IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

MICHELLE L.,
Appellant,

v.

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

No. 2 CA-JV 2020-0015
Filed June 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NOT FOR PUBLICATION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. JD20190423
The Honorable Peter Hochuli, Judge

AFFIRMED

COUNSEL

Sarah Michèle Martin, Tucson
Counsel for Appellant

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

MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

E C K E R S T R O M, Judge:

¶1 Michelle L. challenges the juvenile court's January 2020 order finding her daughter, M.L., born in November 2002, dependent.[1] On appeal, Michelle concedes that M.L. is dependent, but argues the court erred by basing its ruling, in part, on abuse and neglect. *See* A.R.S. § 8-201(15)(a)(iii). We affirm.

¶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). In 2016, Michelle, M.L., and M.L.'s twin brother and older sister moved from Michigan to Arizona.[2] In June 2017, the Department of Child Safety (DCS) received an unsubstantiated report of "drastic punishment" by Michelle and concerns that she had not tried to make contact with M.L.'s brother since he had most recently run away. In December 2018, M.L. left home with a "man" in the middle of the night, and shortly thereafter Michelle discovered "full nude photos" of M.L. with "her hair . . . outlining, or framing, her breasts" on M.L.'s Instagram account. In January 2019, DCS received an unsubstantiated report that Michelle, M.L.'s stepfather, and her maternal grandfather had physically restrained M.L. while her grandmother had cut her hair against her will.

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[1]The parental rights of M.L.'s father were previously terminated. He is not a party to this appeal.

[2]Michelle testified the family had numerous contacts with child protective services in Michigan, and that there was a substantiated finding of neglect against her in that state. M.L.'s twin brother, who is not a party to this appeal, and who had previously run away approximately nine or ten times, has been on runaway status since October 2018. Nor is M.L.'s older sister a party to this appeal.

¶3 M.L. ran away from home for two weeks in July 2019, and the day after the police returned her to Michelle, DCS received a report regarding allegations of neglect and emotional abuse toward M.L. by Michelle and M.L.'s stepfather. M.L. then threatened to kill herself if she was forced to remain in Michelle's home, prompting Michelle to take her to the Crisis Response Center.

¶4 M.L. reported she had been traumatized by the January 2019 haircut incident, during which she had been restrained, her hair had been cut and "stuffed" into her mouth, and Michelle and the stepfather had addressed her as a "slut" and "whore"; she was afraid Michelle would shave her head and was "profoundly afraid" of her home situation; and, Michelle and M.L.'s stepfather had previously struck M.L.'s brother with a "2x4" and she was afraid she would be hit as well.

¶5 Michelle denied that M.L. had been traumatized by the haircut incident, stated numerous times she needed to "'get over'" it, and that she did not want M.L. to receive a psychological evaluation. Nonetheless, licensed psychologist Dr. Dee Winsky evaluated M.L. on July 26, 2019, concluding she was a victim of "significant emotional abuse by her maternal relatives," diagnosing her with Post-Traumatic Stress Disorder (PTSD), and noting she "is a very anxious and depressed young girl and is worried that she may be forced to return home." DCS took temporary custody of M.L. on July 31, 2019, and filed a dependency petition on August 5, alleging M.L. was dependent as to Michelle based on abuse or neglect due to emotional abuse by Michelle arising from the haircut incident.

¶6 At the ensuing dependency hearing, Michelle did not dispute that M.L. was dependent as to her, but denied she had abused or neglected her. Michelle testified that M.L.'s behavior had "changed drastically" after her brother had run away in October 2018, and acknowledged that she had used a "restraint hold" on M.L. during the haircut incident, something she had been professionally trained to use in "extreme situations." She also testified that if a substantiated finding of abuse were found against her, she would lose her job as a special education teacher.[3]

[3]Notably, in a July 2019 Report to the Juvenile Court, DCS reported that "[t]hroughout [Michelle's] interactions with the department, [she] appeared more concerned over being substantiated on than with [M.L.'s] well-being."

¶7 Dr. Winsky acknowledged she found M.L. to be "a credible historian," including her account of the haircut incident and the physical abuse she and her brother had experienced previously. She testified M.L. had PTSD and was a victim of emotional abuse, as demonstrated by "[t]he very significant anxiety and depression that she exhibited and described combined with the difficulty sleeping and the nightmares about her parents mistreating her," and testified that such victims may also demonstrate "severe acting out behavior." Winsky testified that the mistreatment included more than the haircut incident and was "directly link[ed]" to treatment from M.L.'s caregivers and problems in the family home, including calling her "mean, nasty names." M.L. had told Winsky that Michelle and her stepfather had hit her, Michelle and her grandparents had called her a "whore, slut, bitch and tramp," and her step-father had called her "a piece of sh[it]." Winsky opined that placing M.L. back in the family home without significant changes would place her at risk.

¶8 The maternal grandmother testified she had cut M.L.'s hair to prevent her from "looking so provocative on the internet." She confirmed that Michelle had physically restrained M.L. during the haircut incident by holding her arms down and sitting on her, and that M.L. had been screaming, crying and thrashing in an attempt to get away. The grandmother denied anyone had stuffed M.L.'s hair into her mouth, but admitted she had told M.L. that her actions with older men were those of a "whore or a slut."

¶9 At the conclusion of the three-day dependency hearing, the juvenile court noted it had carefully considered the evidence, including the testimony, credibility and demeanor of the witnesses, the legal file and exhibits, and that it had "assigned the weight deemed appropriate to the evidence." The court concluded Dr. Winsky's opinions rose to the level of abuse as defined in A.R.S. § 8-201(2), and found Michelle had emotionally abused M.L. It also concluded the haircut incident constituted an assault on M.L., and noted that Michelle had refused to enroll M.L. in mental health services, reporting she "'needs to get over' the incident." Although the court acknowledged the frustration Michelle had likely felt upon finding a nude picture of M.L. on the internet and her concern about losing her job if a finding of abuse resulted, it nonetheless pointed out that Michelle had used a restraint procedure intended to *protect* children from abuse for the opposite purpose with M.L. The court found M.L. dependent "both due to abuse and neglect, as well as to the mother being unable or unwilling to take the child." *See* § 8-201(15)(a)(i), (iii).

¶10 On appeal, Michelle argues the juvenile court erred as a matter of law by adjudicating M.L. dependent based on abuse and neglect, a finding she asserts is contrary to the legislative intent of the child welfare laws to strengthen and preserve family life, is "unnecessary" and "punitive," and is not supported by the evidence. She maintains that once she acknowledged she was unwilling or unable to parent M.L., it was not necessary for the court to find she had abused her, a finding which will impede her ability to work as a special education teacher by placing her name on the central registry of substantiated reports of child abuse and neglect. *See* A.R.S. § 8-804(B)(2). She contends such an outcome is not only punitive, but is not in M.L.'s best interests, as "[i]t will inevitably increase the rift in this already fractured family." She asks that we leave the dependency adjudication in place and "vacate only the juvenile court's finding of abuse and neglect."

¶11 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*.

¶12 A child is dependent if 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). Subsection 8-201(15)(a)(iii) further defines a dependent child as one "whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent." And, § 8-201(2) defines emotional abuse as "the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior," which has been "diagnosed by a medical doctor or psychologist and is caused by the acts or omissions of an individual who has the care, custody and control of a child."

¶13 Michelle asserts the juvenile court could have relied solely on her inability or unwillingness to exercise effective care and control under the statute, § 8-201(15)(a)(i), and that its additional reliance on abuse was not only punitive, but contrary to the legislative purpose of child welfare laws and the dependency statutes to strengthen and unify families and

protect children. However, although Michelle's job may be impacted by the outcome of the underlying ruling, this does not mean the court was required to ignore an otherwise valid ground for dependency in order to prevent that from happening. While a juvenile court should consider the impact of its ruling on a family, it is ultimately tasked with weighing all of the evidence and carrying out the primary purpose of the dependency statutes, to wit, "to protect the best interests of the child, giving paramount consideration to the health and safety of the child." Ariz. R. P. Juv. Ct. 36; *see also Willie G.*, 211 Ariz. 231, ¶ 21 (principal consideration in dependency matter is best interests of child). Here, the court was presented with reasonable evidence of emotional abuse by Michelle, and thus based its ruling on that evidence. We are aware of no law requiring a court to consider the collateral impact of a substantiation finding on the parent when determining if the parent has, in fact, abused a child. The court here was squarely presented with this issue, and told Michelle, "I'm sorry if this has a negative impact on your job, but it [the assault] is a choice you made." Rather than punishing Michelle, the court based its ruling on the reasonable evidence presented, as it was entitled to do. *See Shella H.*, 239 Ariz. 47, ¶ 13.

¶14 Michelle also argues the juvenile court's finding of emotional abuse as defined in § 8-201(2) "is wholly unsupported by the evidence."[4] As discussed in detail above, Dr. Winsky testified and provided a written summary of her July 2019 psychological evaluation of M.L., explaining why she had concluded that M.L. had PTSD, including very significant anxiety and depression, combined with nightmares, and was a victim of emotional abuse by Michelle. Essentially ignoring that evidence, Michelle nonetheless challenges Winsky's conclusions for several other reasons, including the fact that DCS did not initially view the haircut incident as abuse; Winsky described M.L. as "a happy-go-lucky girl"; and, M.L. had only been provided with "two to three" sessions of therapy since DCS was involved, while two sessions per month had been recommended.

¶15 We address each of these arguments in turn. DCS investigator Sylvia Castillo testified that DCS was now looking at the negative impact of the haircut incident on M.L. in light of the PTSD and emotional abuse diagnoses. Accordingly, when Dr. Winsky evaluated M.L.

[4] To the extent Michelle essentially raises the same argument regarding neglect, we note, as DCS correctly points out in its answering brief, that although the juvenile court and the parties grouped together the terms "abuse and neglect," it is clear the court based its ruling on abuse, and not neglect.

in July 2019, several months after the incident had occurred, she was able to observe the effect of that event on M.L. And, although Winsky described M.L. as "overall . . . happy-go-lucky," she noted that M.L. "attempts to portray a very positive affect but she in fact is quite troubled at this time," and further explained that "[a]ll of [M.L.'s] unhappiness, and fear, and anxiety stemmed from problems within the home." Finally, Michelle does not point to any evidence supporting her otherwise unsupported suggestion that the number of therapy sessions provided were insufficient under the circumstances. In summary, we find that reasonable evidence supported the juvenile court's ruling that Michelle emotionally abused M.L. *See Willie G.*, 211 Ariz. 231, ¶ 21.

¶16 Michelle also contends the juvenile court erred as a matter of law by "solely" basing its finding of emotional abuse on Dr. Winsky's opinion, apparently suggesting that her opinion should be given less weight because she is a consultant who is paid by DCS. The court was well aware of Winsky's employment arrangement with DCS; moreover, Winsky's opinion did not constitute the sole evidence presented to the court. To the extent Michelle asks us to reweigh the evidence, including Winsky's conclusions, we will not do so. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002).

¶17 Accordingly, we affirm the juvenile court's order adjudicating M.L. dependent.