IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

DARRELL H., *Appellant*,

v.

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

No. 1 CA-JV 20-0250
FILED 5-6-2021

Appeal from the Superior Court in Maricopa County
No. JD38904
The Honorable Jo Lynn Gentry, Judge

AFFIRMED

COUNSEL

Maricopa County Legal Defender's Office, Phoenix
By Jamie R. Heller
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Autumn Spritzer
Counsel for Appellee, Department of Child Safety

MEMORANDUM DECISION

Judge Brian Y. Furuya delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Samuel A. Thumma joined.

F U R U Y A, Judge:

¶1 Darrell H. ("Father") appeals the superior court's order finding his minor child, I.S., dependent as to Father. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 I.S. was born in 2007 to Father and Denise S. ("Mother") in Wisconsin, where both Father and Mother lived at the time. Around 2015, Mother moved, together with I.S., to Arizona. For the ensuing five years, while Father remained in Wisconsin, I.S. was primarily cared for by I.S.' maternal grandmother ("Grandmother") in Arizona. Mother struggled with substance abuse, experienced homelessness, and reportedly attempted suicide in 2018.

¶3 In January 2020, the Department of Child Safety ("DCS") took temporary custody of I.S., as authorized by order of the superior court. That same month, DCS filed a dependency petition alleging that Father was "unwilling or unable to provide proper and effective parental care and control" to I.S. by failing to provide for I.S.' basic necessities or to maintain a normal parent-child relationship for an "extended period of time."[1] I.S. was placed in Grandmother's custody, where she had been living before the dependency petition was filed.

¶4 In March 2020, after the dependency action was initiated, Father began video-chatting with I.S. biweekly and had at least one additional telephone conversation with I.S. each week.

[1] DCS also alleged that I.S. was dependent as to Mother. Mother "failed to appear without good cause" to challenge the March 2020 dependency adjudication and is not a party to this appeal.

¶5 In July and August 2020, the superior court held a contested dependency hearing where Grandmother, the ongoing DCS case manager, and Father testified.[2]

¶6 Father failed to take care of I.S. for any extended period of time. Grandmother testified that I.S. had mainly been with her for the last five years and that although I.S. was interested in visiting Father in Wisconsin, she wanted to continue to live with Grandmother.

¶7 The ongoing case manager testified that based on her review of DCS reports and court reports, Father did not have a normal parent-child relationship with I.S. before March 2020. She did, however, acknowledge Father's engagement with I.S. beginning in March 2020, after the dependency action began.

¶8 Father testified that he and Mother had joint "legal" custody of I.S. in Wisconsin and that I.S. stayed with him twice while I.S. lived there—once when I.S. was seven months old for about a year, before this period was ended by Father's incarceration, and then a second time in 2018 for about two months because Mother "needed help." Father further testified he had paid child support intermittently over the years but admitted "it wasn't regularly because sometimes . . . [he] lost jobs and then [he]'d fall back behind on child support." Father visited I.S. once in Arizona. He cited an "ugly relationship" with Mother and his residence in Wisconsin as explanations for his lack of relationship and regular contact with I.S. Nevertheless, Father testified he had had stable employment for the last two years, health insurance he could extend to I.S., and a 401K, and he alleged he could provide a safe home in Wisconsin where I.S. could live with Father, his girlfriend, and his three other children.

¶9 Having heard this testimony, the superior court determined I.S. to be dependent as to Father:

> [F]ather . . . failed to sufficiently demonstrate parental responsibilities for the past 5 years. . . . Father paid child support for a period but after making two lump-sum payments to mother, the child support arrangement terminated. Father paid the support to mother, not knowing

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[2] The continued August 2020 dependency hearing was not digitally recorded nor transcribed. The superior court later adopted the parties' narrative statement as the record for the August 2020 hearing.

> that the child was living with maternal grandmother because mother was unable to parent due to her substance abuse. As a father, it was incumbent on father to make himself aware of [I.S.'] living conditions and ensure [I.S.'] safety and security. In five years, father had two in-person visits with [I.S.] and while he talked with [I.S.] telephonically, he claimed to be unaware that [I.S.] was living with maternal grandmother due to mother's inability to parent.

(Footnote omitted.)

¶10 The superior court adopted a case plan of family reunification. Father timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") § 8-235(A).

DISCUSSION

I. UCCJEA and Jurisdiction

¶11 As a preliminary matter, Father's testimony and argument at trial concerning his "legal custody" of I.S. raises the specter of a jurisdictional question under Arizona's version of the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), codified at A.R.S. §§ 25-1001 to -1067. Neither party briefed the issue of jurisdiction under the UCCJEA. Nevertheless, "dependency proceedings are considered child custody proceedings under the UCCJEA." *Arturo D. v. DCS*, 249 Ariz. 20, 23, ¶ 12 (App. 2020) (citing A.R.S. § 25-1002(4)(a)). As such, we have an "independent obligation to evaluate subject matter jurisdiction." *Angel B. v. Vanessa J.*, 234 Ariz. 69, 71, ¶ 5 (App. 2014).

¶12 The UCCJEA grants jurisdiction over child custody proceedings to a child's "home state," defined as "[t]he state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding, including any period during which that person is temporarily absent from that state." *See* A.R.S. § 25-1002(7)(a); A.R.S. § 25-1002(13)(a)-(b) (defining "person acting as a parent" as a "person, other than a parent," who: (1) "[h]as physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding" and (2) "[h]as been awarded legal custody by a court or claims a right to legal custody under the law of this state"); *see Arturo*, 249 Ariz. at 23, ¶ 10. The UCCJEA further "provides that the issuance of a child custody order by a court with

jurisdiction is binding on other states unless and until certain changes or specified events occur." *Angel B.*, 234 Ariz. at 72, ¶ 8 (citations omitted). It vests "exclusive, continuing jurisdiction with the state that issues the initial child custody determination, subject to statutory exceptions." *See id.* Where an existing out-of-state child custody order exists, the UCCJEA "requires that the [superior] court must confer with the judge who issued the out-of-state custody order and/or get the out-of-state court to release its continuing jurisdiction over its custody order before modifying an out-of-state order." *Melgar v. Campo*, 215 Ariz. 605, 605, ¶ 1 (App. 2007).

¶13 Here, the superior court expressed uncertainty that there were any custody orders issued in Wisconsin court proceedings. In a minute entry, the court explained:

> At trial, father testified that he had "50/50" custody with mother. He also alluded to a child support order. Father's testimony was the first indication that there may be custody orders involving this child. If there are out-of-state custody orders, the parties are ordered to notify the court immediately and provide relevant information so a Uniform Child Custody Jurisdiction and Enforcement Act conference may be held to determine the home state of the child. For now, the court finds mother and the child moved to Arizona approximately five years ago and the child resides in Maricopa County. Since the child lived in Arizona at least the six months preceding the dependency action, Arizona is her home state. This court has jurisdiction and venue is appropriate in Maricopa County.

¶14 Despite this request, no Wisconsin custody order concerning I.S. was forthcoming from either party. Indeed, this record contains no evidence confirming any prior custody proceeding of any kind. With no direction by which it could meaningfully direct further inquiry, the court could properly conclude that there was no out-of-state court with which to confer pursuant to requirements imposed under the UCCJEA. *See* A.R.S. § 25-1010 (setting forth procedure for communication between courts).

II. Evidence Supports Finding of Dependency

¶15 Father argues that reasonable evidence does not support the superior court's order finding I.S. dependent as to Father.

¶16 "We review an order adjudicating a child dependent for an abuse of discretion, deferring to the [superior] court's ability to weigh and

analyze the evidence." *Shella H. v. DCS*, 239 Ariz. 47, 50, ¶ 13 (App. 2016). Thus, we will accept the court's "findings of fact unless clearly erroneous," *Joelle M. v. DCS*, 245 Ariz. 525, 527, ¶ 9 (App. 2018), and "only disturb a dependency adjudication if no reasonable evidence supports it," *Shella H.*, 239 Ariz. at 50, ¶ 13. Further, "[o]n review of an adjudication of dependency, we view the evidence in the light most favorable to sustaining the [superior] court's findings." *Louis C. v. DCS*, 237 Ariz. 484, 486, ¶ 2 (App. 2015).

¶17 A finding of dependency requires proof by a preponderance of the evidence that a child is in need of proper and effective parental care and control pending reunification with a parent or pending severance of parental rights. *See* A.R.S. §§ 8-201(15)(a)(i), -844(C)(1).

¶18 Father contends he "was ready, able, and willing" to parent I.S., and he had established legal and emotional bonds with I.S. Father largely relies on his own testimony as support for this contention. However, even with all of Father's evidence before it, the superior court still deemed Father's considerable absence—substantively, physically, and financially—from I.S.' life for a five-year period as indicative of a need for a dependency while DCS pursued a case plan of reunification with Father. This conclusion is supported by the record.

¶19 For at least five years before the dependency was filed, Father did not have regular contact with I.S. and provided limited financial support to I.S. To his credit, from March of 2020, he made more of an effort to be in contact with I.S. after the dependency proceeding had been pending. But, for at least the five years before that date, Father did not have a normal parent-child relationship. Father had not cared for I.S. for several years and was largely unaware of I.S.' circumstances in Arizona, having only visited her once in Arizona in five years. Father testified he never sought to enforce any purported Wisconsin custody order because, among other reasons, he did not want to deal with Mother's erratic behavior.

¶20 Father testified he was not aware of I.S.' circumstances until he received court documents related to this matter. Father further claimed that he was unaware of Mother's substance abuse issues. Given issues with Mother, Father "stopped the communication" with Mother about a year-and-a-half before the dependency hearing, during which time financial support from Father ceased as well. This and other evidence presented at trial properly supports the superior court's finding that I.S. is dependent as to Father.

¶21 Father counters that, at the time of the dependency trial, he had established a normal parent-child relationship. *See Shella H.*, 239 Ariz. at 48, ¶ 1 (observing that a court "must consider the circumstances as they exist at the time of the dependency adjudication hearing in determining whether a child is a dependent child"). However, the superior court determined I.S. to be dependent as to Father, even in light of the evidence concerning Father's recent efforts to rebuild his relationship with I.S. In so concluding, the court rejected Father's claim that he was currently ready, willing, and able to parent I.S. Reasonable evidence supports the superior court's determination that Father was unwilling or unable to care for I.S. as of the date of the dependency hearing, which does not sever Father's parental rights, but allows additional time for DCS to pursue a case plan of reunification. Reviewing for a preponderance of the evidence, Father has failed to show an abuse of discretion.

CONCLUSION

¶22 For the foregoing reasons, we affirm the superior court's order adjudicating I.S. dependent as to Father.

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