

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

RONALD S.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND A.S.,
Appellees.

No. 2 CA-JV 2016-0108
Filed February 8, 2017

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NOT FOR PUBLICATION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 Pima County
No. JD196542
The Honorable Joan Wagener, Judge

AFFIRMED

COUNSEL

Domingo DeGrazia, Tucson
Counsel for Appellant

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Mark Brnovich, Arizona Attorney General
By Laura J. Huff, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

Pima County Office of Children's Counsel, Tucson
By John Walters
Counsel for Minor

MEMORANDUM DECISION

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

ST A R I N G, Presiding Judge:

¶1 Ronald S. appeals from the juvenile court's June 2016 order adjudicating his daughter, A.S., born in January 2012, dependent.¹ We affirm.

¶2 Under A.R.S. § 8-201(15)(a)(i),² a "[d]ependent child" is defined as one who is "[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 dependent child is also defined as one "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." § 8-201(15)(a)(iii). "Neglect" is defined, in relevant part, as "[t]he inability or unwillingness of a parent, guardian or custodian of a

¹A.S. was also found dependent as to her mother, S. S. is not a party to this appeal.

²Portions of the definitions statute were renumbered in 2016, but the applicable text was not amended. See 2016 Ariz. Sess. Laws, ch. 300, § 1. We refer to the current version of the statute throughout.

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child to provide that child with supervision . . . if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare" § 8-201(25)(a). A determination of dependency requires proof by a preponderance of the evidence. A.R.S. § 8-844(C)(1). We review a dependency adjudication for an abuse of discretion, deferring to the juvenile court's ability to weigh and analyze the evidence. *Louis C. v. Dep't of Child Safety*, 237 Ariz. 484, ¶ 12, 353 P.3d 364, 368 (App. 2015). Thus, "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).

¶3 We will not reverse a juvenile court's order for insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. See *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). The juvenile court, as the trier of fact, "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). We do not reweigh the evidence on review. *Id.* ¶ 14.

¶4 A.S. was found dependent as to Ronald in 2013, and we affirmed that order on appeal. *Ronald S. v. Ariz. Dep't of Econ. Sec.*, No. 2 CA-JV 2013-0074 (Ariz. App. Sept. 23, 2013) (mem. decision). The dependency was based on his failure to provide adequate supervision—specifically, by leaving A.S. in the care of her mother, S., who abused medication and alcohol and "regularly relied on physical punishment as a means of discipline." That dependency was dismissed in March 2015.

¶5 Less than a year later, however, the Department of Child Safety (DCS) filed a new dependency petition, asserting Ronald had continued to expose A.S. to domestic violence and failed to protect her from S.'s substance abuse, including leaving the home without A.S. when S. was trying to harm herself. After a contested dependency hearing, the juvenile court determined A.S. was dependent as to Ronald, finding he was "the victim and perpetrator

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of domestic violence; that he has failed to protect [A.S.] from the mother's domestic violence, from her unstable mental health issues, and also her substance abuse history." This appeal followed.

¶6 Evidence presented at the hearing showed that, since the first dependency ended, S. had resumed abusing medication and alcohol. There was also evidence she had physically abused one of her other children, A.V. Additionally, she and Ronald had several incidents of domestic violence with A.S. present, including an altercation where S. was cut with a knife. She claimed Ronald had attacked her with the knife. He claimed she had punched and cut herself during the altercation, but admitted he had left A.S. and A.V. alone in the home with her after she had done so. After that incident, Ronald obtained an order of protection against S.

¶7 During the dependency hearing, Ronald acknowledged his long history of domestic violence with S. He also admitted he was aware that S. had resumed her substance abuse and that she had been drinking during the incidents of domestic violence, but had not reported her substance abuse and continued to live with her.

¶8 A DCS case manager testified that, although A.S. had been placed with Ronald after the January altercation, that placement was conditioned on Ronald's participation in services until DCS concluded he had benefitted from those services and was able to protect A.S. The manager stated, however, that Ronald had not benefitted from services in the previous dependency because he quickly reunited with S. and continued to engage in domestic violence. He further testified that Ronald required domestic-violence counseling, as well as counseling on adult relationships and codependency issues, to avoid similar issues in other relationships.

¶9 On appeal, Ronald argues, citing *Shella H. v. Dep't of Child Safety*, 239 Ariz. 47, 366 P.3d 106 (App. 2016), that, absent a continuing threat of domestic violence from S., a dependency finding is inappropriate. He asserts there is insufficient evidence he would reconcile with S. because, since the last domestic-violence incident, he had obtained an order of protection and an independent

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residence for himself and A.S. He also asserts that he responded appropriately to S.'s escalating behavior and could not have foreseen that she would turn violent.

¶10 As this court pointed out in *Sheila H.*, a “substantiated and unresolved threat” of domestic violence supports a dependency finding. *Id.* ¶ 16. Ample evidence supports the conclusion here that the threat of violence from S. was ongoing. Although Ronald has taken steps to reduce that threat by again ending his relationship with S., and by moving to a new residence with A.S., the juvenile court had to evaluate that recent conduct in light of his previous conduct. Notably, during the first dependency, Ronald ended and resumed a relationship with S. despite their history of domestic violence and her continuing issues with substance abuse. And, shortly before the January incident, he and S. had separated but he had returned to the home after only two weeks. The juvenile court could readily conclude there was a significant risk he would again resume his relationship with S. Additionally, as we noted above, the DCS case manager opined that Ronald was at risk of engaging in domestic violence in the future, even without being in a relationship with S., due to his lack of benefit from services during the first dependency.

¶11 And, Ronald’s abandonment of A.S. during the incident of domestic violence not only reflects a failure to adequately supervise her, but also supports a finding that he lacks the skills to adequately protect her. Ronald asserts, however, that a DCS case manager “could not find specific fault in [his] actions during the . . . incident.” But the case manager testified Ronald had acted inappropriately in leaving A.S. with S. during the January altercation. Although the manager admitted he would give Ronald “credit” for avoiding a hypothetical situation in which he “tried to remove th[e] children that night, a physical altercation occurred, and they were harmed,” he nonetheless maintained Ronald had made a mistake by leaving the home with the children still in it.

¶12 Because the juvenile court’s findings are amply supported by the record, we affirm the court’s order finding A.S. dependent as to Ronald.