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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 10/28/10  
RUTH WILLINGHAM,  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

DARNELL M., SR., ) 1 CA-JV 10-0099  
)  
Appellant, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) 103(G), Ariz. R.P. Juv. Ct.;  
SECURITY, ODESSO M., DARNELL M., ) Rule 28 ARCAP)  
JR., )  
)  
Appellees. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. JD18515

The Honorable Dawn M. Bergin, Judge

**AFFIRMED**

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by Robert D. Rosanelli  
Attorney for Appellant

Phoenix

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by Michael F. Valenzuela, Assistant Attorney General  
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Phoenix

P O R T L E Y, Judge

¶1 Darnell M., Sr. ("Father") appeals the determination that his children are dependent.<sup>1</sup> For the following reasons, we affirm.

#### FACTS AND PROCEDURAL HISTORY

¶2 Darnell M., Sr., is the biological father of two children: one born in 2006, and the other born in 2007.<sup>2</sup> Between June and October 2009, Child Protective Services ("CPS") received three reports that Father's apartment was unsafe for his children. The reports indicated that Father allowed his dog to urinate and defecate indoors; did not supervise his children; suffered from paranoid schizophrenia; received mental health services from Magellan;<sup>3</sup> that trash and other items cluttered the house; and that the children received services from the Arizona Department of Economic Security's ("ADES") Division of Developmental Disabilities ("DDD").

¶3 CPS took temporary custody of the children on October 19, 2009, after receiving the third report.<sup>4</sup> ADES then filed a dependency petition and alleged that Father was unable to

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<sup>1</sup> The juvenile court also found the children dependent as to their mother, but she is not a party to this appeal.

<sup>2</sup> Father has seven other children who do not live with him, and they are not part of the dependency petition.

<sup>3</sup> Magellan Health Services of Arizona, Inc., is the Regional Behavioral Health Authority of Maricopa County and manages the publicly funded behavioral health care delivery system.

<sup>4</sup> The CPS investigator did not assist in the removal of the children because Father had threatened to kill her.

exercise proper and effective parental care because he failed to maintain his home, provide developmental stimuli for his children, and take medication for his paranoid schizophrenia.

¶4 After an initial dependency hearing, the juvenile court found that custody with Father was contrary to the welfare of the children and ordered that they remain in ADES' temporary physical custody. Father challenged the dependency petition, and the matter proceeded to adjudication.

¶5 After the adjudication, the juvenile court found that ADES proved the allegations by a preponderance of the evidence and ordered the children to remain in the care and custody of ADES. The court also approved the case plan of family reunification, which included a parent aide, assistance with transportation, mental health services, and additional supervised visits.

¶6 Father appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-235 (2007), 12-120.21(A)(1), and -2101(B) (2003).

#### **DISCUSSION**

¶7 Father contends that the juvenile court's dependency finding was not supported by the evidence. We view the evidence "in a light most favorable to affirming the [juvenile] court's findings." *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 250, ¶ 20, 995 P.2d 682, 686 (2000) (quoting *Maricopa*

*County Juvenile Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994)). “[T]he 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, therefore, uphold the “ruling in a dependency action unless the findings upon which it is based are clearly erroneous and there is no reasonable evidence supporting them.” *Pima County Juvenile Dependency Action No. 118537*, 185 Ariz. 77, 79, 912 P.2d 1306, 1308 (App. 1994).

¶18 Father first contends that there was insufficient evidence to find that his apartment was unfit by reason of neglect. We disagree.

¶19 Although Father argues that a cluttered apartment and a family pet do not make a house unfit for habitation, there is evidence to support the juvenile court’s findings. For example, when CPS first investigated Father’s apartment in June 2009, the apartment lacked artificial lighting and the windows were covered.<sup>5</sup> The investigator testified that a strong smell of dog

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<sup>5</sup> Father claimed that the room was dark because the children were playing video games during one visit and were sleeping during another visit.

urine "knocks you over when the door opens."<sup>6</sup> The investigator stated that the home was extremely cluttered; boxes and other items littered most of the apartment and prevented her from accessing certain rooms. A CPS report that was admitted indicated that the children were essentially confined to a four foot by three foot area in the living room due to the clutter, and could crawl under the couch that was supported by a milk crate.

¶10 Similarly, when CPS went to the apartment in August 2009, Father was sweeping dog feces out of the apartment. The CPS investigator testified that the clutter in the apartment had increased since her prior visit. Although CPS voluntarily provided Father with family preservation services, CPS received a report in October 2009 indicating that the apartment remained cluttered, dog feces were on the floor, and the apartment still smelled of animal urine. The report also indicated that cockroaches were prevalent.<sup>7</sup>

¶11 In fact, after the children were removed, Father moved to a new apartment. The rooms for the children, according to the CPS case manager, lacked beds and were filled with trash

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<sup>6</sup> The children's pediatrician noted that the children smelled of urine during an office visit.

<sup>7</sup> An August 2009 Arizona Early Intervention Program ("AzEIP") report noted the prevalence of bugs on the floor and that trash and other items were stacked throughout the apartment. Father admits the complex had roaches, but he denies that his apartment unit had roaches.

bags. Although Father had toys for the children and reduced the clutter that had been in the apartment, the CPS case manager testified that the apartment still lacked sufficient space for the children.

¶12 Father disputed the severity of the condition of his apartment. He testified that the dog rarely urinated in the former apartment, and that he no longer allowed it to urinate and defecate inside in the new apartment. The juvenile court, however, specifically found that father was "too reluctant to acknowledge that there were safety hazards in his home with the clutter and . . . the dog urine and dog feces." Because we defer to the court's determination of the facts and witness credibility, there is factual support for the finding.

¶13 Father also argues that there was no reasonable evidence that he is incapable of adequate and effective parenting. He contends that receiving state assistance does not render him an unfit parent. Moreover, he argues that he complied with the services offered by CPS and other state agencies.

¶14 The juvenile court recognized that since the children were removed, Father "has shown himself to be willing to do whatever is necessary to learn what he needs to learn to correct these problems." Moreover, the court found that Father has done an "excellent job" managing the services he receives from the

state. Based on the evidence from the case manager, a pediatrician, and AzEIP reports, the juvenile court, however, concluded that the children's developmental delays were "probably . . . caused by their environment and their inability to move around and develop properly in that environment." In fact, the case manager testified that the children's communication and motor skills began improving after they were placed in foster care.

¶15 Finally, Father disputes any finding that his mental disabilities affected his ability to parent. He testified that he was diagnosed with paranoid schizophrenia in 1998, but he denied the accuracy of the diagnosis. His Magellan caseworker, however, testified that Father could not effectively parent his children without the assistance of CPS and Magellan. Moreover, there was evidence from the CPS investigator, the case manager, and the children's pediatrician that supported the juvenile court's finding.

**CONCLUSION**

¶16 For the foregoing reasons, we affirm the dependency determination.

/s/ \_\_\_\_\_  
MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/ \_\_\_\_\_  
MARGARET H. DOWNIE, Judge

/s/ \_\_\_\_\_  
PATRICIA A. OROZCO, Judge