

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



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FILED: 10-12-2010  
RUTH WILLINGHAM,  
ACTING CLERK  
BY: GH

LARRY M., )  
) 1 CA-JV 10-0072  
Appellant, )  
) DEPARTMENT E  
v. )  
) MEMORANDUM DECISION  
ARIZONA DEPARTMENT OF ECONOMIC ) (Not for Publication -  
SECURITY, NEIL M., ) Ariz. R.P. Juv. Ct. 103(G);  
) ARCAP 28)  
Appellees. )  
)  
)

Appeal from the Superior Court of Maricopa County

Cause No. JD 507119

The Honorable Mark F. Aceto, Judge

**AFFIRMED**

Robert D. Rosanelli Phoenix  
Attorney for Appellant Larry M.

Terry Goddard, Attorney General Tucson  
By Jane A. Butler, Assistant Attorney General  
Attorneys for Appellee Department of Economic Security

**T H O M P S O N**, Judge

¶1 Larry M. (Father) appeals the juvenile court's order of March 25, 2010, finding his child, Neil M., a dependent child. After a contested hearing, the juvenile court found by a

preponderance of the evidence that the child was dependant as to father pursuant to Arizona Revised Statutes (A.R.S.) 8-201(13) (2007), found the child in need of out-of-home care to protect his welfare, affirmed the case plan and services outlined. The case plan is family unification. Father asserts on appeal that the juvenile court erred in finding his child dependant, arguing that he has addressed his past drug abuse and that he no longer resides with the child's mother. Father asserts that he can effectively parent this child. We affirm.

¶2 This court will not disturb the juvenile court's dependency ruling unless the findings upon which it is based are clearly erroneous and there is no reasonable evidence supporting them. *Maricopa County Juv. Action No. J-75482*, 111 Ariz. 588, 536 P.2d 197 (1975); *Maricopa County Juv. Action No. JS-4130*, 132 Ariz. 486, 647 P.2d 184 (App. 1982). The allegations of the petition must be supported by a preponderance of the evidence. *Cochise County Juv. Action No. 5666-J*, 133 Ariz. 157, 650 P.2d 459 (1982).

¶3 Neil is father's second child born drug exposed. The first child was found to be dependant as to father. During the first dependency, in 2008, father's urine tested positive for methamphetamine and he submitted two additional diluted samples; there were allegations that the urine in question was provided

by another child in the household. Neil was born in November 2009 exposed to methamphetamine. In December 2009, father was arrested for attempting to acquire a narcotic drug from a pharmacy with a forged prescription. Father twice tested positive for methamphetamine in December 2009. Previously, in 2007, father had been arrested for possession of cocaine and resisting arrest. Prior to this dependency hearing, father was twice ordered to provide a hair follicle for testing by CPS and he failed to do so. At father's TERROs intake he denied any prior illegal substance use.

¶4 Father asserts that since December 2009, he has submitted clean urine and hair follicle samples. However, the testing was not done through CPS; CPS questions the tests validity both as to the source of the testing and because the urine samples were diluted. The CPS case worker, while recognizing that father has a much improved attitude and that she hopes for reunification, indicated that she still had concerns that father may be using drugs or seeing the child's mother. The mother has a long history of substance abuse and seven referrals to CPS for other children in addition to the two involving father's children. The case worker indicates that a parent using methamphetamine presents significant safety factors in parenting an infant and that they want to see clean drug test

done through CPS over a prolonged period of time.

¶5 Finding that a preponderance of the evidence supports the juvenile court's determination, we affirm.

/s/

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JON W. THOMPSON, Judge

CONCURRING:

/s/

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SHELDON H. WEISBERG, Presiding Judge

/s/

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PETER B. SWANN, Judge