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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

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| BERNARD K., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and AMORIE S., Appellees. | 2 CA-JV 2009-0052<br>DEPARTMENT A<br><br>MEMORANDUM DECISION<br>Not for Publication<br>Rule 28, Rules of Civil Appellate Procedure |

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. JD 200800085

Honorable Joseph R. Georgini, Judge

AFFIRMED

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E S P I N O S A, Presiding Judge.

**¶1** Appellant Bernard K. is the father of Amorie S., who was born in April 2000. Bernard challenges the juvenile court's order of March 26, 2009, adjudicating Amorie dependent as to Bernard. Because we find Amorie clearly met the statutory definition of a dependent child at the time of the contested dependency hearing, we affirm the juvenile court's order.

**¶2** As defined in A.R.S. § 8-201(13)(a)(i), a dependent child includes one adjudicated to be "[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." The burden of proof in a dependency adjudication is by a preponderance of the evidence. A.R.S. § 8-844(C)(1). On appeal, we view that evidence in the light most favorable to sustaining the juvenile court's findings, *In re Maricopa County Juv. Action No. JD-5312*, 178 Ariz. 372, 376, 873 P.2d 710, 714 (App. 1994), and will not disturb a dependency adjudication unless no reasonable evidence supports it, *In re Maricopa County Juv. Action No. JD-500200*, 163 Ariz. 457, 461, 788 P.2d 1208, 1212 (App. 1989).

**¶3** Bernard, who was never married to Amorie's mother, has been incarcerated in Michigan since approximately February 2005. He is serving a natural-life sentence for murdering his daughter Stephanie, Amorie's half-sibling, in September 2004.[1] He was

[1]Michigan Department of Corrections records admitted in evidence in this case variously indicate that Stephanie was either two or three years old when she died.

separately charged and convicted in 2006 of having previously assaulted with intent to murder Amorie and her mother, Charity S., in February 2002.[2]

**¶4** Charity and Amorie were living in Arizona in July 2008, when Charity asked that Amorie be placed in foster care on the ground that Charity was emotionally and financially unable to care for her. The Arizona Department of Economic Security (ADES) took Amorie into custody and filed a dependency petition, and Charity stipulated to Amorie's dependency at a hearing on July 23, 2008. Bernard appeared telephonically at a hearing on March 25, 2009, at which the juvenile court adjudicated Amorie dependent as to him. Combining that dependency hearing with the hearing contemplated by Rule 57, Ariz. R. P. Juv. Ct., the court simultaneously ruled that ADES was not required to provide reunification services to Bernard, pursuant to A.R.S. § 8-846(B)(2).[3]

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[2]According to the Michigan presentence investigation report, Charity was in her bedroom with Amorie in September 2002 when Bernard, who was outside, shot through the window four times, striking Charity in one knee. Charity reportedly "threw her body over [Amorie]" to protect her from being shot. Charity told the Arizona Child Protective Services investigator in 2008 that "Amorie's father attempted to kill her so as not to have to pay child support."

Avoiding child support was reportedly also Bernard's motivation in September 2004 when he went to a home where his daughter Stephanie was in day care, shot and wounded two adults in the home, and—according to Amorie—"pistol whipped" Stephanie. An autopsy identified Stephanie's cause of death as "blunt force trauma to the head."

[3]Section 8-846(B)(2) states that "reunification services are not required to be provided if the court finds by clear and convincing evidence that . . . [t]he parent or guardian of a child has been convicted of murder or manslaughter of a child" or of various other, enumerated offenses.

**¶5** Bernard testified at the dependency hearing that he is serving his life sentence without possibility of parole and is unable to parent or provide for Amorie while he is in prison. Further, he acknowledged that he had not seen Amorie for seven or eight years, that he would remain imprisoned beyond her eighteenth birthday, and that he was currently unable to identify any relatives or friends with whom she could be placed. In short, Bernard's testimony clearly established Amorie's dependency, proving that she had no parent or guardian willing or able to exercise "proper and effective parental care and control." § 8-201(13)(a)(1).

**¶6** Seemingly ignoring his own testimony at the dependency hearing, however, Bernard now claims the evidence that Amorie was dependent as to him was insufficient. He suggests the "case presents an interesting issue of first impression regarding whether the child of a father who is unavailable and ignorant as to maternal misconduct against the child can be designated dependent as to Father." But Bernard's awareness or ignorance of Charity's "misconduct" toward Amorie has nothing to do with whether Amorie is or is not a dependent child. Applying the definition of dependency applicable here, the sole issue is whether Amorie had a parent or guardian willing and able to provide and care for her appropriately. *See* § 8-201(13)(a)(1). Although Bernard also now contends that, had Arizona Child Protective Services contacted him in Michigan, he "could have suggested appropriate paternal and maternal relatives or close friends to be Amorie's guardians while [Charity] was having psychiatric problems," that assertion is directly contradicted by his own testimony at the dependency adjudication hearing.

**¶7** The issue raised on appeal lacks even debatable merit.[4] The evidence overwhelmingly supported the adjudication of dependency, and we affirm the juvenile court's order.

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PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

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JOSEPH W. HOWARD, Chief Judge

_____
ANN A. SCOTT TIMMER, Judge*

*The Honorable Ann A. Scott Timmer, Chief Judge of Division One of the Arizona Court of Appeals, is authorized to participate in this appeal pursuant to A.R.S. § 12-120(F) (2003).

[4]For future reference, we direct counsel's attention to Rule 106(G)(1), Ariz. R. P. Juv. Ct., which permits the filing of an affidavit in this court avowing that "[c]ounsel has reviewed the entire record on appeal and finds no non-frivolous issue to raise," and Rule 103(G), Ariz. R. P. Juv. Ct., which authorizes sanctions for frivolous appeals.