in the dependency petition. Rikki maintains on appeal that the court deprived her of due process when it deemed the allegations in the dependency petition admitted because she had not received adequate notice she was required to attend the pretrial conference. But, she did not present the court with the argument she now makes in relation to its compliance with A.R.S. § 8-826,[1] nor did she assert her due process rights had been violated. Assuming, without deciding, that fundamental error review would be available for an unpreserved claim of error in a dependency proceeding, Rikki has waived that review by failing to argue that the court's finding of a waiver of rights in her case constituted fundamental, prejudicial error. *Cf. Monica C. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 89, ¶ 23, 118 P.3d 37, 42 (App. 2005) (applying fundamental error doctrine to termination of parental rights); *see*

[1]Rikki maintains "It is not clear to a lay person that something called a 'conference' is actually a 'hearing' to be included within the vague category of 'hearings' provided for in the initial notice" she received.

also State v. Moreno-Medrano, 218 Ariz. 349, ¶ 17, 185 P.3d 135, 140 (App. 2008) (failure to allege fundamental error on appeal waives argument). *But see Bradshaw v. State Farm Mut. Auto. Ins. Co.*, 157 Ariz. 411, 420, 758 P.2d 1313, 1322 (1988) (review for fundamental error "sparingly applied in civil cases and may be limited to situations . . . [that] deprive[] a party of a constitutional right").

¶5 In any event, the juvenile court's minute entry from the July 19, 2011 status hearing that preceded the pretrial conference noted that the court had scheduled the pretrial conference and the "Contested Dependency" and had "admonishe[d] the mother that she must be present at future hearings or the hearings may proceed in her absence."[2] Likewise, the dependency petition indicated that Rikki's failure to appear without good cause could result in a waiver of rights. And, despite Rikki's assertions on appeal that advisements about *hearings* were insufficient in relation to the pretrial *conference*, in her affidavit explaining why she failed to appear, she repeatedly refers to the conference as a hearing. Thus, Rikki has not established that she lacked notice of the pretrial conference or the necessity of her appearance there and has failed to show that any alleged error amounted to fundamental, prejudicial error requiring reversal.

¶6 We likewise reject Rikki's argument that the juvenile court abused its discretion in finding she did not have good cause to be absent. She maintains "The court's failure to properly instruct her . . . and her attorney's failure to keep in touch with her and, specifically, to meet with her prior to the pretrial conference as required by [Rule] 54(A), [Ariz. R. P. Juv. Ct.], constitute 'good cause' for her failure to be present at

[2]The transcript of that proceeding is not part of our record on appeal.

the pretrial conference." Because she did not raise below any argument related to her attorney's alleged failure to comply with Rule 54's dictate to meet with his "client[] prior to the conference" or develop any such argument adequately on appeal, we do not address it.

¶7 Rule 54(C)(2), Ariz. R. P. Juv. Ct., provides that if a parent has been properly advised, a juvenile court may proceed with a dependency adjudication and adjudicate a child dependant on "the record and evidence presented" if a parent fails to appear "without good cause shown." The juvenile court has broad discretion in determining what constitutes good cause for a party's failure to appear at a hearing. *Adrian E. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 96, ¶ 15, 158 P.3d 225, 230 (App. 2007). And we will reverse a court's conclusion that good cause has not been shown only if its exercise of discretion was "'manifestly unreasonable.'" *Id.*, *quoting Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 19, 107 P.3d 923, 929 (App. 2005).

¶8 In a motion for reconsideration explaining why she had not appeared at the pretrial conference on August 29, Rikki averred she had called and emailed her attorney on the Saturday before the conference to, inter alia, "ask him about the hearing on Monday, August 29, 2011." Rikki's attorney returned her call on Monday at 8:00 a.m., but she was "patching a roof" and "did not have [her] cell phone until 3:00 p.m." The conference began at 8:36 a.m. and the attorney stated in his message that he was waiting for her at the courthouse. Rikki further averred she had been "under the impression that the hearing on . . . August 29 . . . was for attorneys only." But, she provided no basis for her belief beyond her assertion that her attorney had "met in various meetings without

[her] during th[e] case." On this record, we cannot say the juvenile court's decision was unreasonable, and we will not replace its judgment with our own. *See id.*; *see also Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004) (reviewing court does not reweigh evidence but defers to juvenile court's factual findings).

¶9 Rikki further maintains, however, that even if the allegations made are deemed admitted, the evidence was insufficient to establish that Cortney was a dependent child. As defined in § 8-201(13)(a)(i), a dependent child includes one adjudicated to be "[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." The burden of proof in a dependency adjudication is by a preponderance of the evidence. A.R.S. § 8-844(C)(1). And, as noted above, we view that evidence in the light most favorable to sustaining the juvenile court's findings, *In re Maricopa Cnty. Juv. Action No. JD-5312*, 178 Ariz. 372, 376, 873 P.2d 710, 714 (App. 1994), and will not disturb a dependency adjudication unless no reasonable evidence supports it, *In re Maricopa Cnty. Juv. Action No. JD-500200*, 163 Ariz. 457, 461, 788 P.2d 1208, 1212 (App. 1989).

¶10 In this case, the juvenile court had before it evidence that Cortney had lived with her stepfather for the preceding two years, that he had claimed Cortney as a dependent for tax purposes, and that Rikki had not "provided care" for Cortney. In the dependency petition, the allegations in which Rikki was deemed to have admitted when she failed to appear, ADES also asserted she had provided "little financial support" for Cortney and had only "limited visitation" with her. And, when Cortney had been with

her, Rikki had allowed her to have contact with a registered sex offender. Evidence before the court also showed that Rikki had not provided Cortney's stepfather with legal authority to obtain medical or educational services. And, Cortney's biological father had not provided financial or emotional support, had no "significant relationship" with her, and visited her only once or twice a year. He also was reported to have substance abuse and mental illness issues that caused Cortney to be afraid of him. Thus there was reasonable evidence to support the court's conclusion that Cortney was dependent because she had no parent willing or able to provide proper and effective parental care. *See* A.R.S. § 8-201(13)(a)(i).

¶11 In support of a contrary conclusion, citing *In re Cochise County Juvenile Action No. 5666-J*, 133 Ariz. 157, 650 P.2d 459 (1982), Rikki argues the juvenile court could not find Cortney dependent on the basis of her failure to provide Cortney's stepfather with the authority to provide her with medical care when she had not yet needed such care. But, that case is distinguishable from the situation presented here. In that case, after one of her children had died from an untreated medical condition, a mother who had religious objections to medical treatment stated she would not seek medical treatment for her remaining children if they became ill. *Id.* at 158, 650 P.2d at 460. Our supreme court balanced the mother's interest in religious freedom and the children's welfare and concluded it would "not interfere with a parent's fundamental right to the custody of his or her child if providing medical care is contrary to the parent's religious beliefs and there is no known medical danger." *Id.* at 163, 650 P.2d at 465. No such balancing is required here. The evidence before the court showed that Rikki had

failed not only to provide Cortney's stepfather with the authority to provide medical care, but also had failed to give him any legal authority over Cortney—as a guardian or otherwise—and that she herself had failed to parent Cortney in any meaningful way.

¶12 Rikki also maintains that ADES cited only § 8-201(13)(a)(i)—that Cortney was in need of parental care and had no parent or guardian to provide it—as grounds for the dependency, and that Cortney's needs were being met "by [her] informal custody arrangement" with Cortney's stepfather. But, "[a] voluntary placement of the child with persons under no legal obligation to provide for the child is not sufficient to negate the basis for the finding of dependency." *In re Pima Cnty. Juv. Action No. 98874*, 161 Ariz. 231, 233, 778 P.2d 266, 268 (App. 1989).

¶13 Rikki further maintains that because her boyfriend had not been prohibited from having contact with children, and because there was no evidence he had "acted inappropriately with Cortney," the juvenile court could not find her dependent based on Rikki's having allowed contact between the two. First, as the state points out, this court has stated that "[e]ffective parental care clearly implies prevention of sexual as well as other physical abuse." *In re Appeal in Pima Cnty. Juv. Action No. J-77188*, 139 Ariz. 389, 392, 678 P.2d 970, 973 (App. 1983). But, we need not dwell on this point, because even assuming arguendo that effective parenting would encompass allowing one's child to have contact with a registered sex offender, there was reasonable evidence to support a finding of dependency based on Rikki's failure to otherwise parent Cortney. *See Maricopa Cnty. Juv. Action No. JD-500200*, 163 Ariz. at 461, 788 P.2d at 1212 (appellate court will affirm unless no reasonable evidence).

¶14 For the reasons stated above, the dependency adjudication is affirmed.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge