

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

LEYLA V.,	)	
	)	
	)	Appellant,
	)	
v.	)	
	)	
ARIZONA DEPARTMENT OF ECONOMIC	)	2 CA-JV 2010-0056
SECURITY and JEFENIA V.,	)	
	)	
	)	Appellees.
_____	)	
JEFENIA V.,	)	2 CA-JV 2010-0058
	)	(Consolidated)
	)	DEPARTMENT A
	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC	)	Appellate Procedure
SECURITY and LEYLA V.,	)	
	)	
	)	Appellees.
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 19339100

Honorable Javier Chon-Lopez, Judge

AFFIRMED

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E S P I N O S A, Judge.

¶1 Appellants Jefenia V. and her daughter, Leyla V.,<sup>1</sup> born in January 2010, appeal from the juvenile court’s May 2010 order adjudicating Leyla dependent following a contested dependency hearing.<sup>2</sup> We have consolidated their appeals. Finding that reasonable evidence supports the juvenile court’s ruling and that the issues Jefenia and Leyla raise do not warrant reversal, we affirm.

¶2 As defined in A.R.S. § 8-201(13)(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.

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<sup>1</sup>Leyla’s name is spelled as both “Leyla” and “Layla” in the record. For ease of reference, we refer to her as “Leyla.”

<sup>2</sup>The juvenile court also adjudicated Leyla dependent as to the legally recognized father, whose whereabouts are unknown.

- (ii) Destitute or who is not provided with the necessities of life, including adequate food, clothing, shelter or medical care.
- (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.

Because “[t]he primary consideration in a dependency case is always the best interest of the child[,] . . . the juvenile court is vested with ‘a great deal of discretion.’” *Ariz. Dep’t of Econ. Sec. v. Superior Court*, 178 Ariz. 236, 239, 871 P.2d 1172, 1175 (App. 1994), quoting *In re Cochise County Juv. Action No. 5666-J*, 133 Ariz. 157, 160, 650 P.2d 459, 462 (1982).

¶3 The petitioner’s burden of proof in a dependency proceeding is by a preponderance of the evidence. A.R.S. § 8-844(C)(1); Ariz. R. P. Juv. Ct. 55(C). On appeal, we view the evidence and the reasonable inferences permitted by the evidence in the light most favorable to sustaining the juvenile court’s findings, and we will affirm a dependency adjudication unless there is no reasonable evidence to support it. *In re Maricopa County Juv. Action No. J-75482*, 111 Ariz. 588, 591, 536 P.2d 197, 200 (1975); *In re Pima County Juv. Action No. 118537*, 185 Ariz. 77, 79, 912 P.2d 1306, 1308 (App. 1994). Pursuant to A.R.S. § 8-841(B)(3), a dependency petition must include “[a] concise statement of the facts to support the conclusion that the child is dependent.” The Arizona Department of Economic Security (ADES) alleged in the petition, inter alia, that Jefenia has a lengthy substance abuse history, and that she had used intravenous methamphetamine during her pregnancy with Leyla.<sup>3</sup> Additionally, ADES alleged Jefenia had failed to seek appropriate medical treatment for Hepatitis C and syphilis

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<sup>3</sup>It appears that the allegation regarding drug use during the pregnancy referred to Jefenia’s earlier pregnancy in 2000, an error ADES acknowledged at the dependency hearing.

during her pregnancy, thereby exposing Leyla to these diseases. ADES further alleged Jefenia has untreated mental health issues, is unemployed, has a history of homelessness, and is living with her current boyfriend, Daniel S., who “may” have mental health issues.

¶4 Viewed in the light most favorable to sustaining the juvenile court’s findings, *see In re Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994), the evidence established that Jefenia was a dependent child from age six to eighteen, and was “on the run for much of her adolescence.” She has another child, who was born substance exposed in 2000. She married another man, not the father of that child, approximately three years later. Jefenia apparently has not had any contact with her husband or her first child for many years. She essentially has no employment history; according to her own testimony, the few jobs she has ever had were “under-the-table jobs.” Although Jefenia testified that she stopped using “street drugs” when she met Daniel in June 2008, she also testified she made “about seven” false reports of domestic violence against Daniel “to get away from [him] and maybe go out and get high and stuff.” Notably, two of those reports were made in September 2008, months after Jefenia claimed to have stopped using drugs. Also in September 2008, Jefenia was hospitalized “with acute psychosis, hallucinations, suicidal ideation and was diagnosed with alcohol dependence.” As a result, pursuant to A.R.S. § 36-533, another court ordered her to participate in mental health treatment and to take mental health medications until October 2009.

¶5 Jefenia first realized she was pregnant with Leyla in late September 2009, approximately three months before Leyla was born; she received prenatal treatment for syphilis in December, less than two months before Leyla was born. Because Leyla was born exposed to syphilis, she was placed in the neonatal intensive care unit at birth.

When the hospital social worker, Clare Aylward, initially met with Daniel and Jefenia, Daniel instructed Jefenia not to speak with Aylward. Daniel was “verbally threatening to hospital staff,” attempted to prevent Leyla from being tested and treated for syphilis, and was described as “controlling” as to Jefenia and Leyla. Jefenia testified at the dependency hearing that she initially denied Daniel was Leyla’s father because “we thought that if CPS took the baby, they would ask [Daniel] for child support.” Aylward concluded neither Jefenia nor Daniel could safely care for Leyla, and Jefenia posed a “serious risk to any baby left in her care,” specifically noting Jefenia’s “documented homelessness, untreated [mental health] diagnosis, [intravenous] drug use and apparent inability to take care of her physical health (syphilis, hep C).” Accordingly, upon discharge from the hospital, Leyla was removed from Jefenia’s care and placed in a licensed foster home. Following a three-day adjudication hearing in April 2010, the juvenile court found the allegations of dependency proven by a preponderance of the evidence.

¶6 On appeal, Jefenia and Leyla contend the court’s finding that Leyla is dependent as to Jefenia was not supported by competent evidence and thus was erroneous. They specifically challenge the court’s findings that Leyla is at risk of abuse or neglect based on Jefenia’s history of substance abuse, her previous mental health diagnosis, her admission that she is not receiving mental health or substance abuse treatment, and her relationship with Daniel. Jefenia claims the evidence was “uncontroverted” she had not used alcohol or drugs in the sixteen months before the hearing, her mental health history did not prevent her from complying with her case plan, and the court’s concerns about the nature of her relationship with Daniel was

“insufficient evidence to warrant a finding of dependency.” In its dependency adjudication ruling, the court made the following findings:

The Court finds that Mother is unable to independently provide the child with supervision, food, clothing, shelter or medical care and that inability causes an unreasonable risk of harm to the child’s health and welfare. The Court finds that the mother’s history of substance abuse, her bipolar mental health diagnosis from court-ordered treatment in October 2008, her admission that she is not receiving any mental health or substance abuse treatment, and her relationship and dependence on [Daniel] who refused to accept paternity at the hospital, placed L[e]yla at risk of abuse or neglect.

While Mother states that she has not abused any substances for the past year, she admitted at trial that she does want to use substances but she has not used because [Daniel] prevented her from using. Given her lengthy substance abuse history and her current lack of substance abuse treatment, the Court finds that her assertions of total sobriety for the past year are difficult to believe. The mother admits to lying to police, to hospital staff, and to Child Protective Services . . . on serious issues such as domestic violence between her and alleged father, and about L[e]yla’s paternity. Her willingness to lie about these issues requires this Court to rule out current substance abuse before placing a vulnerable baby in her care. Moreover, Dr. German states in his psychological evaluation: “She has done nothing to this point to indicate that she is capable of providing stability, care, and nurturance to a child or children. She has never matured into a responsible adult. If she is going to be able to parent a child or children, she is going to have to make a very radical and dramatic change and departure from her old established pattern of behavior. That will be remarkably difficult for her to do.” [citation omitted]

Mother was also previously diagnosed as bipolar and court ordered to take medications . . . Mother is currently not taking any medications. Although it may be that the bipolar/schizophrenic diagnosis was inaccurate, Dr. German opined that a current psychiatric evaluation of her is

necessary to “further elucidate whether she has a psychotic disorder.” . . . Dr. German also stated: “I am certainly no[t] in a position to make definitive statements about whether or not [mother] has schizophrenia or bipolar disorder; if she does, she is not displaying those active symptoms at this time.” [citation omitted]

Most troubling of all is Mother’s relationship with Daniel . . . , L[e]yla’s alleged father. He appears to place his own interests ahead of Mother’s and L[e]yla’s. He lied about possibly being L[e]yla’s father, not because he believed another man could possibly be the father, but because he did not want to pay child support. Testimony established that he is very controlling of Mother. The Court is not sure if domestic violence between Mother and [Daniel] did or did not occur but in view of [Daniel’s] controlling and difficult personality as described by several witnesses, the Court finds that it is more probable than not that domestic violence did occur and that Mother’s calls to police were not all fraudulent as she claims. The Court finds that L[e]yla’s safety as a vulnerable child mandates such domestic violence be ruled out by trained professionals.

¶7 A clear preponderance of the evidence supports the juvenile court’s findings, which in turn, sustain its legal conclusion that Leyla is dependent because Jefenia is unable to provide independently for Leyla’s needs, thereby subjecting Leyla to an unreasonable risk of harm for her future health and welfare. In addition to the previously noted evidence of Jefenia’s history of mental health and drug-related issues, she testified that, due to her “problems with drinking alcohol,” she had been living in boarding homes, had checked herself into a mental hospital, and had been in substance abuse “hospitals” before she moved in with Daniel in January 2009. The court was presented with evidence that Jefenia has a lengthy substance abuse history of methamphetamine, marijuana, methadone, heroin, “acid,” and alcohol, and a long history of mental health issues, including at least three inpatient hospitalizations during her adolescence, and more recently in 2009. In addition, Jefenia’s insistence that she had

stopped using drugs when she met Daniel in June 2008 was inconsistent with her numerous false reports of domestic violence against Daniel months later to escape from him so she could “get high.” Notably, the court simply did not find Jefenia credible. *See Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002) (juvenile court, as trier of fact, in best position to weigh evidence, observe parties, judge credibility of witnesses, and resolve disputed facts).

¶8 Dr. Michael German, a psychologist who evaluated Jefenia just before the dependency hearing, testified that even if she is not schizophrenic or bipolar, her most recent symptoms could have been related to drug withdrawal, rather than hallucinations. However, Dr. German added that untreated schizophrenia “could be harmful to [Jefenia] and her ability to parent.” Dr. German’s testimony that Jefenia’s mental condition may have been misdiagnosed, a fact the court acknowledged in its ruling, does not lessen the court’s apparent adoption of Dr. German’s opinion that more information about Jefenia’s mental health is necessary to assure her ability to parent Leyla.

¶9 In addition, to the extent Leyla suggests the testimony about Daniel was unsupported because ADES did not attempt to compel him by subpoena to testify at the dependency hearing, we reject this claim. The record shows four unsuccessful attempts to serve Daniel with a subpoena at the home he shared with Jefenia. On the final attempt, the “residents . . . refus[ed] to answer the door.”

¶10 Finally, Leyla argues the juvenile court erred in granting ADES’s motion to amend the pleadings to conform to the evidence at the conclusion of its case, a motion essentially made in response to Leyla’s assertion that there was a discrepancy between the allegations set forth in the dependency petition and the evidence presented. Leyla argues she objected to ADES’s motion to amend because “it remained a mystery as to



what amended allegations [ADES] was proposing,” and contends the court essentially amended the dependency petition sua sponte. Leyla also contends she and Jefenia were unprepared to defend against the allegation that Daniel had a controlling personality. Rule 55(D)(3), Ariz. R. P. Juv. Ct., provides that “[a]ny amendments made to conform to the evidence [at a dependency adjudication hearing] shall be made pursuant to Rule 15(b), Ariz. R. Civ. P.” Rule 15(b), in turn, permits the court to freely permit “the pleadings to be amended . . . when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party’s action or defense upon the merits.” On review, we will not disturb a juvenile court’s decision to grant or deny a leave to amend a pleading absent an abuse of the court’s discretion. *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 355, 884 P.2d 234, 241 (App. 1994).

¶11 The record simply does not support Leyla’s claim that the court amended ADES’s petition sua sponte. To the contrary, counsel for ADES recited in detail the evidence that had been presented and noted it had proven additional facts about Jefenia and her relationship with Daniel. It is this latter information about the controlling nature of Daniel’s and Jefenia’s relationship that Leyla contends forms the basis for a “completely different theory of the case.” However, this evidence merely supported ADES’s theory that Jefenia was unable to meet Leyla’s needs independently and that Daniel had acted in an intimidating manner as soon as Leyla was born, as asserted in the dependency petition. Accordingly, we reject Leyla’s claim that the juvenile court abused its discretion by granting ADES’s motion to amend the dependency petition to conform to the evidence.

¶12 There was abundant evidence to support the factual findings upon which the juvenile court based its conclusion that Leyla is dependent as to Jefenia. Consequently, the order adjudicating Leyla dependent is affirmed.

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.  
J. WILLIAM BRAMMER, JR., Presiding Judge