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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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EFEHI E., *Appellant*,

*v.*

DEPARTMENT OF CHILD SAFETY, T.G., *Appellees*.

No. 1 CA-JV 15-0370  
FILED 5-19-2016

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Appeal from the Superior Court in Coconino County  
No. S0300JD201500009  
The Honorable Elaine Fridlund-Horne, Judge

**AFFIRMED**

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COUNSEL

Coconino County Public Defender's Office, Flagstaff  
By Sandra L. J. Diehl  
*Counsel for Appellant*

Coconino County Legal Defender's Office, Flagstaff  
By Bruce W. Griffin, Jillian Marini  
*Counsel for T.G.*

Arizona Attorney General's Office, Phoenix  
By Carol A. Salvati  
*Counsel for the Department of Child Safety*

**MEMORANDUM DECISION**

Judge Randall M. Howe delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Andrew W. Gould joined.

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**H O W E**, Judge:

¶1 Efehi E. (“Mother”) appeals the juvenile court’s determination that T.G., her minor daughter, is a dependent child. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 Mother adopted nine-year-old T.G. and her brother in Texas in December 2014. Shortly after, Mother and the children moved to Arizona because Mother accepted a position with the Navajo Nation. A month later, the police were called to T.G.’s school to investigate a report that T.G. did not want to go home. T.G. told the officer that Mother was abusive and that Mother was going make her sleep outside that night. The officer spoke with Mother, who said that T.G. was disrespectful towards her, had disciplinary issues, and was challenging to handle. The officer advised Mother that T.G. would stay at the school’s dormitory that night.

¶3 Nine days later and after T.G. returned to Mother’s care, T.G. threw objects at Mother in response to Mother’s telling T.G. that she could not live at her school’s dormitory. T.G. then locked herself in her room and refused to get ready for school. Mother called the police for help; an officer arrived and had to stay at the house until T.G. left for school. Mother later went to the police and reported that T.G. was “beyond control” and asked for help.

¶4 The next day, T.G. asked Mother again whether she could live in the school’s dormitory, and Mother refused. T.G. brandished a knife while threatening to kill Mother and herself. Mother called the Kayenta Child Protective Services, and they recommended that Mother take T.G. to the hospital. Mother did so. The hospital staff found no evidence that T.G. had been abused. However, a staff member called the Department of Child Safety (“Department”) and reported that T.G. was disruptive, she had threatened Mother, and Mother was unwilling to take her home.

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¶5 A Department case manager went to the hospital and spoke with Mother. Mother said that the case manager needed to take T.G. because Mother was tired, she feared that T.G. would act on her threats, and T.G. was damaging Mother's reputation with false accusations of abuse. Concluding that T.G.'s wellbeing was not at risk, the case manager left the child in Mother's care; Mother and T.G. went home together. The next morning, however, T.G. threw objects at Mother while she was sleeping. T.G. then ran away from home, and campus security had to escort her home twice against her wishes. Once home, T.G. was "talking back" to Mother, and Mother told an officer that if T.G. attacked her, she would defend herself.

¶6 The following morning, campus security found T.G. standing outside the door of an urgent care facility. T.G. refused to go home and said that Mother was mistreating and abusing her. At home, Mother told the officer that T.G. was lying and that if T.G. did not want to stay with her, the child did not have to. Later that day, T.G. was found ringing the doorbell at the emergency room, claiming that her shoulders were hurting. A nurse found nothing wrong with the child, and two officers escorted her home. Mother told the officers that T.G. had cursed at her, refused to listen, and bitten her leg. A health center employee later went to Mother's home and found T.G. outside in the cold. T.G. refused to go inside, and Mother told the employee that the child would not be allowed inside unless "she ke[pt] her mouth shut." The employee offered to care for T.G. for the night; Mother accepted the offer, saying that she would "finally have a break" from the child.

¶7 Soon after in February, Mother tried to take T.G. to a hospital for an evaluation, but T.G. jumped out of the car. Mother called the police, and they took T.G. to another hospital. Mother told her case manager that she wanted T.G. in foster care for a couple weeks or returned to Texas. The Department learned that the Texas child welfare agency was willing to take T.G. back if Mother brought her to its office. Both Mother and T.G. agreed, and that day, they set out for Texas. T.G. soon disrupted the trip, however, by opening the car door and threatening to jump out. Mother refused to stop the car; T.G. began hitting her as she was driving. Mother called the police, and the police took T.G. to a health care clinic.

¶8 The clinic staff determined that T.G. had suicidal ideations, but no physical problems. Because the clinic was not equipped to admit T.G. for treatment, it advised Mother to take T.G. home. Mother refused, even after the clinic warned her that her refusal would constitute abandonment and that it would call the Department. Mother's case

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manager went to the clinic after receiving the clinic's call and took temporary custody of T.G. The Department placed the child in a group home the next morning.

¶9 The Department petitioned for dependency. It alleged that the child was dependent due to neglect because Mother abandoned the child. The Department subsequently amended the petition to strike this allegation, however. The amendment left in place the Department's allegation that the child was dependent due to neglect because "Mother [was] unable or unwilling to provide the child with proper parental care and control." Specifically, the Department alleged that the child had engaged in a number of concerning behaviors, that Mother had been unable to deal with these behaviors, and that Mother's inability to deal with the child's behavior created an unreasonable risk of harm to the child.

¶10 At the dependency hearing, Mother testified that she was willing to take T.G. back, but only after the child was "stabilize[d]." When asked what she would do if T.G. acted up again in the car, Mother responded that she was "just going to pray that [the child] doesn't," but if the child did, she would take the child to the emergency room. Mother testified that she would not call the Department if T.G. acted up because she did not "want us to go through this again." Mother also testified that she would only call the police if T.G. attacked her again, but not if T.G. threw picture frames and other objects at her.

¶11 The juvenile court adjudicated T.G. a dependent child. The court found that Mother was unable to provide proper parental care and control of T.G., and therefore, T.G. was dependent. Specifically, and as alleged in the petition, the court found that the Department proved that the child engaged in a number of concerning behaviors, including threatening harm to herself and her mother and attacking her mother, and that Mother was unable to deal with these behaviors. The court also found that Mother's inability to deal with the child's behavior created an unreasonable risk of harm to the child. The court explained that Mother did not "neglect" T.G., as the term is defined in A.R.S. § 8-201(24) for a dependency determination under A.R.S. § 8-201(14)(a)(iii). The court also noted that the Department's "neglect" allegation was a "general allegation" that was not necessary to a dependency finding.

¶12 The Department objected to the court's determination finding T.G. dependent on a ground other than neglect. The Department argued that it had alleged that the child was dependent because Mother neglected her, and therefore, the court had to find the child dependent under A.R.S.

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§ 8-201(14)(a)(iii). The Department further argued that by finding the child dependent under another ground, the court was modifying the allegations to conform to the evidence. The Department explained that an amendment was improper because no additional allegations were litigated or supported by the evidence. Mother's counsel and T.G.'s counsel agreed with the Department that the issue of neglect was the only ground for dependency that was before the court. The court explained that it was not amending the petition, however, but instead was correctly finding the necessary allegations on which to base a dependency. The parties moved for reconsideration and also requested that the court dismiss the petition because it had found that the Department had not proved neglect. The court denied their requests, and Mother timely appealed.

### DISCUSSION

¶13 Mother argues that the juvenile court erred by amending the petition on its own accord and not dismissing the petition even though the court found that the Department had not proved neglect as alleged in the petition. Although the Department objected to the court's ruling at the time, it now argues that the court correctly found the child dependent because the court found the allegations in the petition to support a dependency. We will not disturb a juvenile court's ruling in a dependency action unless the findings upon which it is based are clearly erroneous and no reasonable evidence supports them. *Oscar F. v. Dep't of Child Safety*, 235 Ariz. 266, 267-68 ¶ 6, 330 P.3d 1023, 1024-25 (App. 2014). But we review de novo the court's interpretation and application of the dependency statute. *Id.* Because the primary consideration is the child's best interests, we afford broad discretion to the juvenile court. *Joshua J. v. Ariz. Dep't of Econ. Sec.*, 230 Ariz. 417, 424 ¶ 29, 286 P.3d 166, 173 (App. 2012). Here, sufficient evidence supports the juvenile court's dependency determination, and accordingly, the court did not err.

¶14 A parent has a constitutional right to raise her child without government intervention. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248 ¶ 11, 995 P.2d 682, 684 (2000). This right, however, is not absolute. *Id.* at ¶ 12. Before a child can be found dependent, the Department must prove by a preponderance of the evidence the allegations in the dependency petition. A.R.S. § 8-844(C)(1); *Louis C. v. Dep't of Child Safety*, 237 Ariz. 484, 489 ¶¶ 19-21, 353 P.3d 364, 369 (App. 2015). Under A.R.S. § 8-201(14)(a)(i), the juvenile court may find a child dependent if she is "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." Further, under A.R.S. § 8-201(14)(a)(iii), the court may find a

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child dependent if it finds the child's "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." "Neglect" is the "inability or unwillingness of a parent . . . of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare." A.R.S. § 8-201(24)(a). An adjudication of dependency does not require a finding of fault on the parent's part. *Matter of Appeal in Santa Cruz Cty. Juvenile Dependency Action Nos. JD-89-006 & JD-89-007*, 167 Ariz. 98, 102, 804 P.2d 827, 831 (App. 1990).

¶15 Here, the Department's dependency petition cited A.R.S. § 8-201(14), without clarifying whether its allegations were made under subparts (14)(a)(i) or (14)(a)(iii). After the amendment eliminating abandonment as a ground for dependency, the remaining allegation was that the child was "dependent due to neglect . . . Mother is unable or unwilling to provide the child with proper parental care and control. . . . Mother's inability to deal with the child's behavior creates an unreasonable risk of harm to the child." The juvenile court found that the Department had proved that Mother was unable to provide proper care and control for T.G., but it specifically concluded that the Department had not proved neglect. The court's findings nonetheless are sufficient to support a dependency under A.R.S. § 8-201(14)(a)(i). Although Mother argues that the court effectively amended the petition at trial, she cannot contend that she was prejudiced by the court's findings of some but not all of the facts that the petition alleged. The allegation that she was unable to provide proper care and control over T.G. was sufficient, by itself, to support a dependency, and that is all the court found.

¶16 Consequently, sufficient evidence supports the juvenile court's finding T.G. a dependent child. First, the record shows that the child engaged in a number of concerning behaviors. On numerous occasions, the child has threatened to harm herself and Mother, has attacked Mother, and has put herself and Mother in harmful situations. For example, when Mother was driving T.G. to the hospital for an evaluation, T.G. opened the car door and threatened to jump out. When Mother refused to stop the car, T.G. attacked Mother—while Mother was still driving. Second, the record shows that Mother has been unable to deal with these behaviors. In response to T.G.'s behavior, Mother has repeatedly called the police and depended on their help to control T.G. Mother also resorted to leaving the child outside in the cold until the child behaved again. Moreover, nothing in the record indicates that Mother has been able to effectively deal with T.G.'s behavior. Consequently, because sufficient evidence supports the

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juvenile court's finding that Mother was unable to provide proper care and control of T.G., the court did not err in adjudicating the child dependent under A.R.S. § 8-201(14)(a)(i).

**CONCLUSION**

¶17 For the foregoing reasons, we affirm.



Ruth A. Willingham · Clerk of the Court  
FILED : ama