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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JOHN M., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and MICHAEL M., Appellees.	2 CA-JV 2010-0109 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J18738300

Honorable Peter Hochuli, Judge Pro Tempore

AFFIRMED

Child and Family Law Clinic
By Paul D. Bennett, a clinical professor appearing under Rule 38(d), Ariz. R. Sup. Ct.
Tucson
Attorneys for Appellant

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K E L L Y, Judge.

¶1 John M. appeals from the juvenile court's September 2010 order adjudicating his fourteen-year-old son, Michael M., a dependent child, arguing the evidence was insufficient to support a finding of dependency. For the reasons that follow, we affirm the court's adjudication order.

¶2 A juvenile court may adjudicate a child to be dependent if it finds, by a preponderance of the evidence, that he is "[i]n need of proper and effective parental care and control and . . . has no parent . . . willing to exercise or capable of exercising such care and control." A.R.S. § 8-201(13)(a)(i); *see also* A.R.S. § 8-844(C)(1) (preponderance standard). The focus of this statutory definition "is not on the conduct of the parents but rather the status of the child." *In re Santa Cruz County Juv. Action Nos. JD-89-006 & JD-89-007*, 167 Ariz. 98, 102, 804 P.2d 827, 831 (App. 1990). But "[e]ffective parental care clearly implies prevention of . . . physical abuse." *In re Pima County Juv. Action No. J-77188*, 139 Ariz. 389, 392, 678 P.2d 970, 973 (App. 1983).

¶3 In reviewing an adjudication of dependency, "we view the 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, ¶ 21, 119 P.3d 1034, 1038 (App. 2005). "And, because '[t]he primary consideration in a dependency case is always the best interest of the child, . . . the juvenile court is vested with a great deal of discretion.'" *Id.*, *quoting Ariz. Dep't of Econ. Sec. v. Superior Court*, 178 Ariz. 236, 239, 871 P.2d 1172, 1175 (App. 1994). Accordingly, "we will not disturb a dependency adjudication unless no reasonable evidence supports it." *Id.* That is, we will not reverse the court's decision for

insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶4 In this unusual case, the juvenile court was required to determine whether Michael, an autistic child, was dependent based on allegations that his parents' conduct either exacerbated or failed to protect him from his own self-harming behaviors. Michael was diagnosed with autism in 1998 and began receiving services from the Division of Developmental Disabilities (DDD) of the Arizona Department of Economic Security (ADES). In 2010, Michael's sister Andriana was adjudicated dependent after John, along with the children's mother, Chesia M., admitted allegations in an amended dependency petition, including an allegation of a recent domestic violence incident between John and Andriana. Based on Andriana's statements and consultation with Michael's DDD-approved habilitation worker, Hillary Glickman, Child Protective Services (CPS), another division of ADES, removed Michael from John and Chesia's custody, and ADES filed a petition alleging Michael was a dependent child. Specifically, ADES alleged that John had physically abused Andriana during the recent domestic violence incident; that, according to his sisters, Michael had been a witness to domestic violence in the home for many years; that, according to his DDD case manager, "after witnessing domestic violence in the home, Michael causes physical harm to himself resulting in cuts and bruises"; and that John "suffers from untreated Bi-Polar Disorder and Alcoholism."

¶5 After a contested dependency hearing that spanned four days and included, by stipulation, all testimony previously presented during the temporary custody hearing, the juvenile court issued a detailed, under-advisement ruling finding ADES had established Michael was a dependent child. The court summarized the testimony of a number of service providers who had worked with the family and noted that "ADES [had] agreed on more than one occasion that the past care of Michael ha[d] been admirable." But the court also identified current issues for the family, "which include the domestic violence, yelling, and general chaos in the home, and [John]'s actions when drinking alcohol." The court further found, "Although . . . there are a variety of reasons Michael might self-harm, it is clear that one of those reasons is yelling or screaming between individuals or at him."

¶6 On appeal, John argues the evidence was insufficient to support a dependency finding and maintains there was "no evidence connecting Michael's self harm with any parental conduct." John does not dispute evidence that he and Chesia frequently yelled at one another and other members of the family, or Glickman's report that he once raised his hand and threatened to "whack" Michael at the dinner table. Instead, he suggests the juvenile court gave inordinate weight to Glickman's testimony that "[i]f somebody is screaming, [Michael will] bite himself or bang his head," and he characterizes Glickman as a "rookie" with little experience or training in working with autistic children. But we do not reweigh the evidence. *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶¶ 4, 14, 100 P.3d 943, 945, 947 (App. 2004) (juvenile court "in the

best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts").

¶7 Here, although John maintains Glickman was less "credentialed" than other service providers, he fails to address her unparalleled opportunity to observe Michael in the family's home during the months preceding his removal. As the juvenile court observed in its order, Glickman had worked with Michael four hours a day, five days a week, from 4:00 p.m. until 8:00 p.m.

¶8 Moreover, the juvenile court also considered the testimony of Dr. Fernando Armendariz, a psychologist who had worked with the family until 2008. Although Armendariz testified that he had most often observed Michael engaging in self-harm "because he doesn't get what he wants," he also acknowledged that Michael did not like noise, particularly "high-pitched yee noise," and agreed his parents' yelling might cause him to self-injure and could rise to the level of abusing Michael if he got "mad enough to start yelling himself and hit himself." When asked about Andriana's statements that her parents engaged in name-calling and that John becomes angry when he drinks and had struck her, Armendariz agreed such an environment would not be "conducive to Michael staying on task and staying in a place where he wouldn't be self harming." As for Andriana's report that Michael exhibited more self-harming behavior when his parents were screaming at their children or each other, he agreed that might be "a natural result for a child like Michael." Similarly, Linda Hallard, the assistant director of Michael's

special education program, opined that Michael bites himself when he becomes agitated, triggered sometimes by not getting what he wants and "sometimes [by] noise."

¶9 We need not repeat the juvenile court's sound analysis of the evidence here. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 207-08 (App. 2002), *citing State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Based on the testimony described above, as well as that detailed in the court's ruling, ample evidence supported the court's finding that Michael was a dependent child at the time of adjudication.

¶10 Accordingly, we affirm the juvenile court's dependency adjudication order.

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

CONCURRING:

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

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge