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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: 06/07/2011
RUTH A. WILLINGHAM,
CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

FELICIA K.,) 1 CA-JV 11-0002
)
Appellant,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for
ARIZONA DEPARTMENT OF ECONOMIC) Publication - Ariz.
SECURITY, FATIMA K.,) R. P. Juv. Ct.
) 103(G); ARCAP 28)
Appellees.)
_____)

Appeal from the Superior Court of Maricopa County

Cause No. JD 19293

The Honorable Joan Sinclair, Judge Pro Tem

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By David M. Osterfeld, Assistant Attorney General
Attorneys for Appellee
Arizona Department of Economic Security

Popilek & Jones, P.A. Phoenix
By John L. Popilek
Attorneys for Appellant

T H O M P S O N, Judge

¶1 Felicia K. (mother) appeals from the juvenile court's finding of dependency regarding her daughter, Fatima K. Because

we find sufficient evidence to support the juvenile court's ruling, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Fatima was born in March 2006 in Alabama. Alabama Child Protective Services was involved with Fatima and Felicia when they lived in Alabama and provided services to the family there. Alabama had concerns about Felicia's substance abuse; she tested positive for marijuana there. Fatima came into the care of the Arizona Department of Economic Security (ADES) after Felicia was arrested and spent several days in jail on a child abuse charge in Arizona. Buckeye police had responded to Felicia's home after a 911 call, and Felicia appeared to be intoxicated. She was alone with Fatima. Felicia told police that she was bipolar and admitted she had been drinking and taking valium. Police observed Felicia pretending to talk to people on the phone and she told police that there were cameras in the house.

¶3 When she came into care, Fatima had obvious developmental delays and displayed aggressive behaviors toward animals and other children. Because of Fatima's special needs, she was put into occupational therapy, physical therapy, and speech therapy to address the problems with her speech and gait. In addition, Fatima had a heart murmur, and at the time of the

dependency hearing ADES had an appointment set up for Fatima to undergo genetic testing for Williams syndrome.

¶4 Felicia denied that Fatima had developmental delays and had not sought treatment for her. This was a concern to ADES, as was the fact that Felicia had claimed to have worked for the CIA, the FBI, and the DEA but provided no documentation of ever having been employed by those agencies. ADES was also concerned about Felicia's tendency toward erratic behavior and outbursts during Fatima's appointments with service providers. At the time of the hearing Felicia had undergone a psychological consultation with Dr. Hunt; Dr. Hunt recommended that she have a full psychological evaluation and had concerns about her ability to parent. In September 2010, Felicia completed a psychiatric examination with Dr. Farney, who diagnosed Felicia with an adjustment disorder. Fatima's Child Protective Services (CPS) case manager opined that Fatima would be at risk of neglect if returned to Felicia's care due to Felicia's mental health issues and her admitted substance abuse and Fatima's developmental and cognitive delays.

¶5 After the dependency hearing, the juvenile court found that Fatima was dependent as to Felicia. Felicia timely appealed.

DISCUSSION

¶6 On appeal, Felicia asserts that there was not sufficient evidence to support a finding that Fatima was dependent as to her. This court "will not disturb the juvenile court's 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 Juv. Dependency Action No. 118537*, 185 Ariz. 77, 79, 912 P.2d 1306, 1308 (App. 1994). The allegations of the dependency petition must be proven by a preponderance of the evidence. *Id.* (citation omitted). We defer to the trial court in resolving conflicting testimony, as that court "had the opportunity to assess the credibility, attitude and condition of the parties at trial." *Pima County Severance Action No. S-1607*, 147 Ariz. 237, 239, 709 P.2d 871, 873 (1985).

¶7 Under Arizona Revised Statutes (A.R.S.) section 8-201(13)(a)(i) (2009), a dependent child is a child who is "[i]n 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." Also, a dependent child is one who is "destitute or who is not provided with the necessities of life, including adequate food, clothing, shelter or medical care," or a child "whose home is unfit by reason of abuse, neglect, cruelty or

depravity by a parent” A.R.S. § 8-201(13)(a)(ii), (iii). “Neglect” is “the inability or unwillingness of a parent . . . to provide [a] child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes substantial risk of harm to the child’s health or welfare” A.R.S. § 8-201(22).

¶8 The evidence was sufficient to support the juvenile court’s finding of dependency. Although Felicia was incarcerated for only a short time, as the juvenile court recognized, the evidence showed that she failed to recognize Fatima’s significant developmental and physical delays, and that Fatima is in need of the services she is now receiving. The evidence also showed that Felicia had been involved in an abusive relationship and that her partner lived in the same home with her and Fatima. Felicia admittedly had a history of alcohol and marijuana abuse, and had failed to provide a urine sample on eight different occasions. The preponderance of the evidence also showed that Felicia had mental health issues that need to be addressed. Accordingly, we find that the juvenile court properly found Fatima dependent as to mother.

CONCLUSION

¶9 For the foregoing reasons, we find that the juvenile court properly found Fatima dependent as to mother and we

therefore affirm the decision.

JON W. THOMPSON, Judge

CONCURRING:

DIANE M. JOHNSEN, Presiding Judge

MARGARET H. DOWNIE, Judge