

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

CHAD P.
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND L.P.,
Appellees.

No. 2 CA-JV 2015-0095
Filed August 18, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pinal County
No. JD201400329
The Honorable Henry G. Gooday Jr., Judge

AFFIRMED

COUNSEL

Rosemary Gordon Pánuco, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Erika Z. Alfred, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

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MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

M I L L E R, Presiding Judge:

¶1 Chad P. appeals from the juvenile court's May 2015 minute entry adjudicating his infant daughter L.P. a dependent child. For the following reasons, we affirm.

Background

¶2 "On review of an adjudication of dependency, we view the evidence in the light most favorable to sustaining the juvenile court's findings." *Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, ¶ 21, 119 P.3d 1034, 1038 (App. 2005). Around June 2014, Chad began living with L.P.'s mother, Bretta S.,¹ after learning she was pregnant. Around the same time, the Department of Child Safety (DCS) began receiving reports that Bretta was using drugs. In August, her ten-year-old son reported finding "needles" in the bathroom, and she tested positive for methamphetamines and opiates in urinalyses performed in August and November. Until L.P. was born in December, DCS continued to receive reports that Bretta was drinking heavily and "snort[ing]," "smok[ing]" or "shoot[ing] up" prescription drugs. L.P. was "born substance exposed to methamphetamine," and Bretta tested positive for opiates, benzodiazepine, and methamphetamines the following day.

¶3 That month, DCS took temporary custody of L.P. and filed a dependency petition alleging, in relevant part, that Chad had

¹Bretta and Chad married in October 2014. Bretta did not contest the dependency adjudication and is not a party to this appeal.

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failed to protect L.P. from Bretta's "neglect, substance abuse, and abandonment." At the contested dependency adjudication, Chad acknowledged he knew Bretta had been using alcohol during her pregnancy and had seen her drinking tequila "[o]ut of the bottle," but he said he did not know how much she drank because he was working "14 hours a day" and "[did] not regulate what she did." Citing his busy work schedule, he also denied knowing Bretta had a drug problem; was attending drug court, apparently as a condition of probation; and had tested positive for methamphetamines and opiates during her pregnancy. He admitted, however, knowing that Bretta had a prescription for Percocet and that she had abused that drug during her pregnancy. And he acknowledged seeing Bretta under the influence of alcohol or drugs at least once a month during her pregnancy. And, like Bretta's son, he had seen needles in their bathroom in August 2014, but believed Bretta when she told him they belonged to a roommate. Although he continued to be suspicious that she was using the needles to inject illegal drugs, he took no further action.

¶4 Through March 2015, Bretta continued to test positive for methamphetamine and opiates, including morphine, Oxycodone, and oxymorphone. In early April, she was incarcerated, as a result of testing positive for substances in violation of drug court requirements.

¶5 In contrast, Chad complied with a substance abuse assessment at the request of DCS, and evaluators concluded he did not require treatment. He also has participated in random urinalysis and, although he failed to call in for testing several times in January and February 2015, he has substantially complied with the requirements and has never tested positive for the presence of alcohol or other tested drugs. The DCS case manager for L.P. acknowledged that Chad had engaged in services "almost immediately" after DCS became involved with the family, had promptly corrected home safety issues identified by DCS, and had attended weekly visitations with L.P. at her placement in Yuma.

¶6 Both Chad and the case manager understood that upon Bretta's release from incarceration, she would be transferred directly

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to an inpatient drug rehabilitation program and, on April 9, the case manager spoke with Chad about the possibility of dismissing the dependency and returning L.P. to his care at the next juvenile court hearing on April 20. But on April 20, Bretta appeared with Chad in court, having just been released, and apparently expected to remain in the family home until a bed became available at the rehabilitation program. The court then confirmed the date of May 7 for the contested dependency adjudication hearing.

¶7 At the hearing, the case manager testified Chad had appeared able to parent L.P. adequately, but for Bretta's presence in the home. But she became concerned when he permitted Bretta to return to the home, before she had received substance abuse treatment, just as he was expecting to have L.P. returned to his custody. Chad testified he had investigated alternative living arrangements for Bretta in the event that L.P. was returned to his care. But he also said he did not believe Bretta posed any potential harm to L.P., even though she "may need to be supervised." When pressed about the risk that a parent under the influence of heroin might pose in trying to care for a child, even under supervision, he responded that "there's a lot [of] things that could happen with drugs or unrelated to drugs." And although he said he would also supervise Bretta to determine whether she had used alcohol or drugs, he acknowledged that he had not recognized her use of drugs since L.P. was born, although she consistently had tested positive for drug use until her incarceration in April.

¶8 At the end of the hearing, the juvenile court found the state had met its burden of establishing L.P. was dependent by a preponderance of the evidence. The court acknowledged that Chad now recognized Bretta's need for substance abuse treatment and stated it was "very encouraged" about the prospect of L.P.'s eventual return. But the court observed that denial isn't always "as black and white" as insisting that "there is not a problem," and it found Chad's testimony had revealed "some minimizing" of the risk that Bretta had posed to her unborn child and could currently pose – unintentionally – to L.P. This appeal followed.

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Discussion

¶9 “We generally will not disturb a dependency adjudication unless no reasonable evidence supports it.” *Willie G.*, 211 Ariz. 231, ¶ 21, 119 P.3d at 1038. Under A.R.S. § 8-201(14)(a)(i), a “[d]ependent child” is defined as one who is adjudicated to be “[i]n 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.” A determination of dependency may be based on one parent’s unwillingness or inability to protect a child from a risk of harm posed by the other parent. *See, e.g., Willie G.*, 211 Ariz. 231, ¶¶ 25, 27, 119 P.3d at 1039.

¶10 On appeal, Chad argues the juvenile court “abused its discretion” in finding L.P. dependent as to him, alleging its determination was based on DCS’s “unreasonable position that [Chad] could not get custody of L.P. until [Bretta] left their home, even though [he] had made arrangements to ensure that [Bretta] would not be alone with L.P. and had met all of the requirements demanded by DCS.” Essentially, Chad is asking this court to reweigh the evidence, which we will not do. *See In re Pima Cnty. Juv. Action No. 118537*, 185 Ariz. 77, 79, 912 P.2d 1306, 1308 (App. 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.” *In re Pima Cnty. Juv. Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987). We agree with DCS that the evidence, as detailed above, was sufficient to support the court’s ruling.

Disposition

¶11 Chad has identified no error or abuse of discretion warranting reversal of the juvenile court’s adjudication of dependency, and its findings are supported by reasonable evidence in the record. Accordingly, we affirm the court’s ruling adjudicating L.P. dependent as to Chad.