

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

JEANNETTE W.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, I.D., AND K.D.,
Appellees.

No. 2 CA-JV 2017-0022
Filed June 29, 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NOT FOR PUBLICATION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. JD20160793
The Honorable Julia Connors, Judge Pro Tempore

AFFIRMED

COUNSEL

Peter G. Schmerl, P.C., Tucson
By Peter G. Schmerl
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel, Phoenix
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

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

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Howard¹ concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Jeannette W. appeals from the juvenile court's January 2017 order adjudicating her children, I.D. and K.D., born in 2001 and 2002, dependent. On appeal, she argues the court erred in considering circumstances at the time the dependency petition was filed rather than at the time of the dependency hearing and there was insufficient evidence to support a dependency adjudication based on neglect. We affirm.

¶2 Section 8-201(15)(a)(i), A.R.S.,² defines a "[d]ependent child" 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." § 8-201(15)(a)(iii). That section defines "[n]eglect", as "[t]he inability or unwillingness of a parent . . . to provide [the] child with supervision, food, clothing, shelter or

¹The Hon. Joseph W. Howard, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

²Portions of the relevant 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 in this decision.

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medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare." § 8-201(25)(a).

¶3 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). We view the evidence in the light most favorable to sustaining the court's finding that the Department of Child Safety (DCS) sustained its burden of proving the allegations of the petition by a preponderance of the evidence. See *Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, ¶ 21, 119 P.3d 1034, 1038 (App. 2005); see also A.R.S. § 8-844(C) (allegations of dependency petition must be proved by preponderance of evidence). We will affirm the order "unless the findings upon which it is based are clearly erroneous and there is no reasonable evidence supporting them." *In re Pima Cty. Juv. Action No. 118537*, 185 Ariz. 77, 79, 912 P.2d 1306, 1308 (App. 1994).

¶4 In November 2016, DCS took custody of the children and filed a dependency petition based on allegations of abuse and neglect for Jeannette's failure to protect the children from ongoing issues of alcohol abuse and domestic violence in their father's home.³ Although the family law court had denied Jeannette's prior attempts to modify the parenting time orders that gave primary custody to the father, the juvenile court temporarily placed the children with her a few days after the dependency petition was filed.⁴

¶5 During the January 2017 contested dependency hearing, Jeannette admitted to the factual basis in the dependency petition,

³The father is not a party to this appeal.

⁴Although it is unclear when Jeannette married her current partner, whom we refer to as the "stepfather," their marital status does not appear to be in dispute. The stepfather was not permitted to have unsupervised contact with Jeannette's children due to the 2010 termination of his parental rights to his daughter based on allegations of sexual abuse. In 2013, a family law court found he had not received any counseling related to those incidents.

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stating “the only question is what is the legal basis for a dependency.” Arguing she had not neglected the children, she asserted “it comes down to” whether they had been exposed to an unreasonable risk of harm under the statute. *See* § 8-201(15)(a)(iii), 25(a). DCS argued Jeannette’s failure to protect the children from their father constituted neglect under the statute. *See id.* The juvenile court then stated, “So essentially what it boils down to is mother’s choice of a husband [the stepfather], who has a background that leads a family law court to enter such custody orders as neglect,” and the state responded, “Essentially, yes.” Jeannette’s attorney argued his client’s conduct had not created an unreasonable risk of harm under the statute and pointed out that she had made “arrangements so that there wouldn’t be unsupervised contact between the stepfather and the children.”

¶6 The juvenile court ruled as follows:

But for [Jeannette’s] decision to remain with her current spouse [the stepfather], the family law [parenting time] orders could have been modified. And I do find that the children are dependent as to [Jeannette] for the fact that that decision presents an unreasonable risk of harm and I find that the children are dependent.

See § 8-201(15)(a)(iii). Jeannette’s attorney objected, and argued that although the issue about the stepfather “is implied” in the allegations in the dependency petition to which Jeannette had admitted, “they’re not explicitly there. So I would object to the Court’s finding based on the fact that that specific set of facts in regard to the stepfather frankly isn’t in front of the Court today. That factual issue isn’t what my client admitted to.”⁵ The court noted counsel’s objections and concluded the hearing.

⁵The dependency petition states, in relevant part: “The mother is unable to protect the children from the father. The children live primarily with the father pursuant to current parenting time orders.

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¶7 On appeal, Jeannette argues the juvenile court erred by considering the facts at the time the dependency petition was filed in November 2016 rather than at the dependency adjudication hearing in January 2017; the court “erred in considering any evidence other than the pleadings”; and, the evidence did not support a finding of neglect because her home was not unfit at the time of the dependency hearing. Jeannette also maintains, “[p]resumably, the trial court would not have affirmed placement with [her in November 2016] if such placement would have created a substantial risk of harm to the children” by exposing them to the stepfather.

¶8 To the extent Jeannette asserts the juvenile court erred by considering evidence other than the factual basis in the dependency petition, to which she had admitted, we note the court’s obligation did not end once Jeannette admitted those facts. Rather, the court properly considered the record as a whole to determine whether a factual basis existed to support a dependency adjudication, as it was required to do. *See* Ariz. R. P. Juv. Ct. 55(D)(1)(c) (in accepting admission of allegations in dependency petition, court shall “[d]etermine whether a factual basis exists to support a finding of dependency”); *cf. Manuel M. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 205, ¶¶ 26-28, 181 P.3d 1126, 1134-35 (App. 2008) (juvenile court required to determine whether grounds for termination have been proven independent of parent’s admission to factual allegations in petition). In addition, to the extent the court considered information contained in the report admitted at the preliminary protective hearing in November 2016, which apparently was not admitted at the dependency adjudication hearing, we likewise find no error. *Manuel M.*, 218 Ariz. 205, ¶ 34, 181 P.3d at 1136 (exhibits duly admitted at prior hearings part of record and properly considered by court).

¶9 Moreover, other than her attorney stating Jeannette had made “arrangements so that there wouldn’t be unsupervised contact between the stepfather and the children,” Jeannette did not provide the juvenile court with any meaningful evidence establishing that the

The mother has attempted to modify these orders on multiple occasions with no success.”

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court's ongoing concern about the stepfather had been resolved at the time of the hearing. The record contains significant evidence spanning the course of several years indicating the family court had determined it was not safe for the children to spend time with the stepfather, to wit: a temporary restraining order in 2013 prohibiting the stepfather from being in Jeannette's home during her parenting time with the children; a subsequent order prohibiting unsupervised contact between the stepfather and the children; and the family court's ongoing denials of Jeannette's requests to modify parenting time. Nor do we find that the court's temporary placement of the children with Jeannette in November 2016 somehow eliminated concern about this history, as is evident from the dependency ruling.

¶10 The juvenile court thus determined, based on Jeannette's decision to remain with the stepfather, a decision it found had "prevented the family law [parenting time] orders from being modified," that she had exposed the children to an unreasonable risk of harm. *See In re Pima Cty. Juv. Dependency Action No. 96290*, 162 Ariz. 601, 605, 785 P.2d 121, 125 (App. 1990) ("A finding of dependency may be predicated on one parent's failure to prevent abuse by another parent."). To the extent Jeannette suggests the court improperly considered evidence related to the stepfather, we disagree. DCS expressly alleged in the dependency petition that Jeannette had "attempted to modify" the current parenting time orders "with no success," a fact she admitted, and which she necessarily knew related to her history with the stepfather. At the very least, the petition placed Jeannette on constructive notice that DCS's allegation concerned the stepfather. Accordingly, she should have anticipated the court would consider her inability to provide the children with a safe alternative residence to protect them from the father because of her relationship with the stepfather, as it did. Because reasonable evidence supports the court's ruling, we find no abuse of discretion. *See Pima Cty. No. 118537*, 185 Ariz. at 79, 912 P.2d at 1308.

¶11 Finally, we conclude Jeannette has waived her essentially undeveloped and unsupported claim that "this case is about a legal impediment" and thus do not address it. *See Melissa W. v. Dep't of Child Safety*, 238 Ariz. 115, ¶ 9, 357 P.3d 150, 152-53 (App. 2015) (failure

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to support arguments with citation to relevant authority waives them on appeal).

¶12 Accordingly, we affirm the juvenile court's order finding I.D. and K.D. dependent as to Jeannette.