IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

MARISA E.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND K.M.,
Appellees.

No. 2 CA-JV 2019-0120
Filed May 18, 2020

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NOT FOR PUBLICATION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. JD20190279
The Honorable Scott McDonald, Judge

AFFIRMED

COUNSEL

Joel Feinman, Pima County Public Defender
By David J. Euchner, Assistant Public Defender, Tucson
Counsel for Appellant

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

Pima County Office of Children's Counsel, Tucson
By Christopher Lloyd
Counsel for Minor

MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Chief Judge Vásquez concurred and Judge Brearcliffe specially concurred.

S T A R I N G, Presiding Judge:

¶1 Appellant Marisa E. challenges the juvenile court's order of August 28, 2019, finding her child, K.M., born January 2004, dependent. *See* A.R.S. §§ 8-201(15)(a)(i), 8-844(C). On appeal, Marisa argues the juvenile court erred in finding K.M. dependent when the Department of Child Safety (DCS) had "admitted that [she] posed no safety risk to" K.M. We affirm.[1]

¶2 In reviewing an adjudication of dependency, we view the evidence in the light most favorable to affirming the juvenile court's findings. *Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, ¶ 21 (App. 2005) (juvenile court enjoys great discretion because principal consideration is best interests of child). DCS received a report in February 2019 that Marisa had been involved in a car accident with K.M. in the vehicle, after which she tested positive for methamphetamine and methamphetamine was found on her person. DCS took temporary custody of K.M. and filed a dependency petition alleging K.M. was dependent as to Marisa based on her neglect of K.M. due to chronic substance abuse.

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[1] DCS contends this appeal is moot because the juvenile court dismissed the dependency shortly after Marisa filed her opening brief. We disagree, because the question of dependency is to be decided based on the circumstances at the time of the dependency hearing, *see Shella H. v. Dep't of Child Safety*, 239 Ariz. 47, ¶ 1 (App. 2016), and because of the potential effect of the dependency on Marisa's interests, *see, e.g.*, A.R.S. §§ 8-533(B)(8) (child in placement for "cumulative total period"), 8-533(B)(11) (child removed from parent's custody within eighteen months of return); *see also Cardoso v. Soldo*, 230 Ariz. 614, ¶ 9 (App. 2012) (issue not moot if "consequences of . . . order will continue to affect a party").

¶3 In the period between the February removal and the dependency hearing in August 2019, Marisa participated in reunification services and tested negative for drug use with the exception of one diluted test and one positive test as a result of a prescribed medication. At the hearing, the DCS case manager testified that her concern with Marisa was "not safety issues . . . because there's no safety concerns that exist[]"; rather she was concerned with "[Marisa's] substance use and her ability to recognize that and the ability to acknowledge that." Citing the "longevity of [Marisa's] . . . chronic drug use," she expressed concern about Marisa's failure to "fully recogniz[e] that substance abuse is the reason that this case came about" and to meet K.M.'s emotional needs.

¶4 The juvenile court adjudicated K.M. dependent, concluding DCS had proven Marisa was "unable or unwilling to parent based upon substance abuse." It noted that despite her "extraordinary steps since February 2019 to demonstrate sobriety," she was "still unable to parent due to [her lengthy] history [of substance abuse]" and an "additional period of sobriety" was necessary.

¶5 On appeal, Marisa argues the juvenile court "abused its discretion in finding [K.M.] dependent as to Marisa because DCS admitted that Marisa posed no safety risk and Marisa is not currently unable to parent" K.M. The allegations in a dependency petition must be proven by a preponderance of the evidence, A.R.S. § 8-844(C), based on "the circumstances as they exist at the time of the dependency adjudication hearing," *Shella H. v. Dep't of Child Safety*, 239 Ariz. 47, ¶ 1 (App. 2016). We review a dependency adjudication for an abuse of discretion, "deferring to the juvenile court's ability to weigh and analyze the evidence." *Id.* ¶ 13. Accordingly, "[w]e will only disturb a dependency adjudication if no reasonable evidence supports it." *Id.*

¶6 A child is dependent if she is found to be "[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." § 8-201(15)(a)(i). Marisa argues the record does not contain any evidence to support the juvenile court's finding that K.M. met this definition. But as noted above, the case manager testified that despite a lack of specific safety concerns, she was concerned with Marisa's ability to maintain sobriety, to meet K.M.'s emotional needs, and to recognize the role of her substance abuse in bringing about the dependency proceedings. Although Marisa characterizes the history of her methamphetamine use as having been over the course of "several years,"

evidence at the dependency hearing showed her history with the drug went back approximately twenty-seven years. At the time of the hearing, she had maintained approximately six months of sobriety. Marisa has cited no authority to support the contention that a juvenile court cannot consider the danger of relapse or a parent's failure to meet the emotional needs of a child in finding a child dependent. Indeed, courts of this state have reached the contrary conclusion as to relapse. *See Jennifer S. v. Dep't of Child Safety*, 240 Ariz. 282, ¶ 20 (App. 2016); *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, ¶ 29 (App. 2010). And, to the extent Marisa contends her successes during the period before the hearing should have outweighed the potential for relapse in view of her long history of substance abuse, we cannot say the court abused its discretion and we do not reweigh the evidence presented. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002).

¶7 As our concurring colleague indicates, the case for dependency is far from overwhelming. Indeed, the juvenile court would have been well within its discretion to rule in favor of Marisa. But, "[i]n testing whether the trial court has abused its discretion, we must determine not whether we might have so acted under the circumstances but whether the trial court in performing the challenged act exceeded the bounds of reason." *Bradley v. Philhower*, 81 Ariz. 61, 63 (1956); *see also Xavier R. v. Joseph R.*, 230 Ariz. 96, ¶ 12 (App. 2012) (appellate court will not replace juvenile court's "judgment with our own"). Accordingly, we affirm the juvenile court's order adjudicating K.M. dependent.

B R E A R C L I F F E, Judge, specially concurring:

¶8 The case for a dependency here is, at best, marginal. The case manager's opinion of the likelihood of Marisa's relapse was seemingly credited by the juvenile court although it was unsupported by any other evidence. And the evidence of K.M.'s unrequited emotional needs was thin. The deference this court is required to give to the juvenile court's determinations, however, compels us to affirm.