

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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CARRIE V.,  
*Appellant,*

*v.*

DEPARTMENT OF CHILD SAFETY, V.V., AND V.-V.,  
*Appellees.*

No. 2 CA-JV 2021-0042  
Filed October 1, 2021

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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NOT FOR PUBLICATION  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. JD20200708  
The Honorable Lori B. Jones, Judge Pro Tempore

**AFFIRMED**

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COUNSEL

Domingo DeGrazia, 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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By Christopher Lloyd  
*Counsel for Minors*

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**MEMORANDUM DECISION**

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

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E P P I C H, Presiding Judge:

¶1 Carrie V. appeals from the juvenile court's April 2021 order adjudicating her daughters, V.V. (born in January 2016) and V.-V. (born in July 2018), dependent based on neglect.<sup>1</sup> She challenges the sufficiency of the evidence to support the dependency adjudication. For the following reasons, we affirm.

**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). On August 4, 2020, Carrie had an argument with Thomas V. – her husband and the children's father – at their home, during which he pointed two guns at her and hit her on the head with one of them, causing a "head bleed" and a "dent . . . that's still there." After leaving, Carrie stayed at a domestic-violence shelter with V.V. and V.-V. and later obtained an order of protection against Thomas.

¶3 On August 12, 2020, because Thomas still had not been served with the order, Carrie returned to their home, where she broke a window to gain entry, began yelling at Thomas and Angela F. – the mother of Thomas's son, I.F. (born in January 2017) – and kicked in a bathroom door. Officers were called, Carrie was arrested for disorderly conduct, and Thomas was served with the order of protection. Carrie continued to stay at the shelter but "slowly transitioned back into the house" because the order of protection prohibited Thomas from being there. Meanwhile, V.V. and V.-V. stayed with their paternal grandmother.

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<sup>1</sup>The juvenile court also adjudicated the children dependent as to their father, Thomas V. He is not a party to this appeal.

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¶4 On September 2, 2020, Carrie requested that the order of protection be dismissed because she wanted to “work things out” with Thomas. Her request was granted, and she “started transitioning [him] back into the home,” where the children also returned. The following month, Thomas went to Carrie’s place of work to retrieve an item from her vehicle. However, Carrie was with customers and unable to answer his calls. Thomas became upset, and there was a confrontation between him and security officers. After he left, Thomas called one of Carrie’s coworkers, who had recently assisted her with her laptop and had given her his business card. Thomas was “upset” with the coworker and “wanted him to come outside of the building to settle their issues.” Although a police report was filed, the coworker declined to pursue criminal charges.

¶5 A few days later, on October 26, 2020, Thomas returned to Carrie’s office with V.V. and I.F., wanting a car seat from Carrie’s vehicle. But Carrie had already left for the day. Thomas had another confrontation with security officers, and they contacted law enforcement officers, but when an officer arrived, Thomas fled in his truck with the children. A high-speed chase ensued. V.V. later stated that “the lights and sirens were scary,” that “daddy was going fast,” and that she had asked him to slow down. When Thomas stopped at his residence, he was arrested and later charged with unlawful flight from law enforcement and two counts of felony endangerment. Thomas remained in jail throughout the remainder of these proceedings with an anticipated release date between July and October 2021.

¶6 On November 10, 2020, the Department of Child Safety (DCS) removed V.V. and V.-V. from Carrie’s care and subsequently filed a dependency petition, alleging that V.V. and V.-V. were dependent “due to abuse and/or neglect.” Specifically as to Carrie, the petition alleged, in part, that she had neglected the children by exposing them to domestic violence. The children were placed with their paternal grandmother. Three days later, Carrie cited the October 26 incident in obtaining an order of protection prohibiting Thomas from contacting her.

¶7 Over the next several months, Carrie participated in various services through the domestic-violence shelter, as well as parenting, anger management, and healthy relationships classes. At a team decision-making meeting in March 2021, DCS was prepared to return V.V. and V.-V. to Carrie with an in-home safety plan. However, shortly thereafter, DCS discovered that Carrie had been communicating with Thomas in jail.

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¶8 After a four-part contested dependency hearing in March and April 2021, the juvenile court found DCS had “proven the allegations in the petition as to [Carrie], specifically allegation 1 having to do with domestic violence and neglect,” and adjudicated V.V. and V.-V. dependent. The court explained that there was “significant domestic violence in this case” and that the “domestic violence could be on-going but for the fact that [Thomas] is currently in jail.” However, the court ordered that V.V. and V.-V. be returned to Carrie with an in-home safety plan and designated Carrie’s brother as the “responsible adult in the home at all times.” The court further ordered Carrie to amend the order of protection to include V.V. and V.-V. as protected parties. This appeal followed.

**Discussion**

¶9 On appeal, Carrie argues that “there is insufficient evidence to support a dependency.” 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). “We will only disturb a dependency adjudication if no reasonable evidence supports it.” *Id.*

¶10 As defined in A.R.S. § 8-201(15)(a), a dependent child includes one:

(i) In 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.

....

(iii) A child whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian or any other person having custody or care of the child.

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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 juvenile court “must determine whether a child is dependent based upon the circumstances existing at the time of the adjudication hearing.” *Shella H.*, 239 Ariz. 47, ¶ 12.

¶11 Carrie contends the dispositive issue in this case is “whether [her] action or inaction created, at the close of trial, an unreasonable risk of harm.” She relies on *Francine C. v. Department of Child Safety*, in which another division of this court explained that “[a] child may be dependent when a parent is *currently* unwilling or unable to protect the child from abuse or neglect.” 249 Ariz. 289, ¶ 28 (App. 2020). In *Francine C.*, the court also established a three-part test for determining when a parent’s prior failure to protect a child may be evidence of that parent’s continuing inability to protect: “(1) the [prior] conditions were sufficient to declare the child dependent; (2) the threat giving rise to those conditions remains unresolved; and (3) the threat continues to pose an imminent risk of harm to the child.” *Id.* Carrie maintains that the three criteria are not met here because “there was no imminent threat of harm from [Thomas] and [she] had mitigated safety concerns.” She therefore asserts that “the adjudication of dependency was without factual support.”

¶12 As a preliminary matter, Carrie does not appear to have raised *Francine C.* and its applicability to this case before the juvenile court.<sup>2</sup> Generally, the failure to raise an argument below waives the issue on appeal. *Logan B. v. Dep’t of Child Safety*, 244 Ariz. 532, ¶ 9 (App. 2018). However, we have 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. Nevertheless, we find no error, much less fundamental error, in the dependency adjudication.

¶13 As DCS points out, although *Francine C.* “suggested (arguably in *dicta*) that ongoing risk must be ‘imminent’ to support a finding of

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<sup>2</sup>Although Carrie argued below generally that she had changed since the filing of the dependency petition, such that DCS could no longer prove the allegations currently existed, she did not direct the juvenile court to *Francine C.* or the three-part test she now asks us to apply. *Cf. Ruben M. v. Ariz. Dep’t of Econ. Sec.*, 230 Ariz. 236, ¶ 13 (App. 2012) (objection on one ground does not preserve issue on another ground).

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dependency based on a parent's unwillingness to protect a child from neglect," § 8-201(25)(a) "refers to 'unreasonable risk of harm' without any express requirement that such risk be immediately 'imminent.'" In any event, we agree with DCS that even assuming the "'unreasonable risk' necessarily implies an 'imminent' risk, the determination whether sufficient evidence establishes risk of such harm is a factual determination for the juvenile court." See *Shella H.*, 239 Ariz. 47, ¶ 13.

¶14 The evidence presented at the contested dependency hearing established "ongoing" domestic violence between Thomas and Carrie for most of their six-year marriage.<sup>3</sup> Carrie testified that the abuse was "mostly emotional," but there was also evidence of physical abuse, including the August 4 incident when Thomas had pointed two guns at Carrie and hit her on the head. Days later, on August 12, Carrie broke a window to their home, yelled at Thomas and Angela, and kicked in a bathroom door – while I.F. was there. I.F. also separately reported having seen Thomas hit Carrie.

¶15 Despite obtaining an order of protection, Carrie had it dismissed less than a month later because she wanted to "work things out." Shortly after Thomas had moved back into the home with V.V. and V.-V., there were two separate incidents at Carrie's work, the second resulting in a high-speed chase with police officers, while V.V. and I.F. were in his truck. Yet, Carrie waited until after V.V. and V.-V. had been removed from her care and a dependency petition had been filed before obtaining a second order of protection, which, significantly, did not include the children as protected parties.

¶16 Despite her self-claimed progress in understanding "what it is to be a victim of domestic violence," Carrie continued to talk to Thomas as late as March 2021, days before the contested dependency hearing began. Carrie admitted that some of those conversations – at least one of which included V.V. – involved heated arguments, with Thomas having to be reminded to stay "calm and civil." At one point, Thomas even broke jailhouse equipment because he was so upset. Although Thomas was in jail – perhaps eliminating an "imminent" threat of physical abuse, as Carrie seems to suggest – domestic violence need not be physical. See *Shah v. Vakharwala*, 244 Ariz. 201, ¶ 6 (App. 2018) (domestic violence broadly defined in A.R.S. § 13-3601(A) and "includes a wide array of criminal acts

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<sup>3</sup> Although Carrie testified that she planned to file for divorce, Thomas and Carrie were still married at the time of the hearing.

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as well as harassment by verbal, electronic, mechanical, telegraphic, telephonic or written communication”).

¶17 According to a DCS supervisor, the jail calls highlighted concerns that still needed to be addressed, including Carrie’s understanding of and ability to get out of “the cycle of domestic violence,” as well as her ability to protect the children. Indeed, Carrie testified that she “would consider re-establishing [the] family bond” if Thomas “does the work that he needs to do to heal himself.” The record therefore includes reasonable evidence that the threat of the children being exposed to domestic violence was unresolved at the time of the contested severance hearing.

¶18 Carrie nevertheless asserts that she “did not know, and could not [have known,] of the increasing risk” to V.V. and V.-V. because Thomas’s “behavior escalated over a short period of time.” See *Francine C.*, 249 Ariz. 289, ¶¶ 28, 29 (to meet burden of showing mother failed to protect child, DCS had to prove mother “knew or had reason to know” that leaving child with father “posed an unreasonable risk to her health or welfare”). She suggests his behavior was “out of character” and she had no reason to know that he “would challenge security at [her] place of employment or that he would . . . lead police on a high-speed chase with kids in the vehicle.” But, as described above, these assertions are not supported by the record. Notably, Carrie admitted that she “knew what [she was] getting into when [she] married [Thomas].” To the extent Carrie suggests we should reweigh the evidence, that is not our function. See *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002) (resolution of conflicts in evidence “is uniquely the province of the juvenile court as the trier of fact”). Because the dependency adjudication is supported by reasonable evidence, no abuse of discretion occurred. See *Shella H.*, 239 Ariz. 47, ¶ 13.

**Disposition**

¶19 For the foregoing reasons, we affirm the juvenile court’s order adjudicating V.V. and V.-V. dependent as to Carrie.