

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

VALERIE G.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, TRACEY E., E.E., I.E., AND L.E.,
Appellees.

No. 2 CA-JV 2020-0140
Filed April 27, 2021

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NOT FOR PUBLICATION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. JD20200328
The Honorable Lisa I. Abrams, Judge

AFFIRMED

COUNSEL

Sarah Michèle Martin, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Sandra L. Nahigian, Assistant Attorney General, Phoenix
Counsel for Appellee Department of Child Safety

The Huff Law Firm PLLC, Tucson
By Laura J. Huff
Counsel for Appellee Tracey E.

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Pima County Office of Children's Counsel, Tucson
By William L. Jenney V
Counsel for Minors

MEMORANDUM DECISION

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

E P P I C H, Presiding Judge:

¶1 Valerie G. challenges the juvenile court's November 2020 order finding her children, E.E., I.E., and L.E., born in October 2012, December 2013, and January 2015, dependent. *See* A.R.S. § 8-201(15). On appeal, Valerie argues that the juvenile court violated her due process rights by conducting separate dependency hearings for the parents. We affirm.

¶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). Beginning in 2015, Valerie, who had drug problems, a criminal history, unstable housing and employment issues, had left the children for lengthy periods of time with Tracey, the paternal grandmother. Tracey obtained a guardianship in 2019, and in June 2020, she filed a dependency petition as to Valerie and the father,¹ alleging as to Valerie that she was unable to safely and independently meet the children's emotional, physical, mental or financial needs; she had not consistently maintained contact with the children when she had left them with Tracey for lengthy time periods on four occasions since 2015; and, she had a criminal history and an unstable lifestyle.²

¶3 At a July 2020 status hearing, Valerie's attorney informed the juvenile court, without objection, that the father was requesting a bifurcated

¹The children were adjudicated dependent as to the father in October 2020. He is not a party to this appeal.

²In her petition, Tracey also requested that the juvenile court vacate the pending hearing on Valerie's motion to revoke the guardianship.

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dependency hearing. Without further discussion, the court set separate hearing dates for Valerie's and the father's contested dependency hearings. Valerie's four-day contested dependency hearing was held between August and October 2020, and the father's contested hearing was held on a single day in October 2020.³ Department of Child Safety (DCS) investigator, Carlos Velasquez, and the father testified at both parents' hearings, and Tracey also testified at Valerie's hearing.

¶4 The juvenile court adjudicated the children dependent as to Valerie in November 2020. The court summarized the evidence supporting its finding that a dependency existed based on evidence and testimony presented at Valerie's hearing establishing Valerie's sporadic parenting history, prior criminal offenses, unstable living situation, drug use, and her involvement with DCS's counterpart in Texas, where she was living at the time of the hearing. The court specifically referred to Velasquez's testimony and his June 2020 report to the juvenile court, which was admitted as an exhibit at Valerie's hearing, and further noted that Valerie's and Tracey's testimony were "at odds." The court also stated it had "given careful consideration to all the evidence, including the testimony of the witness[es], their credibility and demeanor while testifying, the legal file and the exhibits and assigned the weight deemed appropriate to the evidence." This appeal followed.

¶5 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.* On appeal, Valerie does not challenge the sufficiency of the evidence supporting the dependency adjudication as to her. Rather, she argues that the juvenile court violated her due process rights by bifurcating the parents' dependency hearings and admitting evidence and testimony about her at the father's hearing while she was not present. She asserts that such evidence, including the report from Texas child services, which was admitted solely at the father's hearing, not only prejudiced her, but furthered the father's goal of keeping the guardianship in place.⁴

³ At the conclusion of the father's hearing, the juvenile court adjudicated the children dependent as to him, and substituted the Department of Child Safety as the petitioner in order to provide services.

⁴To the extent Valerie also suggests she was prejudiced by other rulings the juvenile court made at the father's hearing, including the

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¶6 To the extent Valerie raises constitutional claims on appeal, we review those claims de novo. *See Brenda D. v. Dep't of Child Safety*, 243 Ariz. 437, ¶ 15 (2018). However, as DCS, the children, and Tracey⁵ argue, by failing to object to bifurcation below, Valerie has waived any argument that the juvenile court violated her due process rights by bifurcating the dependency hearing and by admitting evidence and testimony at the father's hearing which she claims were prejudicial to her. *See Logan B. v. Dep't of Child Safety*, 244 Ariz. 532, ¶ 9 (App. 2018); *see also Trantor v. Fredrikson*, 179 Ariz. 299, 300 (1994) (“[A]bsent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal.”). As we previously noted, at the July 2020 status hearing, Valerie's attorney informed the court, without objection, that the father was requesting a bifurcated hearing. At the conclusion of the second day of Valerie's hearing, before the father's hearing had begun,⁶ the juvenile court asked the parties if they wanted to continue to have bifurcated hearings. Valerie's counsel did not respond. And notably, at the beginning of the father's hearing, when the court informed Valerie and her attorney they could be excused because the hearing was going to focus on the father's dependency, both counsel and Valerie accepted the court's offer and left the telephonic hearing, which proceeded in their absence.

¶7 We have, however, applied fundamental error review to an argument first asserted before this court by a parent challenging a dependency adjudication. *See Louis C.*, 237 Ariz. 484, ¶ 20. Under fundamental error review, the parent has the burden of proving that error exists, that such error goes “to the very foundation of [the] case,” and that the error caused the parent prejudice. *Brenda D.*, 243 Ariz. 437, ¶ 38 (quoting *Monica C. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 89, ¶ 24 (App. 2005)). An error

consolidation of the father's paternity case as to I.E. with the dependency and its order directing DCS to substitute in as petitioner in the father's dependency, she has failed to develop these arguments in any meaningful way, and we thus do not address them further. *See City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, ¶ 88 (App. 2008) (appellate court will not address issues or arguments waived by party's failure to develop them adequately).

⁵Tracey has joined in the answering briefs of the children and DCS.

⁶The father's dependency hearing occurred a few days after the third day of Valerie's four-day hearing.

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is prejudicial when it could have changed the decision of a reasonable fact-finder. *Id.* ¶ 38. Although Valerie asserts the proceedings were “fundamentally unfair,” she has not argued that fundamental error occurred, nor has she responded to DCS’s argument in its answering brief that she failed to so argue. Therefore, Valerie has waived that review. *See State v. Moreno–Medrano*, 218 Ariz. 349, ¶ 17 (App. 2008) (failure to allege fundamental error on appeal waives argument).

¶8 In any event, however, we find no error, fundamental or otherwise. Before questioning Velasquez at the father’s trial, Tracey’s attorney stated, “I realize you’ve testified previously in this exact same case, but they are bifurcated, so we’re creating two separate court records, and so some of this information and questions may seem redundant, but there is definitely a purpose behind it.” And, as DCS, the children, and Tracey point out, the juvenile court appears to have relied solely on information presented at Valerie’s hearing in adjudicating the children dependent as to her, even if that information was repeated at the father’s hearing, and concomitantly, it does *not* appear to have relied on information obtained in Valerie’s absence at the father’s hearing. And, although Valerie was questioned about the Texas report at her hearing, the report was not admitted at that proceeding, nor did the court refer to it when it summarized the evidence it had considered when ruling in her case, but instead referred to Valerie’s testimony in that regard. Accordingly, to the extent Valerie argues she was prejudiced by the admission of the Texas report at the father’s hearing, the record does not support her argument.

¶9 We also reject Valerie’s related argument that she was prejudiced by Velasquez’s testimony at the father’s hearing that he had unsuccessfully tried to contact Valerie in Texas. Notably, at Valerie’s hearing, Velasquez testified about his difficulty in reaching her; her failure to maintain consistent contact with the children and to maintain an active parenting role with them; the children’s reports that they lacked a relationship with her; her criminal history;⁷ and, domestic violence incidents with her other children in the presence of E.E. In addition, Valerie’s attorney had the opportunity to, and did, in fact, extensively cross-examine Velasquez at her hearing.

¶10 Similarly, the record shows that the father testified at both hearings about incidents of domestic violence with Valerie, in addition to her drug use, instability and inability to parent. And although Valerie’s

⁷Valerie also testified about her criminal history at her own hearing.

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attorney briefly cross-examined the father about his knowledge of Valerie's drug use when he testified at her hearing, he did not challenge the father's testimony about her history of domestic violence or her instability and inability to parent.

¶11 Accordingly, we affirm the juvenile court's order adjudicating E.E., I.E., and L.E. dependent as to Valerie.