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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 07/07/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ANN R.,) No. 1 CA-JV 10-0251
)
Appellant,) DEPARTMENT A
)
v.) MEMORANDUM DECISION
)
ARIZONA DEPARTMENT OF ECONOMIC) (Not for Publication -
SECURITY, K.R., S.R.,) Ariz. R.P. Juv. Ct. 103(G);
) ARCAP 28)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD507458

The Honorable Mark F. Aceto, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Eric Devany, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

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By Stephanie A. Stromfors
Guardian *Ad Litem* for Appellees K.R. and S.R.

Sandra L. Massetto, Attorney at Law Phoenix
By Sandra L. Massetto
Attorneys for Appellant

J O H N S E N, Judge

¶1 Ann R. ("Mother") appeals the superior court's order finding her two children dependent. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Child Protective Services ("CPS") responded to a report regarding the condition of the apartment Mother inhabited with her children.¹ Upon arrival, CPS caseworker Alisha Shumway noticed a foul odor emanating from the apartment. Cockroaches were crawling on the outside of the front door and on the window next to door. Through the window, Shumway saw cockroaches on the floor inside the apartment. When no one responded to her knock on the door, Shumway left her business card.

¶3 Apparently having found Shumway's card, Mother then called and arranged for a meeting in the apartment a few days later. When Shumway returned, she again noticed the foul odor from outside the apartment. Once inside, Shumway found the apartment to be "extremely filthy." There was an overwhelming stench, and many cockroaches were crawling on the walls and floors of every room. Cockroaches also were crawling on uncovered food in the refrigerator. Old food was on the counter

¹ "On review of an adjudication of dependency, we view the evidence in the light most favorable to sustaining the [superior] court's findings." *Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, 235, ¶ 21, 119 P.3d 1034, 1038 (App. 2005).

and mold was growing on the ceiling and floor. The children, ages 10 and 7, appeared to have poor hygiene and foul body odor.

¶14 CPS then removed the children, and the Arizona Department of Economic Security ("ADES") petitioned for dependency, alleging emotional abuse and neglect. After a hearing, the superior court found ADES's allegations true and adjudicated the children dependent.

¶15 Mother timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 8-235(A) (2007) and 12-120.21(A)(1) (2003).

DISCUSSION

¶16 We review a superior court's dependency ruling for a clear abuse of discretion. See *Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, 234, ¶ 13, 119 P.3d 1034, 1037 (App. 2005). We will disturb an adjudication of dependency only if no reasonable evidence supports it. *Id.* at 235, ¶ 21, 119 P.3d at 1038.

¶17 Mother first argues that we should reverse the order of dependency because the court initially failed to make the findings required by Arizona Rule of Procedure for the Juvenile Court 55(E)(1) and A.R.S. § 8-844(C)(1)(a)(i) and (ii) (Supp.

2010).² Because the superior court subsequently entered those findings, however, we do not address this argument.

¶18 In relevant part, a dependent child is one adjudicated to be:

(i) In need of proper and effective parental care and control and . . . who has no parent or guardian willing to exercise or capable of exercising such care and control.

* * *

(iii) A child whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent

A.R.S. § 8-201(13)(a)(i) and (iii) (Supp. 2010). Further, in relevant part, "neglect" means "[t]he inability or unwillingness of a parent . . . of a child 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(22)(a). "At any dependency hearing, the court's primary consideration shall be the protection of a child from abuse or neglect." A.R.S. § 8-843(A) (2007). The court must consider the child's best interests when ruling on a dependency petition. See *In re Appeal in Cochise County Juv. Action No. 5666-J*, 133 Ariz. 157, 161, 650 P.2d 459, 463 (1982). As the petitioner, ADES has the

² Although this statute was amended after the relevant date, the revisions are immaterial to the disposition of this appeal. Thus, we cite to the current published version of the statute.

burden of proving dependency by a preponderance of the evidence. Ariz. R.P. Juv. Ct. 55(C); see also A.R.S. § 8-844(C)(1).

¶9 Mother argues the evidence did not support the superior court's finding of neglect. She also argues ADES failed to prove emotional abuse because it offered no evidence of a diagnosis of emotional damage by a medical doctor or psychologist as required by A.R.S. § 8-201(2). Because there is evidence to support the superior court's finding of neglect, we need not reach the issue of emotional abuse.³

¶10 Reasonable evidence supports the superior court's finding that Mother neglected to provide the children a safe and sanitary home. Mother and the children had been living in the apartment for about a year and a half at the time of removal. Certain areas of the apartment appeared never to have been cleaned. It had been infested with cockroaches since the family moved in, and the condition had worsened during their time there. There also was an overwhelming stench inside the apartment that was detectable from the outside.

¶11 Mother argues there was no evidence that the children's health was in jeopardy as a result of their living conditions. The record evidence of the unsanitary condition of

³ Mother also argues the superior court erred in finding her children dependent based on a prior dependency of a third child. The superior court, however, did not base its finding of dependency on that ground.

her apartment in October, however, was sufficient for the superior court to conclude the children's health was at risk.

¶12 Mother also argues she has moved to a new residence that is clean and appropriate for the children. Evidence in the record, however, supported the conclusion that Mother lacks insight into acceptable levels of cleanliness. After Shumway left her card for Mother to contact her, it was at least four days before she returned to visit. Shumway's description of the inside of the apartment when she returned demonstrates that even though Mother knew of CPS's concerns that her apartment was unsuitable for children, she failed to clean it prior to Shumway's return visit. Further, during her testimony, Mother attempted to minimize the inadequacy of the conditions in which her children were living. She claimed she never saw the cockroaches that Shumway reported infested the refrigerator and testified she never smelled the foul odor inside the apartment and she did not know how long it took for the condition to develop.

¶13 On these facts, we cannot conclude the superior court abused its discretion in finding the two children dependent as to Mother based on neglect.

CONCLUSION

¶14 Because the evidence adequately supports the superior court's finding of dependency, we affirm.⁴

/s/
DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/
ANN A. SCOTT TIMMER, Chief Judge

/s/
PATRICIA A. OROZCO, Judge

⁴ On the court's own motion, we modify the caption of this decision to refer to the children only by their initials.