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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

SHENEKA B., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, A.C., *Appellees*.

No. 1 CA-JV 20-0291
FILED 4-27-2021

Appeal from the Superior Court in Maricopa County
No. JD533277
The Honorable Jeffrey A. Rueter, Judge

AFFIRMED

COUNSEL

Maricopa County Public Advocate's Office, Mesa
By Suzanne Sanchez
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Dawn R. Williams
Counsel for Appellee Department of Child Safety

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MEMORANDUM DECISION

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

T H U M M A, Judge:

¶1 Sheneka B. (Mother) appeals the superior court's orders adjudicating her daughter A.C. dependent and adopting a family reunification case plan. Because Mother has shown no error, the orders are affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 Mother is the biological parent of A.C., D.B. and R.B., ages 4, 7 and 10, respectively. In February 2020, the Department of Child Safety (DCS) received a report that A.C. was being sexually abused by others in the apartment. A few days later, DCS received another report that D.B. was wandering the apartment complex alone. A DCS investigation corroborated the report of A.C.'s abuse. As a result, Mother later testified she sent D.B. and R.B. to live with their maternal grandmother in Illinois, leaving A.C. as the only child in Mother's care.

¶3 In March 2020, three weeks after DCS' first investigation, A.C. was found alone at a park near Mother's apartment, disheveled and asking strangers for food. This led to a second investigation by DCS and the involvement of the Tempe Police Department. When Mother arrived several hours later, she reported that A.C. had left the apartment unsupervised "countless times before." Earlier that day, Mother had fallen asleep after using medical marijuana and when she awoke that evening, A.C. was gone. As a result of this investigation, DCS took A.C. into temporary custody, implemented an in-home safety plan and filed an in-home dependency petition, alleging substance abuse and neglect. Because Mother violated the safety plan soon after implementation, the court authorized DCS to take physical custody of A.C. Around this time, Mother was charged with two counts of misdemeanor child neglect.

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¶4 During the months that followed, DCS provided Mother with parent-aide, substance abuse and psychological services. Following a one-day adjudication, the court found those services had not resolved the issues which had led to A.C.'s removal, and A.C. was adjudicated dependent as to Mother in September 2020. Mother timely appealed from that decision, as well as the resulting disposition order which approved a case plan of family reunification.¹ This court has jurisdiction over Mother's appeal pursuant to Article 6, Section 9, of the Arizona Constitution, A.R.S. §§ 8-235(A), 12-2101(A) and 12-120.21(A) (2021)² and Ariz. R.P. Juv. Ct. 103-04.

DISCUSSION

¶5 Mother argues the superior court (1) lacked subject matter jurisdiction under Arizona's version of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), A.R.S. §§ 25-1001 to -1067; (2) made a material mistake of law (that she was charged with felony neglect of A.C., not misdemeanor neglect) and (3) erred in applying Arizona's Medical Marijuana Act (AMMA), A.R.S. §§ 36-2801 to -2821. The court addresses each argument in turn.

I. Mother Has Not Shown the Superior Court Lacked Subject Matter Jurisdiction.

¶6 At some point, Mother and A.C. lived in Illinois. By the time of this dependency, however, A.C. had lived in Arizona for more than six months, making Arizona A.C.'s home state. *See* A.R.S. § 25-1031(A)(1). Based on statements made by Mother, the dependency petition referenced possible custody orders for A.C. in Illinois. DCS stated that, once it had sufficient information, it would move to address temporary emergency jurisdiction under the UCCJEA. *See* A.R.S. § 25-1034(A). DCS never filed such a motion.

¶7 Ultimately, it was learned that A.C. had been in foster care in Illinois "for a couple months as a baby," then returned to Mother's care when she was six or seven months old. There was no evidence that any Illinois court issued any other custody orders. Indeed, Mother reported that A.C.'s father was not involved in her life, and that there were no custody

¹ Mother's arguments on appeal address only the finding of dependency and do not, independently, challenge the family reunification case plan.

² Absent material revisions after the relevant date, statutes and rules cited refer to the current version unless otherwise indicated.

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orders from Illinois. Mother has provided no contrary evidence of any kind at any point in this dependency. Given Mother's admission that Arizona is A.C.'s home state and that there were no custody orders for A.C. issued in Illinois that might remain in place, coupled with the lack of record evidence of any pending order, Mother has not shown that the superior court lacked jurisdiction under the UCCJEA. *See* A.R.S. § 25-1031(A).

II. Mother Has Not Shown the Court's Error in Stating the Nature of Her Child Neglect Charges Was Prejudicial.

¶8 Mother correctly asserts the court erred in finding she was charged with two counts of "felony child neglect." She was, instead, charged with two counts of "misdemeanor child neglect." *See* A.R.S. § 13-3619. Mother has not shown, however, that this mistake caused prejudice.

¶9 Any criminal consequences for Mother's child neglect charges are properly addressed in criminal court, not in this dependency. Instead, the relevant question here was whether DCS proved, by a preponderance of the evidence, that Mother had neglected A.C. As Mother concedes, in a dependency, "'neglect' is not a term of fixed meaning – its meaning varies as the context of circumstances change." *Pima Cnty. Juv. Action No. J-31853*, 18 Ariz. App. 219, 222 (1972). As a result, Mother is mistaken in claiming that "the court implicitly found that Mother's remedial efforts were insufficient to overcome felony-level allegations." Instead, as DCS argues, the court found A.C. dependent given Mother's inability or unwillingness to provide A.C. with appropriate supervision. Sufficient evidence supports those findings. On this record, Mother has not shown the incorrect description of the criminal charges against her was prejudicial.

III. Mother Has Shown No Error in the Court's Treatment of Her Marijuana Use.

¶10 Mother, who has an AMMA registry identification card, argues the court failed to acknowledge a statutory presumption that a qualifying patient is lawfully using marijuana under the AMMA. Regardless of her compliance with the AMMA, the superior court found DCS proved neglect because Mother was unable or unwilling to provide A.C. with appropriate supervision. The court found that a likely contributor or cause of that neglect was Mother's marijuana use. The critical finding, however, is the fact of Mother's inability or lack of willingness to parent, which the trial record supports here. Even assuming legal use of marijuana under the AMMA, the court properly considered the apparent effect of Mother's marijuana use on her ability to parent. On this record, the court

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did not err in finding A.C. dependent based on Mother's inability or unwillingness to exercise parental care and control. *See* A.R.S. § 8-201(15)(a)(i).

CONCLUSION

¶11 Because Mother has shown no reversible error, the dependency adjudication and disposition orders are affirmed.



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