

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

MORGAN B., *Appellant,*

v.

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

No. 1 CA-JV 20-0402
FILED 4-27-2021

Appeal from the Superior Court in Maricopa County
No. JD39886
The Honorable Lori Horn Bustamante, Judge

AFFIRMED

COUNSEL

Czop Law Firm, PLLC, Higley
By Steven Czop
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Jennifer Blum
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 Morgan B. (Mother) appeals the order finding her child B.B. dependent. Because Mother has shown no error, the order is affirmed.

FACTS AND PROCEDURAL HISTORY¹

¶2 In early September 2020, the Department of Child Safety (DCS) received a report that Mother was homeless and living in her car with B.B. DCS contacted Mother and found the car was littered with trash and contained minimal food. Mother had no cool water, despite the extreme heat of the day. Mother and B.B. had left their Georgia home in May 2020 and spent several months “camping” before arriving in Arizona in July. B.B. had not seen a doctor in two years and had never seen a dentist.

¶3 B.B. was taken into temporary custody the following day. DCS then filed a dependency petition, alleging Mother neglected to (1) provide a safe and stable home environment and proper supervision, and (2) properly treat her mental health. *See* Ariz. Rev. Stat. (A.R.S.) § 8-201(15)(a) (2021).² DCS offered Mother supervised visitation with a case aide, testing to rule out substance abuse, transportation to visitation and a psychological evaluation. Mother’s drug tests came back negative. Mother engaged in supervised visits; the first few went well, but the case aide later expressed concerns about Mother’s conduct during visits.

¹ Although B.B. was found dependent as to Father, Father did not appeal that decision.

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

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¶4 The superior court held a dependency hearing in December 2020. At that time, DCS was concerned about Mother’s employment instability, lack of health insurance, parenting skills and control of her anger and patience during visits with B.B. Mother had a two-year history of housing instability and the evaluating psychologist believed Mother’s moves caused “trouble maintaining consistency in her day-to-day life.” The case worker also testified that an in-home dependency would not be appropriate because Mother did not have another responsible adult in the home, which was required. Mother testified she started going to counseling sessions four weeks prior.

¶5 In closing argument, DCS stated that it was presently concerned with Mother’s relationship with B.B. and unaddressed domestic violence between Mother and Father. DCS asked the court to find B.B. dependent because Mother needed additional help with parenting skills, noting that Mother and B.B. likely would have been reunited already “[b]ut for the issues that arose in the case supervision.”

¶6 The court found that DCS proved the allegations in the petition by a preponderance of the evidence and that B.B. was dependent as to Mother. The court established a case plan of family reunification. This court has jurisdiction over Mother’s timely appeal pursuant to Article 6, Section 9 of the Arizona Constitution, A.R.S. §§ 8-235(A), 12-120.21(A) and 12-2101(A) and Arizona Rules of Procedure for the Juvenile Court 103–104.

DISCUSSION

¶7 The primary consideration in any dependency proceeding is the best interests of the child. *Michael M. v. Ariz. Dep’t of Econ. Sec.*, 217 Ariz. 230, 234 ¶ 17 (App. 2007). This court “review[s] 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. Dep’t of Child Safety*, 239 Ariz. 47, 50 ¶ 13 (App. 2016). A dependency finding must be supported by a preponderance of the evidence. *Louis C. v. Dep’t of Child Safety*, 237 Ariz. 484, 490 ¶ 23 (App. 2015) (citing *Cochise Cnty. Juv. Action No. 5666-J*, 133 Ariz. 157, 158–59 (1982)).

¶8 A dependent child is one who is “[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 “a child whose home is unfit by reason of . . . neglect” A.R.S. § 8-201(15)(a)(i), (iii).

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¶9 Mother argues that no reasonable evidence supported the superior court's finding that B.B. was dependent. But the court heard evidence that Mother was making inappropriate parenting decisions as to housing and medical care for B.B., and that there had been communication issues between Mother and B.B. during supervised visits. While Mother, to her credit, had obtained housing through a transitional housing program and obtained employment, there was evidence presented that Mother had not yet established housing and employment stability. Given this record evidence, Mother has shown no error in the court's dependency finding.

CONCLUSION

¶10 The order is affirmed.



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