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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

BRADLEY T., *Appellant*,

v.

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

No. 1 CA-JV 20-0036
FILED 7-14-2020

Appeal from the Superior Court in Maricopa County
No. JD 532486
The Honorable Cassie Bray Woo, Judge

AFFIRMED

COUNSEL

Vierling Law Offices, Phoenix
By Thomas A. Vierling
Counsel for Appellant

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

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MEMORANDUM DECISION

Presiding Judge Michael J. Brown delivered the decision of the Court, in which Judge D. Steven Williams and Chief Judge Peter B. Swann¹ joined.

B R O W N, Judge:

¶1 Bradley T. (“Father”) appeals the juvenile court’s dependency order relating to his son, B.T. (born in 2002). Father argues the evidence presented was insufficient. For the following reasons, we affirm.

BACKGROUND

¶2 Father and Michelle S. (“Mother”) are B.T.’s biological parents. In 2003, the family court awarded Father sole custody, and he has been the primary custodian of B.T. since that time. Father has been diagnosed with “bipolar disorder, type 1, mixed episode, recurrent, severe with psychosis.” His mental illness causes paranoia and frequent auditory hallucinations, but he believes the voices he hears are from a device implanted in his ear.

¶3 On April 20, 2019, Father and B.T. were involved in an altercation following an argument about the lack of food in their home, which led to B.T. grabbing a screwdriver to defend himself and Father wrestling him to take it away. B.T. was arrested, but no charges were filed. The Department of Child Safety (“DCS”) removed B.T. from Father’s care. B.T. was initially placed at Canyon State Academy and later with his grandmother. DCS filed a dependency petition, alleging that (1) Father’s inconsistent treatment of his mental illness impairs his ability to properly care for B.T., and (2) physical altercations between them show that Father’s home is an unsafe environment for B.T.²

¹ Chief Judge Peter B. Swann replaces the Honorable Kenton D. Jones, who was originally assigned to this panel. Chief Judge Swann has read the briefs and reviewed the record.

² DCS also alleged B.T. was dependent as to Mother due to neglect, but she is not a party to this appeal.

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¶4 In June 2019, Father filed a motion for the return of B.T. pursuant to Arizona Rules of Procedure for the Juvenile Court 59 (“Rule 59”). Following an evidentiary hearing, the juvenile court denied the motion, explaining in part as follows:

The court has significant concerns about Father’s mental health and finds that until his mental health is stable, that he poses a significant risk of danger to [B.T.]’s physical and emotional health. Further, the evidence showed that Father is getting state assistance for health care and food stamps, but has not been consistently employed for many years. The court is concerned about Father’s lack of stability and his ability to provide basic needs for [B.T.], which could put [B.T.] in physical danger.

¶5 On January 27, 2020, the juvenile court held a dependency adjudication hearing.³ After considering the testimony and exhibits presented, as well as the evidence from the Rule 59 hearing, the court found that DCS proved the dependency of B.T. by a preponderance of the evidence. Father timely appealed the dependency order.⁴

³ Arizona law directs a dependency adjudication hearing to “be completed within ninety (90) days of service of the dependency petition on the parent.” Ariz. R.P Juv. Ct. 55(B). The hearing may be continued beyond that time “only upon a finding of extraordinary circumstances,” the factual basis of which “shall be set forth in writing.” *Id.* Father was served with the dependency petition in April 2019, but the record does not reflect why the adjudication hearing was not conducted until January 2020. Nor does the record include any finding of extraordinary circumstances; however, Father does not raise a timeliness challenge on appeal. Nonetheless, given the clear directives of Rule 55(B) and the interests at stake in a dependency proceeding, we urge compliance with Rule 55(B) and note that future challenges to unjustified delays in conducting adjudication hearings would not be unwarranted.

⁴ Because B.T. turned 18 in March 2020, the issue of whether sufficient evidence supports the dependency is arguably moot. But there is undoubtedly a stigma associated with a dependency finding based on neglect. *Cf. Cardoso v. Soldo*, 230 Ariz. 614, 618, ¶ 12 (App. 2012) (explaining that “because an order of protection is issued for the purpose of restraining acts included in domestic violence, its very issuance can significantly harm

DISCUSSION

¶6 We review a dependency order for an abuse of discretion. *Louis C. v. Dep't of Child Safety*, 237 Ariz. 484, 488, ¶ 12 (App. 2015). We view the evidence in the light most favorable to upholding the juvenile court's order, and we will affirm unless no reasonable evidence supports the order. *Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, 235, ¶ 21 (App. 2005). As the trier of fact, the court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004).

¶7 A dependent child is one 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," or one "whose home is unfit by reason of . . . neglect . . . by a parent." A.R.S. § 8-201(15)(a)(i) and (iii). Neglect is defined as "[t]he inability or unwillingness of a parent . . . 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(25)(a). The circumstances that indicate dependency must be present at the time of the adjudication. *Shella H. v. Dep't of Child Safety*, 239 Ariz. 47, 50, ¶ 12 (App. 2016). DCS has the burden of proving the allegations of a dependency petition by a preponderance of the evidence. *See* A.R.S. § 8-844(C)(1); *Shella H.*, 239 Ariz. at 50, ¶ 13.

¶8 The juvenile court found that DCS met its burden of proof, stating as a factual basis that Father is unable to parent because his mental health issues (bipolar diagnosis) impair his ability to properly care for B.T.; for example, Father "does not believe that ceasing his prescription medication affects him." The court also found that Father is unable to parent due to neglect because he and B.T. "got into a physical altercation" and they had similar incidents previously.

the defendant's reputation—a collateral consequence that can have lasting prejudice"); *In re M.H.* 2007-001236, 220 Ariz. 160, 165, ¶ 12 n.3 (App. 2008) (declining to find an appeal of court-ordered mental health treatment moot given the appellant's "interests at stake as a result of having a commitment order in her record"). Thus, we decline to dismiss Father's appeal based on mootness. We also note that B.T. has voluntarily agreed to participate in DCS's extended foster care program, which will presumably continue regardless of the outcome of this appeal. *See* A.R.S. § 8-521.02.

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¶9 Father argues that DCS failed to present evidence of any of Father's mental health records after July 2019 and therefore presented no evidence from an expert or mental health provider as to his *current* mental health or need for counseling. Father's own testimony, however, suggests that at the time of the hearing he was still suffering from significant paranoia and delusions referenced in previous medical records as part of his bipolar disorder. Father continually blamed "outside influences" for the whole incident between him and B.T. that led to removal, asserting that DCS and "the system" are the problem.

¶10 At the time of the April 2019 altercation that led to initiation of these dependency proceedings, Father was not taking any medications for his bipolar disorder. He has several prescriptions to treat his bipolar disorder, and his most current medical records, dated December 3, 2019, showed that his medication was assisting in stabilizing his mood, and he did not report any delusions. But Father testified nonetheless that he does not believe he has a mental health problem or that ceasing his medication affects him.

¶11 DCS also presented evidence of Father's visits with Resilient Health, where he was continuing his treatment at the time of the dependency hearing. While Father was engaging in some treatment with Resilient Health, he failed to attend multiple appointments that were intended to assist with managing his medication, claiming he continued to take his medication despite missing the appointments. The DCS case manager testified that Father's failure to seek appropriate treatment through attending counseling and consistently taking appropriate medication shows his unmanaged mental health continues to affect his ability to parent. These issues, showing Father's lack of insight into his own mental health and its negative effect on his ability to parent, support the juvenile court's finding that he was unable to parent due to mental health issues.

¶12 Additionally, the physical altercation that occurred on April 20, 2019, regarding a lack of food in the home, led DCS to believe that B.T. was not safe with Father due to neglect. Father argues that incident was not an altercation and no physical harm resulted. But testimony confirms that B.T. brandished a screwdriver during the altercation and Father physically subdued him. Father also admitted there was at least one other altercation between him and B.T. in which the police were called.

¶13 In sum, DCS presented evidence of Father's mental health issues, past and present, and the physical altercations between Father and

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B.T. that show Father's inability to parent. It was the juvenile court's role to weigh the evidence and determine whether DCS met its burden of proof; we do not reweigh that evidence on appeal. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 12 (App. 2002). We therefore conclude that reasonable evidence supports the court's finding of dependency based on previous physical altercations and Father's continuing unstable mental health.

CONCLUSION

¶14 We affirm the juvenile court's dependency order.



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