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Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 12/06/2012
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ANGEL B., OSANNA B.,) No. 1 CA-JV 12-0055
)
Appellants,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Rule 103(G) Ariz. R. P.
SECURITY, A.B., R.B.,) Juv. Ct., Rule 28, ARCAP
)
Appellees.)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD509273

The Honorable Mark F. Aceto, Judge

AFFIRMED

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B R O W N, Judge

¶1 Angel B. ("Father") and Osanna B. ("Mother") appeal from the juvenile court's order finding their children A.B. and R.B. dependent.¹ For the reasons set forth below, we affirm.

BACKGROUND

¶2 Mother and Father are the biological parents of A.B., born in August 2003, and the adoptive parents of R.B., born in November 2007. In July 2009, Father took R.B. to a hospital because he had pain in his arm and was unable to raise the arm over his head. After evaluating R.B., hospital personnel determined that his arm was broken. Father told the emergency physicians that prior to the injury, he had been playing with R.B. by swinging him from his feet, but Father did not believe that R.B. had hit anything while they were playing. Notwithstanding Father's explanation, the attending physician reported the injury as suspicious for non-accidental trauma but without sufficient evidence of abuse or neglect.

¶3 In April 2011, the Arizona Department of Economic Security ("ADES") received a report from A.B.'s teacher indicating that Mother was physically abusing R.B. A.B.'s

¹ On the court's own motion, it is hereby ordered amending the caption for this appeal to protect the identity of the minor children. The above referenced caption shall be used on all documents filed in this appeal.

teacher stated that A.B. had become increasingly aggressive and visibly upset during school. A.B. told his teacher that he was worried about R.B. because R.B. cried frequently due to Mother's abuse. A.B. also indicated that as a result of the abuse, R.B. had scratches and bruises. A.B. further stated that during certain instances of abuse, Father was present, but did not intervene to stop the abuse. Following the teacher's report, ADES case manager Jessica Stewart visited R.B. but did not find any signs of bruising or other physical abuse.

¶4 One week after A.B. reported the abuse to his teacher, emergency services responded to a 9-1-1 call at Mother and Father's residence regarding an unconscious child. When emergency personnel arrived, Mother reported that she had been home alone with R.B. while Father and A.B. attended Father's basketball game. Mother stated that she had left R.B. on the toilet, walked out of the room, heard a noise from the bathroom, and when she returned, found R.B. unconscious on the floor. R.B. was transported to Phoenix Children's Hospital ("PCH"), where a CT scan revealed a subdural hematoma, a liver laceration, and a healing rib fracture. Due to the severity of the subdural hematoma, it was necessary for R.B. to undergo cranial surgery whereby doctors temporarily removed part of his skull to relieve pressure on his brain. Because of the severity of R.B.'s injuries and because it was not clear that R.B. would

survive, the Phoenix Police Department's homicide unit was contacted and arrested Mother and Father.

¶15 While R.B. was in the hospital, police interviewed Mother and Father about the incident. During the interview of Mother, she admitted that she had been a victim of severe child abuse. Mother informed the police that when she was younger, her mother had, on at least one occasion, repeatedly slammed her head into the back of a toilet until the toilet broke. Father told police that A.B.'s statements to his teacher were false and that because of those statements, he and Mother had punished A.B. for lying.

¶16 Based on R.B.'s injuries and in order to ensure the integrity of the investigation and A.B.'s emotional well-being, case manager Stewart determined that it was necessary to take A.B. into temporary custody. ADES filed a dependency petition on April 26, 2011, alleging A.B. was a dependent child within the provisions of Arizona Revised Statutes ("A.R.S.") section 8-201(13) (2012) due to abuse and neglect. The petition asserted that (1) Father and Mother were unable to parent due to "physical abuse of a child" and "neglect/failure to protect;" (2) A.B. witnessed the abuse towards his brother by Mother and Father and was experiencing fear and anxiety associated with witnessing the abuse; and (3) continuation of A.B. in the home would be contrary to the child's welfare.

¶17 At a preliminary protective hearing on May 4, Father requested disclosure of police and medical records relating to R.B.'s injury as well as any notes that Child Protective Services ("CPS") had relating to A.B. In response, ADES indicated that while it possessed the police reports, the police specifically instructed it not to share the information without authorization. Nonetheless, ADES indicated it would provide all evidence in its possession as soon as practicable.

¶18 On May 13, at the temporary custody hearing for A.B., Father alleged that ADES had failed to provide the police reports, medical records, and the CPS notes as requested. Father therefore requested, among other things, dismissal of the dependency petition. In response, ADES indicated it had instructed the police to provide the records to Father's counsel but the police mistakenly provided the records to ADES. After realizing the error, ADES promptly forwarded the records to Father's counsel. Based on the parties' arguments, the court denied Father's motion, noting that pursuant to Rules 36 and 44 of the Arizona Rules of Procedure for the Juvenile Court, "neither dismissal [n]or preclusion of evidence is an appropriate sanction." The court emphasized there had been "no bad faith or gamesmanship on the part of [ADES]." After hearing the parties' evidence, the court concluded there was "probable cause to believe continued temporary custody is clearly

necessary to prevent abuse or neglect of [A.B.] pending a dependency hearing" and ordered that A.B. remain a temporary ward of the state.

¶9 R.B. was released from PCH in June 2011, whereupon CPS determined he needed continuing medical attention for the injuries he sustained in April. ADES filed a dependency petition regarding R.B., which included allegations substantially similar to those set forth in the dependency petition relating to A.B. While in ADES custody, A.B. and R.B. were sent to separate foster homes, primarily because R.B. required specialized care. The children also started attending weekly therapy sessions to help them cope with the trauma of the physical abuse and any emotional impact that witnessing the abuse may have had.

¶10 Beginning in October 2011, the juvenile court held an evidentiary hearing on both petitions.² At the outset, both Mother and Father objected to ADES' evidence as untimely under Rule 44 and argued that the evidence and witnesses forwarded by ADES should be precluded. The Court found ADES' exhibits admissible because there was no "bad faith on the part of ADES in failing to disclose this information earlier." The court further determined that pursuant to Rule 36, it would be in the

² The evidentiary hearing spanned four days, beginning on October 5, 2011, and concluding March 7, 2012.

best interests of the children to allow consideration of the evidence.

¶11 Dr. Stephanie Zimmerman, a forensic child abuse specialist, testified that she had performed a visual examination of R.B. after his surgery and found, in addition to the cranial wound, he suffered bruising to his forehead, his right ear, his chest on both sides, his right arm, and his right knee, scratches on the front of his chest, "fingernail type" scratches or abrasions to both of his armpits, and what looked like puncture wounds on the bottom of his right foot. Zimmerman also noted that CT scans revealed a liver laceration and a healing tenth rib fracture. When asked if the injuries she found were consistent with a fall off a toilet, Zimmerman responded, "No." Zimmerman expressed concern that some of the bruising and abrasions were old, while others appeared fresh and new. Zimmerman also indicated that R.B.'s brain injury could have been the result of having his head repeatedly slammed into a toilet, but "it would require a lot of violence." Ultimately, Zimmerman opined that the injuries that R.B. sustained were "inflicted . . . upon him."

¶12 Case manager Stewart testified that her involvement with the case began on April 7, 2011, after A.B. reported to his teacher concerns about R.B.'s safety. Following the report, Stewart contacted Mother, who indicated that she and Father

frequently disciplined the children by "placing them in timeout" or by spanking them. Mother also told Stewart that when R.B. was in timeout, sometimes she or Father would take away comfort items such as toys or clothing (sometimes forcing R.B. to strip naked) until he would calm down.

¶13 Stewart also testified that she spoke with both children after R.B. was hospitalized, and they both described instances of abuse. R.B. told Stewart that he had been slapped in the face by his parents and that Mother's ring had cut him. A.B. also told Stewart about two instances where he observed his parents abusing R.B. In one instance, A.B. said he was walking past the bathroom and "observed his father hitting [R.B.] - the back of [R.B.]'s head against the toilets." A.B. also indicated that while Father was hitting R.B.'s head, Mother was present and that she instructed him to go somewhere else because "she didn't want him to see those things." Stewart ultimately testified that R.B. had suffered serious physical trauma at the hands of his parents and A.B. had "been severely, severely troubled by . . . what he's witnessed, by what he's had to keep inside and hold secret."

¶14 Natalie Anderson, R.B.'s therapist at Childhelp, testified that she began seeing R.B. in July of 2011, and by the time of trial she had conducted fourteen sessions with R.B. Anderson indicated that after three sessions with R.B., he

indicated that he wanted to tell her what had happened to his head and then said "papa did it, head in toilet." In addition to speaking with R.B., Anderson engaged in what she described as "play therapy," where R.B. would take toys or other objects and use them to express his feelings or to relay past events. On separate occasions, R.B. would pick up dolls, throw them on the ground, hit their heads against objects, or put them on a toilet and "yell[] at them to go potty."

¶15 Kristi Murphy, the clinical director at Childhelp, had nineteen sessions with A.B. prior to testifying at the dependency hearing. Murphy explained that in talking with A.B., she never suggested new topics of conversation, but instead would try to use his own words. Murphy testified that during one of her sessions with A.B., he told her about the instance where he witnessed his father hitting R.B.'s head against the toilet. A.B. also told Murphy he had seen his mother slam their dog into a cage and that "when Mom gets angry . . . she's really, really strong." In their final meeting before the hearing, A.B. told Murphy about an instance where he observed Father hitting R.B.'s head against the wall in the bathroom.

¶16 On March 19, 2012, after the conclusion of the dependency hearing, the court found both A.B. and R.B. dependent as to Mother and Father. Mother and Father timely appealed the dependency order.

DISCUSSION

¶17 Mother and Father argue there was insufficient evidence presented at the dependency hearing to find the children dependent and the juvenile court erred by not making specific jurisdictional and factual findings in its March 19, 2012 order. Father also argues that the court erred in (1) denying his motion to dismiss based on disclosure violations prior to the temporary custody hearing, (2) finding that A.B. should remain in temporary custody of ADES, (3) denying his motion to preclude evidence at the dependency hearing, and (4) denying his request to call A.B. as a witness.³

I. Temporary Custody Hearing

¶18 We decline to address the two issues Father raises relating to the temporary custody hearing. Temporary custody determinations are final and appealable orders. *Matter of Appeal in Yavapai County Juvenile Action No. J-8545*, 140 Ariz. 10, 14, 680 P.2d 146, 150 (1984) ("A parent denied and redented control over his or her children must have the right to appeal the initial and subsequent denials."). Under Rule 104(A), "[a] notice of appeal shall be filed with the clerk of the superior court no later than 15 days after the final order is filed with the clerk." Ariz. R. P. Juv. Ct. 104(A). Thus, to challenge

³ We note the Guardian Ad Litem filed a brief in this appeal adopting ADES' arguments and urging us to affirm the juvenile court's dependency determination.

the May 13, 2011, order on appeal, Father was required to file his notice of appeal no later than May 28. Because he failed to timely appeal the juvenile court's temporary custody determination and related evidentiary rulings, we lack jurisdiction over those portions of his appeal. See *State v. Limon*, 229 Ariz. 22, 23, ¶ 3, 270 P.3d 849, 850 (App. 2011) ("When a notice of appeal is untimely, we lack jurisdiction over the appeal.").

II. Disclosure Sanctions

¶19 Father argues the juvenile court erred by denying his motion to preclude the evidence ADES sought to present at the dependency hearing. Specifically, Father contends the court should have precluded the evidence under Rule 44 because ADES' disclosure statement was untimely and incomplete and because the late disclosure resulted in "trial by ambush" and "forced Father to have a hearing in which he was completely unprepared."

¶20 We review the juvenile court's rulings regarding the admissibility of evidence for an abuse of discretion. *Ruben M. v. Arizona Dep't of Econ. Sec.*, 230 Ariz. 236, ___, ¶ 13, 282 P.3d 437, 440 (App. 2012). "We will not reverse unless unfair prejudice resulted or the court incorrectly applied the law." *Larsen v. Decker*, 196 Ariz. 239, 241, ¶ 6, 995 P.2d 281, 283 (App. 2000) (internal quotations and citations omitted).

¶21 Rule 44(B)(2), which relates to disclosure in contested adjudication hearings, states, in pertinent part:

Unless otherwise ordered by the court, the parties shall disclose to each other, in the form of a disclosure statement, the following information within sixty (60) days after the preliminary protective hearing or service of the petition upon a party not appearing at the preliminary protective hearing if the matter is set for a contested adjudication hearing:

- d. A list of the witnesses the party intends to call at trial, which shall include the names, addresses and telephone numbers of the witnesses in addition to a description of the substance of the witness' expected testimony. No witness shall be called at trial other than those disclosed in accordance with this rule, except for good cause shown.
- e. A list of and copies of all exhibits which the party intends to use at trial. . . . No exhibits shall be used at trial other than those disclosed in accordance with this rule, except for good cause shown.

Ariz. R. P. Juv. Ct. 44(B)(2)(d), (e). If a party does not adhere to the deadlines set forth in Rule 44(B)(2), the trial court has discretion under Rule 44(G) to impose sanctions.

Ariz. R. P. Juv. Ct. 44(G). Possible sanctions include "precluding the evidence, granting a continuance or entering any order against a party as deemed appropriate." *Id.* Nonetheless, "[a]ny sanction imposed should be in accordance with the intent

of these rules, as set forth in Rule 36." *Id.* Rule 36 states, "[t]he rules should be interpreted in a manner designed to protect the best interests of the child, giving paramount consideration to the health and safety of the child." Ariz. R. P. Juv. Ct. 36. Because the juvenile court's primary consideration is the best interest of the child, the court "is vested with 'a great deal of discretion.'" *Arizona Dep't of Econ. Sec. v. Superior Court in and For County of Maricopa*, 178 Ariz. 236, 239, 871 P.2d 1172, 1175 (App. 1994) (quoting *Cochise County Juvenile Action No. 5666-J*, 133 Ariz. 157, 160, 650 P.2d 459, 462 (1982)).

¶22 Based on the disclosure deadlines in Rule 44(B)(2), ADES was required to provide its disclosure statement no later than August 20, 2011, but did not do so until September 16, only 19 days before commencement of the dependency hearing. In denying Father's motion to preclude ADES' evidence, the court indicated it did "not believe that there has been any bad faith on the part of [ADES] in failing to disclose this information earlier." The court further indicated that "[u]nder the circumstances, it is difficult for the Court to even imagine any prejudice that would ensue from the late disclosure." Finally, the court emphasized that, based on Rule 36, "the best interest of the children would be best served by all of the information that's relevant coming to the Court."

¶23 Notwithstanding the untimeliness of ADES' disclosure, nothing in Rule 44(G) required the court to impose sanctions. Instead, under Rule 44(G) the court "may impose sanctions" when the timing requirements have been violated. (Emphasis added) Furthermore, Rule 44 requires the court, in determining whether or not to impose sanctions, to consider "the best interests of the children" and to give "paramount consideration to the health and safety of the child." Ariz. R. P. Juv. Ct. 36. Here, the court considered the temporal circumstances of the case and the plain language of the rules and concluded that "the best interest of the children would be . . . served by all of the information that's relevant coming to the court." We do not find any improper application of the law.

¶24 Nor has Father established that he suffered any prejudice from ADES' late disclosure. It is clear that when ADES ultimately made its disclosure, Father had nineteen calendar days to prepare for the dependency hearing. We cannot agree that ADES' disclosure, albeit late, resulted in "trial by ambush" or forced Father into a hearing for which he was unprepared. Father makes only conclusory allegations of prejudice. At no point in his briefing to this court or in his arguments to the trial court did Father specifically state how receiving ADES' disclosure 19 days before trial was prejudicial. Instead, he seems to argue that because ADES failed to comply

with Rule 44(B)(2)'s timing requirement, he was automatically entitled to sanctions. Such a result is simply not contemplated by the juvenile procedural rules; we will not presume prejudice where Father has failed to argue it. Accordingly, we find no abuse of discretion regarding the juvenile court's denial of Father's motion to preclude.

III. Father's Request to Call A.B. to Testify

¶25 Father argues that the juvenile court erred by refusing to allow him to call his son, A.B., as a witness. Specifically, Father argues that the court's ruling denied him due process because, if allowed to testify, A.B. would state that he "feels abandoned and likely that he must say what is 'expected' of him and that which is 'protective' of his brother." We disagree.

¶26 We have previously recognized that, "[w]hile protecting a parent's due process right to test the reliability of a child's testimony through *cross-examination*, the supreme court [has] neither stated nor implied that due process required that the parent be permitted to *confront* the child." *Matter of Appeal in Maricopa County Juvenile Action No. JS-7499*, 163 Ariz. 153, 157, 786 P.2d 1004, 1008 (App. 1989). Thus, we held that "[w]hatever the scope of a parent's rights to due process of law in proceedings that affect the parent-child relationship, face-to-face confrontation with the child is not among them." *Id.*

Additionally, the rules of procedure and related statutes regulating dependency hearings expressly permit the use of both CPS reports and hearsay statements from abused children in dependency hearings. See Ariz. R. P. Juv. Ct. 45(C) (stating that a juvenile court "shall admit [CPS] reports into evidence if the worker who prepared the report is available for cross-examination"); A.R.S. § 8-237 (2012) ("The out of court statements or nonverbal conduct of a minor regarding acts of abuse or neglect perpetrated on him are admissible for all purposes in any . . . dependency . . . proceeding under this title[.]").

¶127 Father cites *Matter of Maricopa County Juvenile Action No. JS-4374*, 137 Ariz. 19, 23-24, 667 P.2d 1345, 1349-50 (App. 1983) for the notion that "a parent in a termination proceeding does have the right to confront witnesses where the witnesses' testimony goes to the heart of the termination proof." In that case, however, we did not consider whether the parent had a due process right to call the contested child as a witness. *Id.* Instead, the issue was whether the parent's "bond restrictions pertaining to the homicide indictment forbade her from leaving Texas to attend the termination proceedings." *Id.* at 23, 667 P.2d at 1349. Father has made no explanation, and none is readily apparent, as to how *JS-4374* is applicable here.

¶128 Father also cites *Matter of Maricopa County Juvenile Action No. JD-561*, 131 Ariz. 25, 28, 638 P.2d 692, 695 (1981) for the assertion that “[i]n the interests of fairness and impartiality, this court concludes that, absent stipulation of the parties, parents are denied due process of law when refused the right to cross-examine their children during a dependency hearing.” While we do not quarrel with the holding of *JD-561*, we note that in that case, the child actually testified in a closed proceeding where the complaining parent was not allowed to be present or cross-examine the child. *Id.*

¶129 Here, the juvenile court found that “making [A.B.] testify would carry with it a very great risk . . . for emotional pain and also a significant risk of long-term psychological damage to [A.B].” The court explained further that A.B.’s testimony would not be “particularly helpful to the truth-seeking process, including [A.B.’s] age and including that he would have to come into court with a courtroom full of people. . . .” The juvenile court was in the best position to make these determinations, and the record supports the court’s decision to exclude A.B. as a witness. Father has cited no case law, and we are aware of none, supporting his contention that a parent has a right in dependency proceedings to call the child as a witness in spite of the potential for severe emotional trauma to the child. Furthermore, even if we assume that had

A.B. testified and recanted all previous statements of abuse, ample evidence would remain from which the juvenile court could have made its dependency determination. Accordingly, the trial court's refusal to allow Father to call A.B. as a witness did not deny Father due process.

IV. Adequacy of Findings⁴

¶130 Both Mother and Father contend that the juvenile court erred by not making specific findings of fact in its March 2012 order adjudicating the children dependent. Pursuant to A.R.S. § 8-844(C) (2012), if a court determines a child to be dependent, it shall "make the following findings as to each parent: (ii) the factual basis for the dependency." Additionally, Rule 55(E)(3) states that upon a determination of dependency, the juvenile court shall "set forth specific findings of fact in support of a finding of dependency." In this case, the juvenile court's March 19 order simply stated:

THE COURT NOW FINDS the following to be true:

- Mother physically abused [R.B.] on April 19, 2011;

⁴ Mother and Father both assert that the juvenile court failed to make adequate jurisdictional findings. However, on August 13, 2012, the court issued an order indicating that it "had jurisdiction under Rule 55(E) of the Arizona Rules of Procedure for the Juvenile court and A.R.S. § 8-844(C) regarding the dependency order that it entered on March, 19, 2012." Accordingly, the issue is moot. See *Contempo-Tempe Mobile Home Owners Ass'n v. Steinert*, 144 Ariz. 227, 229, 696 P.2d 1376, 1378 (App. 1985) ("The court is not empowered to decide moot questions or abstract propositions.")

- Father physically abused [R.B.] before April 19, 2011;
- Mother failed to protect [R.B.] before April 19, 2011;
- Father failed to protect [R.B.] on April 19, 2011;
- Both [A.B.] and [R.B.] are Dependent as to both Mother and Father.

¶31 "The primary purpose for requiring a court to make express findings of fact and conclusions of law is to allow the appellate court to determine exactly which issues were decided and whether the lower court correctly applied the law." *Ruben M.*, 230 Ariz. at ___, ¶ 24, 282 P.3d at 441. It is readily apparent that more detailed findings of fact and conclusions of law would have assisted the parties and this court in evaluating the juvenile court's dependency determination. However, because neither Father or Mother requested more detailed findings from the juvenile court, their argument has been waived and we will not reverse on that basis. See *Christy C. v. Arizona Dep't of Econ. Sec.*, 214 Ariz. 445, 452, ¶ 21, 153 P.3d 1074, 1081 (App. 2007) (recognizing that "a party may not sit back and not call the trial court's attention to the lack of a specific finding on a critical issue, and then urge on appeal that mere lack of a finding on that critical issue as a grounds for reversal.") (citation omitted); *Banales v. Smith*, 200 Ariz. 419, 420, ¶ 6, 26 P.3d 1190, 1191 (App. 2001) ("[A] party must have afforded

the trial court and opposing counsel the opportunity to correct any asserted defects in order to contest on appeal the absence of a trial court's necessary findings of fact and conclusions of law.").

V. Sufficiency of the Evidence

¶32 A.R.S. § 8-201(13)(a)(iii) (2012) defines a dependent child as one who is adjudicated to be "[a] child whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian or any other person having custody or care of the child." For a child to be adjudicated dependent, ADES must prove by a preponderance of the evidence that the statutory requirements have been met. A.R.S. § 8-844(C). On appeal, we view the evidence in light most favorable to upholding the juvenile court's findings and will not disturb the dependency adjudication unless no reasonable evidence supports it. *Matter of Maricopa County Juvenile Action No. JD-5312*, 178 Ariz. 372, 376, 873 P.2d 710, 714 (App. 1994); *Matter of Maricopa County Juvenile Action No. JD-500200*, 163 Ariz. 457, 461, 788 P.2d 1208, 1212 (App. 1989).

A. Sufficiency as to R.B.

¶33 Both Mother and Father argue there was insufficient evidence presented to the juvenile court to support a finding that R.B. was dependent. We disagree.

¶134 The medical records, testimony from CPS case workers and therapists, along with the statements from R.B. and A.B. overwhelmingly support the juvenile court's finding that both parents physically abused R.B. With respect to Father, R.B. repeatedly told his therapist that Father had hit his head on a toilet and against a wall. During play therapy, R.B. would refer to figurines as "papa," place them in a container, and hit them with foam swords while saying "not nice." A.B. also described walking past the bathroom and witnessing Father hitting R.B.'s head against the back of a toilet. Regarding Mother, the uncontradicted testimony at trial showed that she was the only person at home when R.B. sustained life-threatening injuries. Zimmerman opined that R.B.'s injuries were not consistent with Mother's explanation and were instead indicative of non-accidental trauma. Further, A.B. told his therapist that he had heard Mother repeatedly slam R.B.'s head into a wall with sufficient force to leave indentations in the wall. This evidence, along with an abundance of additional evidence, was more than enough to allow the juvenile court to determine that ADES had proven beyond a preponderance of the evidence that both parents physically abused R.B. and that R.B. was therefore dependent.

B. Sufficiency as to A.B.

¶135 Mother and Father also challenge the juvenile court's determination that A.B. was dependent. We note that in making its determination of dependency, the juvenile court did not specifically indicate on what grounds it did so. Nevertheless, after reviewing the record and relevant statutes, we find there is sufficient evidence to uphold the court's determination of dependency.⁵ *Glaze v. Marcus*, 151 Ariz. 538, 540, 729 P.2d 342, 344 (App. 1986) (noting that "[w]e will affirm the trial court's decision if it is correct for any reason, even if that reason was not considered by the trial court." (citing *Cross v. Cross*, 94 Ariz. 28, 381 P.2d 573 (1963))).

¶136 Under A.R.S. § 8-201(13), a child is dependent if his or her home is unfit by reason of abuse. Section 8-201(2) defines abuse as encompassing the causation of "serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist . . . and is caused by the acts or omissions of an individual having

⁵ Section 8-201(13) provides several additional grounds for dependency. Subsection 13(a)(i) refers to a child who is adjudicated to be "[i]n need of proper and effective parental care and control and who has no parent or guardian, or one who has no parent or guardian willing to exercise or capable of exercising such care and control." Although not specifically referenced by the juvenile court, this subsection also supports the court's decision in this case.

care, custody and control of a child." A.R.S. § 8-201(2). During trial, Kristi Murphy, a licensed clinical social worker and registered play therapist, testified that A.B. told her that he had witnessed his parents physically abuse R.B. Murphy's notes also indicated that because he witnessed those events, A.B. was "experiencing some symptoms associated with Post Traumatic Stress Disorder." Murphy's notes further indicate that during the therapy sessions, A.B. continued "to appear to be fearful to openly discuss his past experiences" and that A.B. likely "was witness to and experienced more trauma than he is currently sharing." Additionally, Murphy indicated that A.B. had committed an act of self-harm because he was "irritated" and "just want[ed] the mad to go away." Based on Murphy and A.B.'s statements, we conclude there was sufficient evidence to determine that A.B.'s home was unfit by reason of abuse as defined by A.R.S. §§ 8-201(13) and (2).

CONCLUSION

¶137 For the forgoing reasons, we affirm the decision of the juvenile court adjudicating the children, A.B. and R.B., dependent as to both parents.

/s/

MICHAEL J. BROWN, Presiding Judge

CONCURRING:

/s/

ANDREW W. GOULD, Judge

/s/

DONN KESSLER, Judge