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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MICHELLE M., *Appellant*,

v.

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

No. 1 CA-JV 21-0004
FILED 9-28-2021

Appeal from the Superior Court in Maricopa County
No. JD504124
The Honorable Connie Contes, Judge *Retired*

AFFIRMED

COUNSEL

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

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

MEMORANDUM DECISION

Chief Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Jennifer B. Campbell and Judge Samuel A. Thumma joined.

C A T T A N I, Chief Judge:

¶1 Michelle M. (“Mother”) appeals the superior court’s order adjudicating her child, M.A., dependent. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Mother and Michael A. (“Father”) are the parents of M.A., born in 2005. Mother has three other children that are not parties to this appeal. Between 2000 and 2019, the Department of Child Safety (“DCS”) received 14 reports that Mother was neglecting and physically and/or emotionally abusing her children.

¶3 In August 2020, school staff relayed to DCS reported concerns about physical, verbal, and emotional abuse perpetrated by Mother. The next day, a family friend filed a dependency petition, alleging that M.A. had been the subject of Mother’s “verbal, physical, mental, emotional and psychological abuse . . . for her entire life.” The petition provided detailed allegations of physical, verbal, and emotional abuse by Mother. The superior court joined DCS as a party to the proceeding, and DCS later substituted in as the petitioner.

¶4 After joining the dependency, DCS investigated and confirmed the allegations of abuse by Mother. This investigation included interviewing M.A.’s family members, some of whom relayed that Mother had been violent in the past and echoed concerns about her erratic, manipulative, and aggressive behaviors. Mother largely denied the allegations. DCS also interviewed the family’s therapist, a family friend who had been working with M.A. and Mother “off and on for several years.” The therapist voiced concerns about Mother but reported that she was not aware of any recent physical abuse. Law enforcement also became involved in the investigation, but no criminal charges appear in the record.

¶5 In October 2020, Mother and M.A. successfully completed family preservation services, but providers noted little progress towards repairing their strained relationship. Contemporaneously, a DCS case

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manager visited Mother's home and noted continuing issues. During the visit, Mother told DCS she was recording everything on camera and repeatedly called M.A. spoiled. Mother told the case manager she would not allow a dentist to treat M.A.'s eight cavities because although she had insurance, she thought the dentist was charging too much. Mother was not arranging regular counseling for M.A. Nor had Mother followed through with visits between M.A. and Father. DCS also noted other significant concerns.

¶6 Over the next few weeks, DCS learned that M.A. no longer trusted the family therapist and refused to see her. DCS thus referred M.A. for individual therapy with a different provider and ordered psychological evaluations for both Mother and M.A. Meanwhile, DCS learned that Mother had allowed two adults to stay in the home without allowing DCS to conduct background checks before their stay. DCS also noted continuing concerns about M.A.'s circumstances.

¶7 Mother reported to providers that she had "never done anything wrong" in regard to her parenting of M.A. The providers concluded her denial created a barrier to mending her relationship with her child. Accordingly, citing Mother's frequent emotional and occasional physical abuse and traumatic and unconventional discipline, DCS moved to change physical custody of M.A. DCS also filed an amended dependency petition alleging that Mother neglected M.A. by failing to protect her from emotional abuse and failing to adequately attend to her mental health.

¶8 In November 2020, Mother and M.A. both submitted to psychological evaluations with Dr. Al Silberman. Mother acknowledged the allegations of abuse but continued to maintain that she was not to blame, and she asserted DCS's involvement was based solely on M.A.'s behavioral issues. Dr. Silberman opined Mother demonstrated "considerable defensiveness" and sought to "portray herself as being exceptionally free of common shortcomings." He also stated that Mother minimized any negative impact that her actions may have on others. Because of Mother's defensiveness, Dr. Silberman could not make a definitive diagnosis, but based on Mother's history, he concluded that "she appears to have a[] . . . personality disorder with narcissistic tendencies and perhaps past antisocial behavior which she minimized." Dr. Silberman expressed concern that Mother lacked insight and was not accurately reporting the events that occurred between Mother and child. Ultimately, he gave a poor prognosis of Mother's future ability to parent and recommended Ph.D.-level individual counseling for Mother and therapeutic visits for Mother and M.A.

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¶9 Dr. Silberman found the allegations of abuse credible and concluded that Mother was not meeting M.A.'s needs. Ultimately, Dr. Silberman diagnosed M.A. with an adjustment disorder mixed with anxiety and depression and recommended that DCS remove her from Mother's home.

¶10 After a three-day hearing, the superior court found M.A. dependent and granted DCS's motion to change physical custody, removing M.A. from Mother's home. Mother timely appealed the dependency order. Later, at Mother's request, the superior court supplemented its dependency order with additional factual findings. We have jurisdiction under A.R.S. § 8-235(A).

DISCUSSION

¶11 Mother challenges the sufficiency of the evidence supporting the dependency order. We review the superior court's dependency determination for an abuse of discretion and will affirm unless no reasonable evidence supports the court's findings. *Louis C. v. Dep't of Child Safety*, 237 Ariz. 484, 488, ¶ 12 (App. 2015). A dependency finding must be supported by a preponderance of the evidence, and the superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of the witnesses, and resolve disputed facts." *Id.* at 490, ¶ 23; *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334, ¶ 4 (App. 2004).

¶12 A dependent child is one "whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent." A.R.S. § 8-201(15)(a)(iii). Neglect means "[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 superior 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." *Shella H. v. Dep't of Child Safety*, 239 Ariz. 47, 48, ¶ 1 (App. 2016).

¶13 Mother first argues that any concerns of abuse were "speculative at best," asserting that the concerns were based on unsubstantiated and uncorroborated reports. The record refutes Mother's contentions. Aside from Mother's general denials, the evidence substantially supports the concerns about M.A. expressed by many, including a family friend, DCS, police, and Dr. Silberman. The superior court weighed the competing evidence and ultimately found the concerns regarding Mother's treatment of M.A. were credible based on their "time,

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content and circumstances.” This court will not reweigh that determination on appeal. *See Oscar O.*, 209 Ariz. at 334, 336, ¶¶ 4, 14.

¶14 Mother asserts that the dependency finding was improper because DCS’s initial investigation of claims of abuse turned up no safety concerns and did not initially lead to M.A.’s removal from the home. Mother points to DCS’s interview with the family’s therapist, claiming the therapist “reported no concerns of abuse or neglect” during the investigation. That same therapist, however, stated that Mother had mental-health issues and a history of abusive behavior, that Mother and M.A. have had a rough relationship for years, and that M.A. “has good reasons to be frustrated with her mom.” Moreover, as the dependency progressed, DCS developed sufficient concerns about M.A. being placed with Mother that it successfully moved to change M.A.’s placement to outside of the home.

¶15 Although Mother claims that “no new information [was] presented at the time of . . . trial” to support a dependency, reasonable evidence in the record supports the court’s conclusions that (1) Mother neglected M.A. because she was unwilling or unable to provide her with appropriate supervision, including protecting her from emotional and psychological abuse, (2) Mother’s actions created an unreasonable risk of harm to M.A.’s health or welfare, and (3) at the time of the adjudication hearing, Mother had not resolved these issues. *See Shella H.*, 239 Ariz. at 51, ¶ 16 (reiterating that neglect or abuse “need not be continuous or actively occurring at the time of the adjudication hearing to support a finding of dependency” and that instead, “the substantiated and unresolved threat is sufficient”).

¶16 Both in his evaluation and at trial, Dr. Silberman opined that Mother was not meeting M.A.’s emotional needs. He testified that M.A. had suffered emotional abuse from Mother’s chronic negative behaviors, including her “getting very angry and then denying that she got angry,” severe “name calling [and] put downs,” and “yelling.” M.A. showed symptoms of trauma and anxiety during Dr. Silberman’s evaluation, and in addition to diagnosing her with adjustment disorder, Dr. Silberman reported that M.A. experiences “recurrent anxieties and pervasive and extended periods of depression” and determined based on testing that “clinical features of persistent depression are an integral part of [her] current makeup.” He concluded that M.A.’s repeated bouts of anxiety were a physical manifestation of Mother’s emotional abuse. Dr. Silberman testified to several ways that Mother continued to neglect M.A.’s emotional health, such as Mother’s negative behaviors and lack of insight,

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unwillingness to “make changes in how she approaches her daughter,” and narcissistic “preoccup[ation] with herself.” He also raised a concern with Mother exposing M.A. to the “various men in her life,” one of whom “humiliat[ed] [M.A.],” by “calling her names” and “yelling at her for 45 minutes.”

¶17 Mother argues that the record fails to establish she was the main cause of the emotional abuse M.A. suffered, but the evidence supports the superior court’s contrary conclusion. Dr. Silberman testified that M.A.’s disclosures clearly indicate a pattern of emotional abuse by Mother, the court found both Dr. Silberman and M.A.’s disclosures credible, and we will not reweigh those determinations on appeal. *See Oscar O.*, 209 Ariz. at 336, ¶ 14.

CONCLUSION

¶18 For the foregoing reasons, we affirm the superior court’s order adjudicating M.A. dependent.



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