IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MARK G., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, J.G., J.G., J.G., J.G., *Appellees*.

No. 1 CA-JV 21-0102
FILED 9-28-2021

Appeal from the Superior Court in Maricopa County
No. JD40180
The Honorable Michael D. Gordon, Judge

AFFIRMED

COUNSEL

John L. Popilek, PC, Scottsdale
By John L. Popilek
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Autumn Spritzer
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 Mark G. ("Father") appeals from the superior court's order adjudicating his children dependent. Although Father concedes that the dependency is proper, he challenges one of the three factual bases underlying the dependency finding. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Father and Ashley M. ("Mother") have four sons together: twins born in 2017, a middle child born in 2018, and the youngest born in 2019 (collectively, the "Children").[1] The Department of Child Safety ("DCS") first became involved in the fall of 2020 after receiving a report that the Children were at times being cared for by their 7-year-old half-sister, Father's daughter from a previous relationship. Father told the in-home case manager that he had PTSD, depression, and anxiety, and that although he was not seeing a psychologist or psychiatrist, he was self-medicating with medical marijuana.

¶3 In early November 2020, DCS removed the Children after an incident of domestic violence. Father had spanked the middle child and left him screaming and crying. When Mother tried to call the child into another room to keep an eye on him, Father physically attacked her for what he perceived as "undermining his parenting," pushing Mother to the floor, then pushing her up against the wall and choking her.

¶4 Mother disclosed this incident to the in-home case manager later that day, and she also expressed concern about Father's escalating violence against her and the Children. Mother explained that Father had been verbally abusive from almost the beginning of their relationship, that this progressed into threatening violence, and that the threats escalated to physical violence by the end of 2017, the severity of which had increased

[1] Mother did not contest the dependency allegations, and the court found all four children dependent as to her. She is not a party to this appeal.

thereafter. DCS also noted Father's prior physical violence against his mother, Mother's mother, and his ex-girlfriend. Mother explained that she had not previously reported the violence (or corroborated reports when the police were called) because she was afraid Father would hurt her or the Children. Mother also described Father using increasingly severe and behaviorally inappropriate discipline against the Children, including screaming aggressively at the two-year-old for crying, placing the Children in "time-out" for extended periods of time while requiring them to hold weighted items, and spanking them with his hand, shoe, or belt.

¶5 DCS filed a dependency petition alleging that the Children were dependent due to neglect and stating three factual bases underlying the assertion that "Father is unwilling or unable to provide the children with proper and effective parental care and control": domestic violence, mental health concerns, and inappropriate discipline. *See* A.R.S. § 8-201(15)(a)(i), (iii). Father did not contest two of the asserted factual bases for a dependency—domestic violence and inappropriate discipline. He challenged only DCS's allegation of mental health concerns. In this factual basis, DCS asserted that Father was "neglecting to properly treat his mental health," citing Father's statement that he had PTSD, depression, and anxiety and used medical marijuana to self-medicate, and tied "mental health issues" to Father's inability to safely care for the Children.

¶6 Mother and the in-home and ongoing case managers testified at the dependency hearing. Additionally, Father presented a report and testimony from his evaluating psychologist, Dr. Carlos Jones, who stated that Father's evaluation showed no basis to diagnose any "significant" or "major mental illness," including depression, anxiety, or PTSD. Dr. Jones further noted that Father had denied reporting those conditions to DCS.

¶7 Although not diagnosing any "mental illness," Dr. Jones's report included a diagnostic impression of "Rule out spouse or partner physical violence, physical" and "Rule out cannabis use disorder." Dr. Jones confirmed that both were "mental health concerns" (noted in the DSM-5) that should be addressed through treatment, but he testified that they fell short of being "major mental disorder[s]." Dr. Jones's report recommended individual psychotherapy or counseling to address Father's anger and aggression issues, to develop more effective parenting skills, and to address Father's problematic marijuana use. Dr. Jones confirmed a high degree of concern about Father's anger and control issues tied to intimate partner violence and domestic violence. He cited a risk of harm to the Children if they were to be returned to Father absent clinical intervention,

and he recommended only clinically supervised parenting time until Father addressed these issues.

¶8 The superior court ruled that all three of the alleged factual bases had been proven and that each independently supported a dependency. As to the mental health allegation, the court explicitly acknowledged that Dr. Jones had not diagnosed any "mental illness" and that Father's self-report did not establish any such diagnosis. The court found, however, that Dr. Jones's evaluation had (1) identified untreated mental health "issues" involving anger, aggression, and the need to develop more effective parenting skills and (2) recommended mental health treatment including "psychoeducation or therapeutic anger management groups" to address these issues and become a safe parent.

¶9 Father timely appealed from the dependency ruling, specifically challenging only the mental-health factual basis. We have jurisdiction under A.R.S. § 8-235(A).

DISCUSSION

¶10 A dependent child is one adjudicated by a preponderance of the evidence to be "[i]n need of proper and effective parental care and control" but without a "parent or guardian willing to exercise or capable of exercising such care and control," or to have a home that is "unfit by reason of . . . neglect." A.R.S. § 8-201(15)(a)(i), (iii); *see also* A.R.S. § 8-844(C)(1); *Louis C. v. Dep't of Child Safety*, 237 Ariz. 484, 490, ¶ 23 (App. 2015). "Neglect" includes a parent's "inability or unwillingness" to provide the child appropriate supervision "if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare." A.R.S. § 8-201(25)(a).

¶11 We review the superior court's dependency ruling for an abuse of discretion and will uphold the decision unless no reasonable evidence supports it. *Shella H. v. Dep't of Child Safety*, 239 Ariz. 47, 50, ¶ 13 (App. 2016); *Oscar F. v. Dep't of Child Safety*, 235 Ariz. 266, 267, ¶ 6 (App. 2014). We do not reweigh the evidence on appeal and instead consider the evidence in the light most favorable to sustaining the ruling, deferring to the superior court's ability to assess credibility and weigh conflicting evidence. *Shella H.*, 239 Ariz. at 50, ¶ 13; *Oscar F.*, 235 Ariz. at 269, ¶ 13; *Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, 235, ¶ 21 (App. 2005).

¶12 Father argues that the superior court erred by determining that mental health issues supported the finding of dependency. He asserts that such a factual allegation regarding "mental health" necessarily

requires proof of a "mental illness" diagnosis, and he relies on Dr. Jones's unequivocal testimony declining to diagnose any "significant" or "major mental illness."

¶13 Preliminarily, it is not clear what relief Father seeks in pressing this argument on appeal. Father challenges only the subsidiary mental health finding, not the dependency adjudication itself. In superior court as on appeal, he did not (and does not) contest the propriety of a dependency based on domestic violence and improper discipline. And here, the superior court found each of these factual bases to be independently sufficient to support a dependency finding. Moreover, Father's trial counsel agreed on the record that, as a practical matter, the character of the dependency and the services required would not depend on whether the court found a factual basis related to mental health.

¶14 Nevertheless, notwithstanding Father's arguments on appeal, the record supports the superior court's assessment that Father's unaddressed mental health issues render him unable to provide safe parenting, justifying a dependency finding. Father's argument to the contrary assumes that a specific mental illness diagnosis is a prerequisite to a dependency finding based on mental health concerns as alleged in the petition. But such a dependency finding does not necessarily require a "mental illness" diagnosis; instead, it may be based on facts showing the parent is unable to exercise proper and effective parental care and control, regardless whether those underlying facts involve diagnosed mental illness, behavioral concerns necessitating individual psychotherapy or counseling (as here), or something completely different. *Compare* A.R.S. § 8-201(15)(a)(i) (defining dependent child by lack of "proper and effective parental care and control") *with, e.g.*, A.R.S. § 8-533(B)(3) (authorizing *termination* of parental rights if, among other requirements, "the parent is unable to discharge parental responsibilities because of *mental illness*") (emphasis added).

¶15 The dependency finding was *not* based on a mental illness diagnosis. As the superior court expressly acknowledged, the record shows no such diagnosis as to Father. But Dr. Jones confirmed that Father's anger, aggression, and control issues (and his apparent self-medication with marijuana) were mental health "concerns" that posed a risk of harm to the Children if they were returned to Father's care. *See* A.R.S. § 8-201(15)(a)(i), (iii), (25)(A). This link between as-yet unaddressed mental health concerns, tied to an inability to safely care for the Children, properly tracks the allegation in the dependency petition and supports the superior court's ruling on this issue.

CONCLUSION

¶16 The dependency adjudication is affirmed.

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