

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE DEPENDENCY OF L.B.,

No. 2 CA-JV 2022-0082
Filed October 20, 2022

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NOT FOR PUBLICATION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. 602(i)(17).

Appeal from the Superior Court in Pima County
No. JD20220050
The Honorable Jane Butler, Judge

AFFIRMED

COUNSEL

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Counsel for Appellant

Mark Brnovich, Arizona Attorney General
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MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Eckerstrom and Judge Cattani concurred.

V Á S Q U E Z, Chief Judge:

¶1 Appellant Jeremy D. challenges the juvenile court’s order adjudicating his daughter, L.B., born August 2014, dependent as to him. He contends the court’s ruling was “unsupported by any evidence” and violated his “statutorily and constitutionally protected rights.” We affirm.

¶2 The Department of Child Safety (DCS) removed L.B. from her mother’s home in February 2022 after police officers were called to the home due to a domestic violence altercation between the mother and the mother’s father. L.B. was present during the altercation and reported she could not “sleep due to the amount of noise [the mother] was making while she was consuming alcohol” the night before. L.B. indicated that she worried about her “grandfather and aunt getting hurt” because her mother “keeps torturing grandmother and grandfather by saying she is going to buy a gun and shoot them.” L.B. also reported she did not feel safe in the home when her mother was present due to her aggressive behaviors. Officers reported that the home was “in disarray” with garbage and dog feces on the bedroom floor and drug paraphernalia within L.B.’s reach. L.B. had not attended school “for the last four years” and was unable to spell her name. She had also not seen a doctor or received vaccinations since she was two years old. When officers contacted Jeremy, who also had “an extensive criminal and DCS history” and had not established paternity of L.B., he “greatly minimized” the mother’s behavior.

¶3 DCS filed a dependency petition several days after the removal, alleging L.B. was dependent as to Jeremy based on neglect, including that he had not established paternity, maintained a relationship with L.B., provided financial support, protected L.B. from her mother, or ensured that L.B.’s “health care and educational needs were met.” In March 2022 Jeremy’s paternity was established, and after a contested dependency hearing, the juvenile court adjudicated L.B. dependent, finding DCS had established the grounds alleged.

¶4 On appeal, Jeremy argues there was insufficient evidence to support the juvenile court’s determination that L.B. was dependent. He

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also maintains the “dependency adjudication was a violation of [his] fundamental rights under the United States and Arizona Constitutions.” 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).

¶5 A dependent child includes one “[i]n need of proper and effective parental care and control and . . . who has no parent or guardian willing to exercise or capable of exercising such care and control” or 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 is “[t]he inability or unwillingness of a parent . . . to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes substantial 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).

¶6 In determining whether a child is dependent, the juvenile court must consider “the circumstances existing at the time of the adjudication hearing.” *Shella H.*, 239 Ariz. 47, ¶ 12. But, contrary to Jeremy’s implicit contention, this does not mean that the court must consider those circumstances in a vacuum. Rather, neglect, abuse, or “domestic violence need not be continuous or actively occurring at the time of the adjudication hearing to support a finding of dependency on these grounds; the substantiated and unresolved threat is sufficient.” *Id.* ¶ 16.

¶7 In this case, by the time of the dependency hearing, Jeremy had established paternity and had steady employment. But as of the date of the contested dependency hearing, he had not obtained any parenting orders regarding L.B. The DCS caseworker expressed concern that if L.B.’s mother, who was only allowed supervised visits, came to Jeremy wanting contact with L.B., he would be unable to “manage and deal with” such a request, to otherwise protect L.B., or to “follow through and get the right parenting orders.” Thus, an ongoing concern existed as to Jeremy’s ability to protect L.B. from abuse and neglect by her mother. *See Francine C. v. Dep’t of Child Safety*, 249 Ariz. 289, ¶ 28 (App. 2020) (“parent’s prior failure to protect may be evidence of that parent’s continuing inability to care for the child” when threat giving rise to conditions sufficient to declare child

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dependent remains unresolved and poses “imminent risk of harm to the child”).

¶8 Likewise, Jeremy and his girlfriend had a history of domestic violence and substance abuse that had led to a dependency as to their shared children. Although that case was closed more than a year before the dependency hearing, the assigned DCS caseworker had not yet been able to interview Jeremy’s girlfriend or to observe her interactions with Jeremy and L.B., at least in part due to Jeremy’s lack of cooperation. And at least as late as April 2022, shortly before the hearing, DCS reports indicated concerns that Jeremy had “not demonstrated an understanding of the severe risk that could come to [L.B.] should she be exposed to domestic violence, substance use, and an unfit/unsafe home environment.”

¶9 In sum, reasonable evidence supported the juvenile court’s ruling. See *Shella H.*, 239 Ariz. 47, ¶ 13. In challenging the court’s findings, Jeremy relies on testimony that is favorable to him, without addressing the contrary evidence cited by the court. But we do not reweigh the evidence, *Jesus M.*, 203 Ariz. 278, ¶ 12, and defer to the court’s resolution of the conflicting inferences that are supported by the record as detailed above, *In re Pima County Adoption of B-6355 & H-533*, 118 Ariz. 111, 115 (1978).

¶10 Jeremy further asserts that his due process rights, as well as his fundamental rights as a parent, were violated by the juvenile court’s adjudication. He argues that “the State focused much attention on [his] inability to have visits with his daughter on Sundays” due to his work schedule and that the state “relied heavily” on the “lack of information” about his girlfriend and their relationship, specifically on concerns about the increased risk of a step-parent abusing a child. He suggests neither of these concerns “is a sufficiently compelling governmental interest to serve as a basis for a dependency adjudication.” And he contends that the court’s ruling therefore runs counter to “the purpose of our child welfare laws” because it is “based upon speculation and assumptions” and therefore violates his “constitutionally protected rights.”

¶11 We agree with the state, however, that the juvenile court’s decision did not turn on either the problems in scheduling visitation or Jeremy’s girlfriend’s status as a “step-parent” to L.B. Rather, as detailed above, the court’s ruling rested on evidence of ongoing concerns that Jeremy would not be able to protect L.B. from her mother and did not adequately acknowledge the danger of domestic violence to L.B. The court also noted its concern that DCS had not been able to ascertain if Jeremy’s home was safe based on his girlfriend’s presence in it.

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¶12 Furthermore, although Jeremy is correct that parents have various rights regarding their children, *see, e.g.*, A.R.S. § 1-601, we cannot agree that his rights were violated here. His reliance on the legislature’s 1970 statement of purpose as to Arizona’s severance statutes is misplaced here, in a dependency proceeding, which is outside the scope of the statutory provisions adopted pursuant to that statement of purpose. 1970 Ariz. Sess. Laws, ch. 153, § 1. Rather, “the court’s primary consideration in dependency cases is the best interest of the child.” *Antonio P. v. Ariz. Dept. of Econ. Sec.*, 218 Ariz. 402, ¶ 8 (App. 2008). And our legislature has directed that when the statutory standard for dependency has been met, the juvenile court “shall” adjudicate the child dependent. § 8-844(C)(1); *Louis C. v. Dep’t of Child Safety*, 237 Ariz. 484, ¶ 23 (App. 2015). As detailed above, the court’s findings here are supported by the evidence presented, and we therefore cannot say it abused its discretion in adjudicating L.B. dependent as to Jeremy.

¶13 We affirm the juvenile court’s dependency adjudication.