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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ROBERT H., CORRIE B., *Appellants*,

v.

DEPARTMENT OF CHILD SAFETY, S.H., *Appellees*.

No. 1 CA-JV 18-0233
FILED 11-27-2018

Appeal from the Superior Court in Mohave County
No. L8015JD201807008
The Honorable Derek Carlisle, Judge

AFFIRMED

COUNSEL

The Stavris Law Firm, PLLC, Scottsdale
By Alison Stavris
Counsel for Appellant Robert H.

Harriette P. Levitt, Tucson
Counsel for Appellant Corrie B.

Arizona Attorney General's Office, Mesa
By Lauren J. Lowe
Counsel for Appellee Department of Child Safety

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MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Jennifer M. Perkins and Judge Lawrence F. Winthrop joined.

T H O M P S O N, Judge:

¶1 Robert H. (father) and Corrie B. (mother) appeal from the juvenile court's order finding their daughter S.H. dependent. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 S.H. was born in May 2017. In January 2018, S.H.'s twelve-year old half-sister, C.B., told a friend that mother's boyfriend (father) sexually assaulted her. Mother, father, C.B., and S.H. were living together in the same home at that time. C.B.'s comment was reported to police, and the police and DCS investigated.

¶3 C.B. was interviewed extensively at Haven House and provided detectives with details of two instances in December 2017 when father sexually abused her when she was alone with him in his truck. Mother stated in front of a DCS investigator and others at Haven House that C.B. was lying about the abuse and trying to break up the family. Mother insisted to the DCS investigator that father and C.B. had never been alone together¹, and told the investigator, "that b[itch] said that. I can't believe she said that." Mother further stated that she and father were "well known in the community and [C.B.'s] allegations would] destroy their reputation," and that father "couldn't have [abused C.B.] because he's a stand-up guy." Mother's statements about C.B.'s allegations caused DCS to be concerned that it would be "difficult, if not impossible" for mother to protect S.H. and C.B. S.H. and C.B. were removed from the home.

¹ Mother later testified that C.B. was alone with father on two occasions in December 2017—once when he took her Christmas shopping and another time when he took her to look at Christmas lights.

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¶4 In February 2018, DCS filed a dependency petition alleging that S.H. was dependent as to mother and father, and that C.B. was dependent as to mother and her biological father, R.J.² After a two-day trial, the juvenile court found S.H. dependent. At the time of trial, mother was still living with father, who supported her financially.

¶5 Father and mother timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 8-235(A), 12-120.21(A)(1), and 12-2101(A)(1).

DISCUSSION

¶6 Mother and father both argue that the juvenile court erred by finding that S.H. was dependent. This court “will not disturb the juvenile court's ruling in a dependency action unless the findings upon which it is based are clearly erroneous and there is no reasonable evidence supporting them.” *Pima Cty. Juv. Dependency Action No. 118537*, 185 Ariz. 77, 79 (App. 1994) (citations omitted). The allegations of the dependency petition must be proven by a preponderance of the evidence. *Id.* (citation omitted). The juvenile court is “in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings.” *Pima Cty. Dependency Action No. 93511*, 154 Ariz. 543, 546 (App. 1987). We will not reweigh the evidence. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 12 (App. 2002) (citations omitted).

¶7 Under A.R.S. § 8-201(15)(a)(i), a dependent child is one “[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.” A child may also be adjudicated dependent if the child’s home “is unfit by reason of abuse, neglect, cruelty or depravity by a parent” A.R.S. § 8-201(15)(a)(iii). Here, the juvenile court found that mother was unable to provide effective parental care for S.H. because “[s]he failed to protect [C.B.] from sexual abuse [and was] unable to explain how she would provide appropriate

² C.B. was placed with her biological father R.J. the night she was removed from mother and father’s home and eventually the dependency as to C.B. was dismissed. Neither C.B. nor R.J. are parties to this appeal.

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parenting since learning of a sexual abuse by [father]."³ The court found that S.H. was dependent as to father based on his sexual abuse of C.B.

¶8 Reasonable evidence supported the juvenile court's dependency findings. The evidence at trial supported a finding that father sexually abused C.B., therefore rendering him unfit to care for S.H. It also supported a finding that mother failed to protect C.B. from the abuse, thus making her an ineffective parent for her daughter S.H. C.B.'s disclosures were corroborated by mother and father's testimony that she had been alone with father in his truck on two occasions in December 2017, and her statements to police, DCS, the nurse who did a forensic medical exam, and her counselor were consistent. At the time of trial, mother continued to express doubt that father sexually abused C.B., stating that she was "still waiting for . . . evidence . . ." Accordingly, the juvenile court's finding that S.H. was dependent was not clearly erroneous.

CONCLUSION

¶9 For the foregoing reasons, we affirm the juvenile court's decision finding S.H. dependent.



AMY M. WOOD • Clerk of the Court
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³ Mother incorrectly asserts on appeal that the juvenile court's final order contains a finding that S.H. was dependent as to her because she failed to provide emotional support to C.B. when C.B. reported father's sexual abuse to mother. The court clearly stated that it was not finding dependency based on the emotional support allegation, and the court's final, signed order does not contain the finding.