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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

MERISSA M., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, C.B., M.B., *Appellees*.

No. 1 CA-JV 17-0186
FILED 10-10-2017

Appeal from the Superior Court in Maricopa County
No. JD33447
The Honorable Monica S. Garfinkel, Judge *Pro Tempore*

AFFIRMED

COUNSEL

John L. Popilek, P.C., Scottsdale
By John L. Popilek
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Cathleen E. Fuller
Counsel for Appellees

MEMORANDUM DECISION

Judge Randall M. Howe delivered the decision of the Court, in which Presiding Judge James P. Beene and Judge Kent E. Cattani joined.

H O W E, Judge:

¶1 Merissa M. (“Mother”) appeals the juvenile court’s order adjudicating her children C.B. and M.B. dependent. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In February 2016, the Department of Child Safety received a “hotline” call stating that Mother was using drugs in the presence of the children, the children were malnourished and had not bathed in over a month, and the home was filthy. Though the Department received the call in February, it was unable to locate the family until October 2016. When the Department first contacted Mother, she was highly aggressive and refused to submit to a drug test that the Department requested.

¶3 At a team decision-making meeting held a few days later, Mother’s behavior was aggressive and she was told several times to either calm down or to leave the meeting. The Department expressed its concern that Mother had not submitted to a drug test, and she ultimately agreed to submit to a hair follicle drug test. At the end of the meeting, the Department determined that family reunification services were necessary.

¶4 A few days later, Mother’s hair follicle test came back positive for methamphetamine and amphetamine. Consequently, the Department took temporary custody of the children the following week. The Department then petitioned for dependency alleging that the children were dependent because Mother had neglected the children due to her untreated substance abuse and mental health issues. At the subsequent preliminary protective hearing, the juvenile court ordered Mother to participate in individual counseling but allowed her to “self-refer for substance abuse assessment and/or treatment through Southwest Behavioral Health.” Mother further agreed to participate in parenting classes and parent-aide services.

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¶5 Mother completed parenting classes through Southwest Behavior Health and provided a certification of completion to the Department's assigned case manager. She also participated in a substance-abuse intake with Southwest Behavioral Health in which she admitted that she had used methamphetamine daily from 15 to 17 years old and two to three times in the previous year. The following month, Mother tested positive for methamphetamine and amphetamine. Mother then missed all other required drug tests in December 2016 and January 2017.

¶6 In February 2017, Mother tested negative once but had two drug tests voided and missed other required drug tests. During one of her voided tests, Mother failed to follow proper procedures and cursed at the drug testing employees. That same month, Mother completed an intensive outpatient treatment program.

¶7 The juvenile court held a two-day contested dependency adjudication hearing in March and April 2016. At the hearing, the case manager testified that Mother missed 19 required drug tests from the start of the case in November 2016 until the beginning of March 2017. He further stated that although Mother completed an intensive outpatient treatment program, he still had concerns about the children's safety if returned to Mother because she tested positive for methamphetamine and amphetamine while in the program. The case manager testified that in the month preceding the April hearing, although Mother had tested negative twice, she missed several tests. He opined that Mother's inconsistency in drug testing could mean that she was abusing drugs and was an issue that needed to be addressed before returning the children to her care.

¶8 During Mother's testimony, she admitted that she began using methamphetamine when she was 15 years old. Additionally, Mother testified that she used methamphetamine while the children were in her legal care, although they were not present while she used drugs. She further stated that she understood the importance of drug testing consistently before her children would be returned to her.

¶9 Before the second day of the dependency adjudication hearing, the Department introduced a police report about a domestic violence incident between Mother and the children's father. Throughout the hearing, both the Department and Mother addressed questions about the domestic violence. At the end of the hearing, the Department moved to amend the dependency petition to add the ground of domestic

violence. Over Mother's objection, the court granted the Department's motion.

¶10 The juvenile court found the children dependent "based upon [Mother's] not being able to provide the children with proper and effective care and control due to [her] chronic substance abuse and domestic violence issues in [the] home." The court also found that abusing methamphetamine "is not something that can be used on a casual basis without having consequences," and that "it puts [Mother] in a situation that you cannot safely parent a child." The court opined that even if Mother was "clean today, it's still been too short a timeframe for the children to safely be returned home to you." Mother timely appealed.

DISCUSSION

¶11 Mother argues that the Department failed to prove the adjudication by a preponderance of the evidence. We review a dependency order for an abuse of discretion and defer to the juvenile court's ability to weigh and analyze the evidence. *Shella H. Dep't of Child Safety*, 239 Ariz. 47, 50 ¶ 13 (App. 2016). "Thus, we will not disturb a dependency adjudication for insufficient evidence unless no reasonable evidence supports it." *Louis C. v. Dep't of Child Safety*, 237 Ariz. 484, 488 ¶ 12 (App. 2015). The juvenile court did not err because reasonable evidence supported the adjudication order.

¶12 A dependent child is one "[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" as well as one "whose home is unfit by reason of . . . neglect." A.R.S. § 8-201(15)(a)(i), (iii). Neglect means the inability or unwillingness of a parent to provide their 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(25)(a).

¶13 The record supports the juvenile court's ruling. At the time of the dependency adjudication hearing in April 2017, Mother was not taking drug tests consistently. According to the case manager, although Mother submitted to two drug tests in March 2017, she missed 19 required drug tests up until that time. Mother knew that failing to consistently drug test was an issue that needed to be addressed because otherwise the Department would have no way of knowing that she was no longer using drugs. Although Mother completed intensive outpatient treatment, she tested positive for methamphetamine while in the program and failed to

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participate in any drug testing throughout all of January. This supports the juvenile court's finding that Mother was unwilling to provide the children with proper and effective control because of her substance abuse. Contrary to Mother's argument that the dependency could proceed as an "in-home" dependency, the court found and the record supports that the children could not safely be returned until Mother consistently tested negative for drugs.

¶14 Mother next contends that the juvenile court erred by granting the Department's oral motion to amend the dependency petition to add domestic violence as a factual basis for dependency. But because we affirm the court's order on neglect due to substance abuse, we need not decide that issue. *Cf. Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280 ¶ 3 (App. 2002) (when one ground for severance is properly established, alternative grounds need not be addressed on appeal). Thus, the juvenile court did not err by adjudicating C.B. and M.B. dependent as to Mother.

CONCLUSION

¶15 For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court
FILED: AA