

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

TAMARA C.,)
)
Appellant,)
)
v.)
)
ARIZONA DEPARTMENT OF)
ECONOMIC SECURITY and)
HAYLEY C.,)
)
Appellees.)
)
_____)

2 CA-JV 2008-0103
DEPARTMENT B

MEMORANDUM DECISION
Not for Publication
Rule 28, Rules of Civil
Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 18413400

Honorable Joan L. Wagener, Judge Pro Tempore

AFFIRMED

Peter G. Schmerl, P.C.
By Peter G. Schmerl

Tucson
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BRAMMER, Judge.

¶1 In this appeal from the juvenile court’s order adjudicating Hayley C. a dependent child, her mother, Tamara C., challenges the sufficiency of the evidence supporting the adjudication. The Arizona Department of Economic Security (ADES) had the burden of proving dependency by a preponderance of the evidence. *See Michael M. v. Ariz. Dep’t of Econ. Sec.*, 217 Ariz. 230, ¶ 10, 172 P.3d 418, 421 (App. 2007). “On review of an adjudication of dependency, we view the evidence in the light most favorable to sustaining the juvenile court’s findings. We generally will not disturb a dependency adjudication unless no reasonable evidence supports it.” *Willie G. v. Ariz. Dep’t of Econ. Sec.*, 211 Ariz. 231, ¶ 21, 119 P.3d 1034, 1038 (App. 2005) (citation omitted); *see also Michael M.*, 217 Ariz. 230, ¶ 10, 172 P.3d at 421 (we accept “juvenile court’s findings of fact unless they are clearly erroneous” but review legal issues de novo). We affirm.

¶2 The dependency proceeding began when Hayley’s guardian ad litem filed a private dependency petition alleging that Hayley was “being subjected to potential sexual abuse by her brother” because, although Hayley had “disclosed her brother Sean ha[d] made her touch him in a sexual manner” and Sean had “admitted to asking his sister to touch his ‘male parts,’” Tamara did “not understand the serious nature of this incident” and was “not following through with both individual therapy for Hayley and family therapy.” At the initial dependency hearing, the juvenile court substituted ADES as the petitioner, and ADES filed a substituted dependency petition in which it made similar allegations. ADES also alleged that Tamara had been “defensive and uncooperative during” a “Team-Decision

Making meeting” conducted by Child Protective Services (CPS) and that Sean had asserted Tamara “abuses alcohol.”¹

¶3 Following a contested dependency hearing, the juvenile court issued a six-page ruling detailing the events leading up to CPS’s involvement with the family, Hayley’s disclosure of sexual abuse by her brother, and services that had been offered to the family thereafter. It described the results of a “Team Decision Making” meeting at which Sean had “disclosed concerns about possible alcohol use by [Tamara]” and the family’s agreement “that intensive in-home services would be in place and that [Tamara] would obtain services for Hayley at Las Familias.” It noted Tamara had participated in in-home services “designed to address parenting issues” and her relationship with Sean and those service providers had observed no evidence of alcohol or drug use by Tamara. But it noted the CPS case manager had testified Tamara had not participated in drug and alcohol testing or completed a valid psychological evaluation.

¶4 The juvenile court also described in detail the testimony of various mental health experts and service providers who generally agreed that, although the family members acknowledged Sean had sexually abused Hayley, they had minimized its gravity and effect as well as its potential to affect Hayley in the future. The court found:

[Tamara] has exhibited a pattern of resistance with the ADES and probation since Hayley’s disclosure of sexual abuse was

¹ADES also alleged that Hayley’s father, Philip C., was “unable to intervene to protect” her because his employment with the Merchant Marines kept him away from the family “for months at a time.” Although the juvenile court found Hayley dependent as to him as well, Philip is not a party to this appeal.

brought to her attention. [Tamara] offered a myriad of excuses to explain her failure to set up services, missed appointments for herself and Hayley, and her lack of participation in drug and alcohol testing. The Court acknowledges and commends [Tamara] for her participation in the in-home services once they were initiated. The Court notes she has been highly resistant to services focusing on the sexual abuse issues. [Tamara] seems to be going through the motions and the question of whether she will benefit from services looms large. She has displayed a lack of understanding and insight into the nature of the abuse and its impact on her family, particularly on Hayley, the victim, making her full participation in services regarding the sexual abuse all the more important. [Tamara] has repeatedly made statements which highlight her minimization of the sexual abuse. [Tamara] expresses deep regret over having contacted law enforcement in October 2007 and is dismayed at the resulting investigation, involvement of the ADES and imposition of services. [Tamara] has repeatedly lobbied for Sean's return to the home, despite input from service providers that it is not appropriate. She cites Hayley's expressed desire to have him home, further accentuating her lack of insight and inability to protect her daughter.

Hayley's therapist testified that Hayley's minimization of the abuse had been a bar to developing a therapeutic relationship with her and that Hayley had "barely start[ed]" to process the sexual abuse. Dr. Elizabeth Wong, a clinical psychologist who facilitated the non-offending parent group Tamara had attended, testified that Tamara had not yet benefitted from that service, had not yet acknowledged "the extent of the abuse that took place, in addition to the effects on her children," and opined Hayley was not safe until Tamara had done so. Implicitly, the court found therapy services were necessary and stated it did "not believe that the family will continue to participate in services without the intervention of ADES and the Court." It concluded, therefore, that Hayley was "a dependent child within the provisions of A.R.S. § 8-201(13)."

¶5 In her opening brief on appeal, Tamara challenges none of the juvenile court’s factual findings, other than its ultimate determination that ADES had presented sufficient evidence of dependency. She acknowledges Hayley was the victim of an incident of sexual abuse, and she does not argue that the services ADES had been recommending and providing to the family were unnecessary for Hayley’s mental and/or emotional health. In her reply brief, she labels the court’s belief that she would not continue to participate in services “conjecture,” but the unchallenged findings quoted above amply support a determination that Tamara is unlikely to continue with services absent ADES and court involvement. Further, to the extent the court’s belief was based on its judgments about credibility, and having heard and observed the testimony, the court was in the best position to make them. *Cf. Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶4, 53 P.3d 203, 205 (App. 2002) (“The juvenile court, as the trier of fact in a termination proceeding, is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings.”).

¶6 Tamara appears to contend a dependency cannot exist absent a threat to Hayley’s physical well being. A dependent child is one who is “[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.” § 8-201(13)(a)(i). “The juvenile court’s purpose in a dependency hearing is to resolve the matter in the best interest of the child.” *Michael M.*, 217 Ariz. 230, ¶17, 172 P.3d at 422; *see also Willie G.*, 211 Ariz. 231, ¶21, 119 P.3d at 1038 (“[B]ecause ‘[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.””), quoting *Ariz. Dep’t of Econ. Sec. v. Superior Court*, 178 Ariz. 236, 239, 871 P.2d 1172, 1175 (App. 1994). Tamara has cited no authority, nor have we found any, that prevented the court from considering Hayley’s mental and emotional health needs in determining whether Tamara is willing or able to provide her with proper and effective care and control. The court’s dependency finding is supported by reasonable evidence. Therefore, we affirm its order adjudicating Hayley dependent.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge