IN THE

# ARIZONA COURT OF APPEALS

DIVISION TWO

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CHRISTIANNE M.,
*Appellant*,

*v.*

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

No. 2 CA-JV 2019-0184
Filed June 4, 2020

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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NOT FOR PUBLICATION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).

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Appeal from the Superior Court in Pima County
No. JD20190150
The Honorable Joan L. Wagener, Judge

**AFFIRMED IN PART; VACATED IN PART**

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COUNSEL

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**MEMORANDUM DECISION**

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

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S T A R I N G, Presiding Judge:

**¶1** Christianne M. appeals from the juvenile court's order adjudicating her daughters, A.L., born in November 2004, and M.L., born in November 2005, dependent on the grounds of neglect. She challenges the sufficiency of the evidence to support the court's neglect findings. For the following reasons, we affirm in part and vacate in part.

**Factual and Procedural Background**

**¶2** We view the facts in the light most favorable to affirming the juvenile court's findings. *See Louis C. v. Dep't of Child Safety*, 237 Ariz. 484, ¶ 2 (App. 2015). A.L. and M.L. started living with Christianne and Christianne's mother in March 2008, and Christianne adopted them in 2010. From the beginning, both girls received services for behavioral issues, although they had periods of improvement.

**¶3** In 2014, A.L.'s behavioral issues began to escalate. As a result, Christianne enrolled A.L. in services to address her violent outbursts and self-harm, and M.L. also received services to manage her impulse behaviors and attention deficit disorder. Those services included individual and family therapy, psychiatric evaluation, and medication management. Although M.L. seemed to improve, A.L. did not.

**¶4** Christianne married in 2016, and she and her husband had a daughter together.[1] Christianne was hospitalized for medical issues at the beginning of 2017, and both girls lived with their former foster mother, E.O., for several months. The girls transitioned back to living with Christianne by the middle of the year. However, A.L.'s behavior started to deteriorate again, and, after an incident in which she bit her stepfather, A.L. went to live with her maternal grandmother in October 2017. A.L. stayed with her maternal grandmother until the summer of 2018, when she went to

[1]Their daughter is not a part of this dependency.

California with E.O. From roughly May to August 2018, Christianne, her husband, their daughter, and M.L. vacationed in Egypt. Christianne signed powers of attorney, giving the maternal grandmother and E.O. authority to make decisions for A.L.

**¶5** After returning to the maternal grandmother's home in July 2018, A.L. became unstable, and her maternal grandmother took her to a crisis center. A.L. was ultimately admitted to Mingus Mountain, a level-one treatment facility, in November 2018.

**¶6** In January 2019, the Department of Child Safety (DCS) received a report that M.L. was being emotionally abused by her stepfather. In an interview with a caseworker, M.L. reported that her stepfather called her names like "stupid" and "retard." During that investigation, Christianne called DCS to report that she "couldn't have [A.L.] back in the home" upon her release from Mingus Mountain because she "needed to keep the other children safe." When the caseworker interviewed Christianne, she admitted that her husband had called M.L. names but suggested he did so by asking questions as a form of discipline, such as, "[A]re you stupid?"

**¶7** In March 2019, DCS filed a dependency petition, alleging that A.L. and M.L. were "dependent due to abuse and/or neglect as to Christianne." Specifically, the petition asserted that Christianne was "unwilling to parent [A.L.] as she has refused to allow [A.L.] to live in the home" and that Christianne "has failed to participate in any services or maintain a relationship with [A.L.]" since her admission to Mingus Mountain. In addition, the petition alleged that Christianne had neglected M.L. "by failing to protect her from the stepfather's verbal abuse" and by failing to "provide mental health services for [M.L.]"

**¶8** The following month, Christianne, her husband, and their daughter moved to Florida. M.L. did not want to move and went to live with E.O. At about the same time, A.L. was moved to a level-two treatment facility.

**¶9** After an eight-session contested dependency hearing, the juvenile court ruled from the bench, adjudicating A.L. and M.L. dependent as to Christianne on the grounds of neglect. The court explained, "There is a rift in the relationship and [Christianne] did not [take] appropriate steps to try and resolve the issues and bring the minors home." Specifically, as to A.L., the court found that Christianne "did not maintain contact with

her" and "placed the responsibility of maintaining the relationship on [A.L.]" And as to M.L., the court found that Christianne "failed to provide her the services she required." This appeal followed.

**Discussion**

**¶10** Christianne challenges the juvenile court's neglect findings as to both A.L. and M.L. 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.*; *see also Little v. Little*, 193 Ariz. 518, ¶ 5 (1999) (abuse of discretion exists when record is "devoid of competent evidence to support" decision (quoting *Fought v. Fought*, 94 Ariz. 187, 188 (1963))). A dependent child includes one "[i]n need of proper and effective parental care and control and who has no parent . . . willing to exercise or capable of exercising such care and control," or one whose "home is unfit by reason of abuse, neglect, cruelty or depravity by a parent." A.R.S. § 8-201(15)(a)(i), (iii). Neglect means "[t]he inability or unwillingness of a parent, guardian or custodian of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare." § 8-201(25)(a). The allegations in a dependency petition must be proven by a preponderance of the evidence. A.R.S. § 8-844(C).

**¶11** Christianne admits that A.L. "is dependent due to her unmanageable behavior." *See* § 8-201(15)(a)(i). However, she argues, "[T]here was no factual basis to find [A.L.] dependent due to neglect" because "[a]t all times relevant to this case A.L., was in the care, custody and control of behavioral health professionals" and "she was not living with or being parented by [Christianne]." *See* § 8-201(15)(a)(iii). Christianne thus reasons that she "had no ability to make decisions for the care, custody or control of the minor and [she] cannot be said to have caused an unreasonable risk of harm to A.L."

**¶12** But Christianne has cited no authority—and we are aware of none—for the proposition that a child must be living with his or her parent to establish a finding of neglect by that parent. Instead, as stated above, the focus is on the inability or unwillingness of the parent to provide the child with supervision, food, clothing, shelter, or medical care and the related risk of harm to the child's health or welfare. *See* § 8-201(25)(a); *see also In re Pima Cty. Juv. Action No. J-31853*, 18 Ariz. App. 219, 222 (1972) ("The

expression 'neglect' is not a term of fixed meaning—its meaning varies as the context of circumstances changes.").

**¶13** Here, Christianne initially reported to DCS that she "didn't want [A.L.] back in the home." Christianne's position did not change throughout the dependency proceeding. Christianne was "adamant" that "there were no circumstances where she would have [A.L.] back," and she identified no services that would change her mind. Yet, she made no alternate plans for permanency for A.L.

**¶14** Christianne also admitted that since A.L. left the home in 2017, she had been less involved in A.L.'s services. After A.L. was admitted to Mingus Mountain, Christianne participated in A.L.'s services for only five or six weeks. Although the maternal grandmother and her children, E.O. and E.O.'s daughter, and M.L. visited A.L. several times at Mingus Mountain, Christianne visited her only once. Christianne also had limited telephone contact with A.L. since returning from a lengthy vacation in Egypt, suggesting it was A.L.'s "choice." And despite recognizing that it was "hurtful" for A.L. and M.L. to be separated, Christianne made little attempt to facilitate contact between them. Accordingly, reasonable evidence supports the juvenile court's finding of neglect as to A.L. *See Shella H.*, 239 Ariz. 47, ¶ 13.

**¶15** Christianne next argues the juvenile court "was without reasonable evidence to support a finding of dependency as to M.L." Specifically, Christianne contends that "the evidence does not support the conclusion that M.L. . . . was neglected due to not having therapy" because "there was no evidence that [M.L.] needed therapy." She also asserts that there was no evidence the statements made by M.L.'s stepfather "caused an unreasonable risk of harm" to M.L.

**¶16** As mentioned above, the juvenile court found M.L. "dependent due to neglect as [Christianne] failed to provide her the services she required." The court explained: Christianne "testified that she, her husband and [M.L.] could benefit from family therapy yet she put it off repeatedly. [M.L.] was involved in equine therapy, which [Christianne] believed . . . benefitted [M.L.] The service ended when the family went on an extended vacation to Egypt. When the family returned this service did not resume." The court acknowledged that the stepfather had made "inappropriate statements" to M.L., but it seemingly declined to find those statements a basis for dependency in this instance, concluding that DCS had not proven "emotional abuse."

**¶17** Turning to the juvenile court's finding of neglect, we agree with Christianne that the record is devoid of evidence establishing that M.L. needed services. Although M.L. was in equine therapy prior to the family's vacation to Egypt, nothing in the record establishes her need to resume that therapy, which was intended to address her "social awkwardness." Moreover, DCS's recommendation that M.L. attend services to address her separation from A.L. and her relationship with her stepfather was apparently based on a caseworker's observation that M.L. appeared "sad and lonely." But the record includes no evidence establishing that such services were necessary for M.L.'s health or welfare. *See* § 8-201(25)(a). DCS's recommendation, unaccompanied by supporting evidence, does not override Christianne's parental discretion in determining whether, or when, to enroll M.L. in potentially beneficial services. *See generally* A.R.S. § 1-601(a) ("The liberty of parents to direct the upbringing, education, health care and mental health of their children is a fundamental right."); *Diana H. v. Rubin*, 217 Ariz. 131, ¶ 12 (App. 2007) (same).

**¶18** DCS nevertheless relies on *In re Santa Cruz Cty. Juv. Action Nos. JD-89-006 & JD-89-007*, 167 Ariz. 98, 102 (App. 1990), to suggest that the juvenile court did not err in finding M.L. dependent because there was a "'breakdown' of the family relationship," causing Christianne to be unable "to provide the requisite care and control." First, that case involved a dependent child under § 8-201(15)(a)(i), while the court's finding here appears to have been based on neglect under § 8-201(15)(a)(iii).[2] *See id.* at 101-02. Second, we disagree with DCS that the evidence established such a significant breakdown in the family relationship. Although Christianne moved to Florida without M.L., she did so because M.L. did not want to go, and Christianne made arrangements for M.L.—unlike with A.L.—to live with E.O. until these proceedings were resolved and a more permanent plan could be implemented. Moreover, Christianne testified that she

[2]DCS alleged in the dependency petition that M.L. was "dependent due to abuse and/or neglect." Neither DCS nor the juvenile court appear to have relied on § 8-201(15)(a)(i) below. *See Burns v. Davis*, 196 Ariz. 155, ¶ 40 (App. 1999) (appellate court addresses arguments not ruled on by trial court "only when the record is so fully developed that the facts and inferences are perfectly clear"); *Elliott v. Elliott*, 165 Ariz. 128, 135 (App. 1990) (where basis for ruling unclear, "it is not enough that the appellate court is able to derive bases on which the trial court could have permissibly reached the decision it did from the record" (quoting *Urban Dev. Co. v. Dekreon*, 526 P.2d 325, 328 (Alaska 1974))).

wanted to continue her relationship with M.L., even if through a guardianship so M.L. would not need to move to Florida.

**¶19** Lastly, in light of the juvenile court's "superior ability to judge the credibility of witnesses and to resolve disputed facts," *Jade K. v. Loraine K.*, 240 Ariz. 414, ¶ 9 (App. 2016), we defer to its implicit determination that Christianne's failure to protect M.L. from her stepfather's statements did not constitute neglect warranting a dependency. Accordingly, we conclude the juvenile court erred in finding M.L. dependent on the basis of neglect. *See Shella H.*, 239 Ariz. 47, ¶ 13; *Little*, 193 Ariz. 518, ¶ 5.

## Disposition

**¶20** For the foregoing reasons, we affirm the juvenile court's order adjudicating A.L. a dependent child. However, we vacate the court's order adjudicating M.L. dependent and remand for proceedings consistent with this decision.