

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE DEPENDENCY OF A.T., S.T., V.T., C.T., V.R., AND M.R.,

No. 2 CA-JV 2024-0001
Filed May 1, 2024

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 602(i)(17).

Appeal from the Superior Court in Pima County
No. JD20230323
The Honorable Geoffrey L. Ferlan, Judge Pro Tempore

REVERSED AND REMANDED

COUNSEL

Buckley Law PLLC, Marana
By Kyle T. Buckley
Counsel for Appellant

Kristin K. Mayes, Arizona Attorney General
By Autumn Spritzer, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

Pima County Office of Children's Counsel, Tucson
By Kylie Allen
Counsel for Appellee Minors

MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Judge Kelly and Judge O'Neil concurred.

ECKERSTROM, Judge:

¶1 Appellant Gabriella C. challenges the juvenile court's order filed on December 21, 2023, adjudicating her children dependent on grounds of neglect as a result of exposure to domestic violence. The state concedes that it presented no reasonable evidence to support the court's dependency finding. We agree and therefore reverse the court's dependency adjudication and remand for further proceedings as necessary.

¶2 "On review of an adjudication of dependency, we view the evidence in the light most favorable to upholding the juvenile court's findings." *Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, ¶ 21 (App. 2005). Gabriella's children were removed from her care in August 2023, after the Department of Child Safety (DCS) received a report of domestic violence against Gabriela. This resulted in the arrest of Victor R., the father of two of Gabriella's children. Gabriella and Victor had lived in Nogales, before she left and moved to Sahuarita to stay with her sister. Victor began to stalk her there, so she relocated to a domestic violence shelter. Victor continued to stalk her while in the shelter, and she obtained a protective order against him in April 2023. She moved to Tucson in May.

¶3 Victor found Gabriella again in Tucson. Officers arrested him after he approached her, uninvited, outside her apartment and broke her phone. Disregarding an order of protection, he entered Gabriella's apartment a few days after his release, and assaulted her. This led to the removal of the children.

¶4 DCS thereafter filed a dependency petition, alleging the children were dependent as to Gabriella based on abuse and neglect "due to domestic violence." Gabriella complied with her DCS case plan but was found ineligible for the therapy that had been prescribed. Gabriella instead sought out services herself, attending group and domestic violence counseling and developing a safety plan with her domestic violence advocate. As part of her safety plan, Gabriella circulated Victor's photograph among neighbors with instructions to call her if he was seen,

IN RE DEPENDENCY OF A.T., S.T., V.T., C.T., V.R., & M.R.
Decision of the Court

installed security cameras at her residence, and did not share the location of the children's daycare. After a multi-day dependency adjudication hearing ending in December 2023, the juvenile court adjudicated the children dependent, concluding DCS had proven the allegation in the dependency petition that Gabriella had "neglected her children and is unable to safely parent due to domestic violence."

¶5 On appeal, Gabriella argues, and DCS concedes, that it presented no "reasonable evidence . . . to support the Juvenile Court's finding that the children were dependent." We review a juvenile court's dependency adjudication for an abuse of discretion and defer to its weighing of the evidence presented. *Shella H. v. Dep't of Child Safety*, 239 Ariz. 47, ¶ 13 (App. 2016). "We will only disturb a dependency adjudication if no reasonable evidence supports it." *Id.*

¶6 "The state has an interest in the welfare and health of children." *Diana H. v. Rubin*, 217 Ariz. 131, ¶ 13 (App. 2007) (quoting *In re Cochise Cnty. Juv. Action No. 5666-J*, 133 Ariz. 157, 161 (1982)). "If the interest of the state is great enough – that is, if the welfare of the child is seriously jeopardized – the state may act and invade the rights of the parent and the family." *Id.* The parent, however, has "a fundamental liberty interest protected by the Fourteenth Amendment 'in the care, custody, and management'" of the child. *Id.* ¶ 12 (quoting *Santosky v. Kramer*, 455 U.S. 745, 753 (1982)).

¶7 To establish that Gabriella's children were dependent, justifying the interference of the state in the family, DCS was required to show that they were "[i]n need of proper and effective parental care and control" and had "no parent or guardian willing to exercise or capable of exercising such care and control" or their home "is unfit by reason of abuse, neglect, cruelty or depravity." A.R.S. § 8-201(15)(a)(i), (iii). DCS was required to prove the grounds alleged in its dependency petition by a preponderance of the evidence. See A.R.S. § 8-844(C)(1); *Willie G.*, 211 Ariz. 231, ¶ 2. And the juvenile court was required to base its dependency adjudication on the circumstances at the time of the hearing. *Shella H.*, 239 Ariz. 47, ¶¶ 1, 12.

¶8 The juvenile court rejected DCS's allegation that the children were dependent as to Gabriella based on abuse, noting during the dependency hearing that she was a "really good mother in terms of her direct interaction with the children." It found, however, that DCS had shown Gabriella "neglected her children and is unable to safely parent due to domestic violence." Specifically, it determined DCS had established

IN RE DEPENDENCY OF A.T., S.T., V.T., C.T., V.R., & M.R.
Decision of the Court

Gabriella “failed to protect her children from exposure to the domestic violence” perpetrated on her by Victor. In its ruling the court explained that Gabriella “has allowed . . . [Victor] back into her life after having lived in a domestic violence shelter” and was “in a cycle or pattern of domestic violence” with him.

¶9 To support its ruling on this point, the juvenile court pointed to testimony from Gabriella’s domestic violence advocate. At the dependency hearing, in response to a question as to whether Gabriella “recognize[d] her own role in the domestic violence,” the advocate stated that Gabriella had expressed regret about “letting [Victor] back in” and understood “she should have just had the no contact.” Although the advocate mentioned this in regard to the time period in which Gabriella “broke free and got to shelter,” the advocate did not specify the timing or extent of Gabriella’s contact with Victor. On the record before us, the only other evidence of this contact arises from an unsubstantiated DCS report in April 2023, stating that one of the children was with Victor at that time. Thus, as the state concedes, there was a “lack of any evidence that” Gabriella “fit the profile of domestic-violence survivors who repeatedly return to abusive partners” “at any point after May 2023, when she left the domestic-violence shelter.”

¶10 Although “domestic violence need not be continuous or actively occurring at the time of the adjudication hearing to support a finding of dependency,” there must still be a “substantiated and unresolved threat” of such violence. *Shella H.*, 239 Ariz. 47, ¶ 16. Such a continued threat may be particularly supportive of dependency if the parent “denies the alleged conduct.” *Id.* But the juvenile court here did not rely on such a denial by Gabriella, instead indicating that she had not had “sufficient domestic violence education regarding the impact that the domestic violence has had on the minors” and had not yet been able to “demonstrate being vigilant with [a] safety plan to not be vulnerable to [Victor’s] contact.”

¶11 As DCS concedes, however, “the juvenile court did not determine that there was a substantial risk of harm to the children’s welfare at the time of the adjudication.” By that time, as DCS further explains, Gabriella had a safety plan in place and had recognized the patterns of domestic violence. The DCS investigator who testified did not identify any specific risks or shortcomings in Gabriella’s conduct. But, according to DCS, its investigator instead appeared to erroneously believe “that a dependency existed *as to Mother*, based solely on the fact that Victor had appeared uninvited and assaulted her.” Further, as DCS now explains, the

IN RE DEPENDENCY OF A.T., S.T., V.T., C.T., V.R., & M.R.
Decision of the Court

ongoing case manager generally asserted the need for DCS to continue “‘oversight’ to verify that Mother continued to benefit from services and make unspecified ‘changes’ to keep herself and the children safe.” Such evidence of a possible benefit to a parent from DCS services is not alone sufficient to establish dependency so long as the parent’s care of the children at the time of the dependency adjudication does not pose a substantial risk of harm to the children. *See* § 8-201(25)(a) (defining neglect as “the inability or unwillingness of a parent, guardian or custodian of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes substantial risk of harm to the child’s health or welfare”).

¶12 Because reasonable evidence does not support a finding that the children are dependent as to Gabriella, we reverse the juvenile court’s dependency order and remand for further proceedings as necessary.¹ *See* Ariz. R. P. Juv. Ct. 608(b)(2).

¹Gabriella also argues the juvenile court fundamentally erred by allowing DCS to disclose, for the first time, during rebuttal closing argument that Victor had been released from jail. Based on our above disposition of the court’s ruling, we need not address that issue.