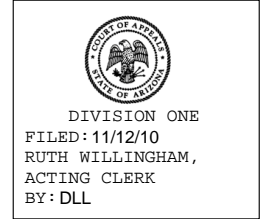


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



JENNIFER M., MICHAEL L., ) 1 CA-JV 10-0084  
)  
Appellants, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) 103(G) Ariz.R.P. Juv.  
SECURITY, SKYLAR L., ) Ct.; Rule 28 ARCAP)  
)  
Appellees. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. JD508195

The Honorable Linda A. Akers, Judge

**AFFIRMED**

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Terry Goddard, Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel  
Criminal Appeals Section/Capital Litigation Section  
And Kathleen E. Skinner, Assistant Attorney General  
Attorneys for Appellee Arizona Department of Economic Security

Robert D. Rosanelli Phoenix  
Attorney for Appellant Jennifer M.

Virginia S. Matté Phoenix  
Attorney for Appellee Michael L.

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O R O Z C O, Judge

¶1 Jennifer M. (Mother) and Michael L. (Father) appeal the juvenile court's finding that their daughter, Skylar L. (Child), is dependent. For the following reasons, we affirm.

#### **FACTS AND PROCEDURAL HISTORY**

¶2 Child was born in September 2009. The day after her birth, Child Protective Services (CPS) received a report that Mother and Father were unable to care for Child, due to possible mental health issues. CPS placed Child in the temporary physical custody of Father's parents (Grandparents) and allowed Mother and Father visitation.

¶3 In October 2009, Mother and Father submitted to a psychological consultation. The consultation report discussed Mother's and Father's histories and recommended a comprehensive psychological evaluation for both. Based on the recommendations of the psychological consultation, Mother and Father submitted to psychological evaluations with Dr. Juliano in December 2009.

¶4 In October 2009, Arizona Department of Economic Security (ADES) filed a dependency petition. ADES alleged Mother and Father were both unable to parent Child due to mental health issues, their failure to bond with Child and the psychological consultation, which concluded that neither parent was able to care for Child.

### ***Mother's History***

¶15 At the time of the dependency hearing, Mother had only lived in her apartment for two months. Prior to her current housing situation, Mother and Father resided together but were unable to maintain that residence when both became unemployed. She had been unemployed since August 2008 and financially supported herself with student loans, food stamps, help from friends and family members. Mother testified her bills were all paid, her apartment was clean and she was actively looking for employment and had multiple job interviews scheduled.

¶16 In 2007, Mother lived in Indiana and had another child, R.M.. Following a referral by hospital personnel to CPS in Indiana for suspected child abuse, R.M.'s biological father admitted to abusing the child and subsequently committed suicide. Mother testified that she consented to the termination of her parental rights in Indiana because at that time she felt stressed by the allegations of abuse, the father's suicide, she had been evicted from her apartment and was unemployed. Mother's former foster mother in Indiana adopted R.M. and has allowed Mother to have a relationship with child.

### ***Father's History***

¶17 Father was a member of the United States Marine Corps from July 2003 until November 2005. In November 2005, Father received an honorable medical discharge. With the exception of

six months in 2009, Father has been employed as a truck driver. His six month lapse in employment was a result of difficulties he had in obtaining an employer-required physical. After obtaining the requisite physical, Father was rehired in November 2009. At the time of the dependency hearing, Father was an over-the-road truck driver and his work routinely required him to be out of town. He testified, as an example, in the first seventeen days of February, he was home approximately three to five days. Dr. Juliano testified that Father's parenting plan was to have Child continue to live with Grandparents while he was working out of town and have them assist him with Child's care when he was in town.

¶18 After Child was born, Father lost his apartment because he was unemployed. He lived with friends until November 2009, when he moved in with Grandparents. While in town, Father would feed Child, change her diaper, and play with her. However, when he visited, he would not take responsibility for her unless asked to by a family member.

¶19 The juvenile court found Child to be dependent as to both parents. Father and Mother timely appealed. We have jurisdiction under Arizona Revised Statutes (A.R.S.) section 12-120.21.A.1. and -2101.B. (2003).

## DISCUSSION

¶10 Mother and Father contend that the juvenile court's findings of dependency are clearly erroneous and are not supported by the evidence.

¶11 ADES must prove dependency by a preponderance of the evidence. *Pima County Juv. Dependency Action No. 118537*, 185 Ariz. 77, 79, 912 P.2d 1306, 1308 (App. 1994). The juvenile court is "in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings." *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987). We will uphold the juvenile court's findings unless they are clearly erroneous. *118537*, 185 Ariz. at 79, 912 P.2d at 1308.

¶12 The juvenile court may find a child to be dependent, if the child is:

- i. In need of proper and effective parental care and control and who has no parent or guardian, or one who has no parent or guardian willing to exercise or capable of exercising such care and control.
- ii. Destitute or who is not provided with the necessities of life, including adequate food, clothing, shelter or medical care.
- iii. A child whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian or any other person having custody or care of the child.

A.R.S. § 8-201.13.(a)(i)-(iii) (Supp. 2009).

**Mother**

¶13 The juvenile court found Child to be dependent as to Mother due to residential, employment and financial instability, no family support in the Phoenix area, the severance of her parental rights to R.M. in Indiana and her limited bond with Child.

¶14 Mother's instability was based on the short duration of her current housing, lack of employment, and limited financial resources. As previously stated, at the time of the dependency hearing, Mother had been living in her apartment for only two months and had been unemployed since August 2008. Her financial support came from student loans, food stamps, and assistance from friends and family.

¶15 At the hearing, a CPS caseworker testified that she had interviewed and observed Mother's interactions with Child. Specifically, she observed Mother not taking initiative to hold, feed or comfort Child unless asked to do so.

¶16 Moreover, ADES presented evidence of the facts leading to Mother's decision to place R.M. for adoption in 2007. When making that decision, Mother had limited resources, was stressed, and did not believe she could adequately raise the child.

¶17 The juvenile court was presented with evidence that supported the arguments for both Mother and ADES' position on Child's dependency status. The juvenile court is "in the best

position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings." 93511, 154 Ariz. at 546, 744 P.2d at 458. In this case, there was sufficient evidence presented for the juvenile court to find Child dependent as to Mother.

**Father**

¶18 The juvenile court found Child to be dependant as to Father because he had a limited bond with Child, was unable to effectively parent Child as a result of his limited understanding and knowledge of Child's needs and the instability created by his absences from the home while working as an over-the-road truck driver. Father was unemployed at the time of Child's birth but was rehired in November of 2009. Father admitted he had financial problems and had relied on others for financial support. At the time of the hearing, Father had been employed for approximately three months. In his new job, he was required to be out of town for days at a time. Father testified that at that time he could only assist in parenting Child until he found a job that did not require him to travel. He also testified he was giving Grandparents a minimum of \$200 per month towards Child's care and support and had provided them with a debit card to his checking account if Child had needs in his absence.

¶19 The juvenile court determined Father's understanding and knowledge of Child's needs were lacking. Father's

psychological evaluation indicated he did not appreciate his own level of awareness and understanding of parenting. Dr. Juliano testified it was his recommendation that Father take parenting classes before being able to attend to the needs of Child. He also expressed his concerns about Father being able to bond with Child due to being absent from the home two to three days at a time as required by his employment. Father admitted he had not attended any parenting classes, even though those services had been offered to him by ADES.

¶20 While Father made financial contributions to Grandparents to care for Child and spent time with Child more regularly from November 2009 to January 2010, there was reasonable evidence to support the juvenile court's finding Child was dependent as to Father.

#### CONCLUSION

¶21 For the above mentioned reasons, we affirm the juvenile court's findings of dependency as to both Mother and Father.

/S/

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PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

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MAURICE PORTLEY, Presiding Judge

/S/

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MARGARET H. DOWNIE, Judge