

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

FRANCISCO O.,
Appellant,

v.

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

No. 2 CA-JV 2019-0130
Filed February 3, 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NOT FOR PUBLICATION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. JD20190293
The Honorable Scott McDonald, Judge

AFFIRMED

COUNSEL

James L. Fullin, Pima County Legal Defender
By Ruby J. Becker, Assistant Legal Defender, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Autumn Spritzer, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

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MEMORANDUM DECISION

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

STARING, Presiding Judge:

¶1 Appellant Francisco O. challenges the juvenile court's September 20, 2019 order adjudicating his child, L.A., born February 2019, dependent. On appeal, Francisco argues that the court abused its discretion in denying his motion to continue the dependency proceedings "in order to review ongoing medical records and obtain expert witnesses" and that there was a lack of reasonable evidence to support the court's dependency finding. We affirm.

¶2 L.A.'s mother sought medical care for her in May 2019, due to concerns about red marks on her face. Medical personnel discovered she had bruising on her face, chest, and back; rib fractures; and a skull fracture. Because the mother was L.A.'s primary caregiver and, with a few exceptions, the only person alone with L.A., she was arrested for child abuse.¹ L.A. was placed with her maternal grandparents.

¶3 The Department of Child Safety (DCS) filed a dependency petition on May 31, alleging Francisco did "not take an active role in caring for" L.A., and had failed to protect her "from the mother's physical abuse." A contested dependency hearing was set for August 16. On August 7, Francisco moved to continue the hearing, stating he "need[ed] additional time to interview and schedule experts in regards to new information reported on the medical records disclosure." The juvenile court denied the motion, noting that Rule 55(B), Ariz. R. P. Juv. Ct., required that the dependency hearing be completed within ninety days of service "unless the Court finds 'extraordinary circumstances.'" Finding no such circumstances identified in Francisco's motion, the court affirmed the hearing date.

¶4 Francisco contends the juvenile court abused its discretion in denying his motion to continue the hearing. He argues the court

¹L.A.'s mother entered a no-contest plea to the dependency petition and is not a party to this appeal.

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“incorrectly interpreted the language” of Rule 55(B), suggesting the court was unaware it had discretion to extend the time set forth therein. But the court’s ruling on the motion makes clear that it denied the motion based on Francisco’s failure to specify what “extraordinary circumstances” would justify continuing the hearing. *See* Ariz. R. P. Juv. Ct. 55(B). Although, as quoted above, Francisco cited medical records and experts, he did not provide the court with any details. On the record before us, we cannot say the court abused its discretion in denying the motion.

¶5 Francisco further asserts the juvenile court’s finding that L.A. was dependent “was clearly erroneous as there was no reasonable evidence to support it.” A dependent child includes one “whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent.” A.R.S. § 8-201(15)(a)(iii). The allegations in a dependency petition must be proven by a preponderance of the evidence. A.R.S. § 8-844(C). We review a dependency adjudication for an abuse of discretion, “deferring to the juvenile court’s ability to weigh and analyze the evidence.” *Shella H. v. Dep’t of Child Safety*, 239 Ariz. 47, ¶ 13 (App. 2016). Accordingly, “[w]e will only disturb a dependency adjudication if no reasonable evidence supports it.” *Id.* “[W]e do not re-weigh the evidence on review.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002). And, we view the evidence in the light most favorable to affirming the court’s findings. *Willie G. v. Ariz. Dep’t of Econ. Sec.*, 211 Ariz. 231, ¶ 21 (App. 2005).

¶6 At the hearing, one of L.A.’s doctors testified that when she was admitted, he had observed “obvious bruising to her face” and that “imaging studies . . . showed fractures as well.” He testified he suspected non-accidental trauma as the cause of her injuries. He further testified that rib fractures are “highly correlated with child abuse.” He also testified that while L.A. had a condition known as “Von Willebrand disease,” which causes an “increased risk of bleeding,” that condition did not affect his opinion that L.A.’s injuries had been caused by non-accidental trauma. The doctor was also questioned about a short fall that Francisco had testified L.A. suffered in March 2019. The doctor opined that such a fall could have caused a skull fracture, but would not have caused the rib fractures.

¶7 L.A. has an older half-brother who was also interviewed. A DCS investigator testified that the half-brother had reported L.A. cried a lot and he had heard Francisco and the children’s mother “arguing about bruising on [L.A.]” The investigator also testified that she was concerned about Francisco’s ability to keep L.A. safe in view of his inability “to

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identify any of the safety issues" relating to the child. And she noted that he had difficulty holding the child appropriately.

¶8 The family's DCS case manager testified that she had safety concerns as to leaving L.A. in Francisco's care because he was not "able to articulate what happened, how [she] was injured," or what "protective plans" he had for L.A. She explained that he continued to believe the mother had "not caused any injuries and [wa]s still not able to articulate how the injuries were caused."

¶9 The juvenile court found that DCS had proven by a preponderance of the evidence that Francisco had neglected L.A. It found L.A.'s doctor's testimony regarding her injuries credible and noted that neither Francisco nor L.A.'s mother had "presented any explanation" for her injuries. It determined L.A.'s mother had abused her and Francisco had failed to protect her from abuse. Despite his assertion otherwise, Francisco's argument on appeal amounts to a request for this court to reweigh the evidence. Relying on favorable evidence, he argues that by the time of the hearing, "the injuries were beginning to be able to be explained by medicine and science." But the evidence to which he points was considered by the court in its ruling, and we will not reweigh that evidence. *See Jesus M.*, 203 Ariz. 278, ¶ 12. Instead, we conclude the court's ruling is supported by reasonable evidence. *See Shella H.*, 239 Ariz. 47, ¶ 13.

¶10 The juvenile court's order adjudicating L.A. dependent is affirmed.