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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
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IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

VICTOR H., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, O.H., A.H., *Appellees*.

No. 1 CA-JV 15-0408
FILED 9-20-2016

Appeal from the Superior Court in Maricopa County
No. JD30150
The Honorable Connie Contes, Judge

AFFIRMED IN PART, DISMISSED IN PART

COUNSEL

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MEMORANDUM DECISION

Judge Donn Kessler delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Jon W. Thompson joined.

K E S S L E R, Judge:

¶1 Appellant Victor H. ("Father") appeals the juvenile court's order adjudicating his children OH and AH dependent pursuant to Arizona Revised Statutes ("A.R.S.") sections 8-201(15) (2016) and 8-844 (2014).¹ Father argues the order was not supported by the preponderance of the evidence. For the following reasons, we affirm the order adjudicating OH as dependent as to Father, but dismiss the appeal as to AH as moot.

FACTUAL AND PROCEDURAL HISTORY²

¶2 OH was born to Father and Vanessa H. ("Mother") in June 2014. OH has three siblings of different fathers and a younger sister, AH;

¹ We cite to the current version of applicable statutes when no revision material to this case has occurred.

² We view the evidence in the light most favorable to sustaining the juvenile court's findings. *Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, 235, ¶ 21 (App. 2005) (emphasis added) (citations omitted).

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all were found dependent as to Mother.³ OH is a child with special needs, receiving services to assist him with speech development and aggressive physical behavior.

¶3 On October 9, 2015, the Department of Child Safety (“DCS”) removed OH from Father’s care, placing him in a licensed foster home. DCS found unacceptable that Father twice relied on OH’s maternal grandfather (“grandfather”) to collect OH from daycare. CH, a DCS specialist and case manager, testified that she and other DCS representatives repeatedly explained to Father that grandfather was forbidden from having any contact with OH. Father denied having been informed about the prohibition. DCS did not approve grandfather as an acceptable caregiver because DCS was actively investigating grandfather and because of grandfather’s previous history with DCS and questionable criminal background.

¶4 Several days after DCS removed OH, Mother broke into Father’s apartment and stole OH’s documents. CH testified that in a subsequent telephone conversation with Father, Father was very upset and concluded that his apartment was not safe for him or his children to visit. While Father denied telling DCS that the apartment was not safe, CH realized the domestic violence counseling was not effective.

¶5 Following the attack, Father ended his relationship with Mother, arranged for an order of protection against her, changed his phone number, and moved to a different apartment without giving Mother or grandfather his new address. However, by the time of trial, DCS was unable to vet Father’s new apartment or the lease. The Guardian ad Litem reported the new apartment was clean and appropriate but without any furniture.

¶6 After trial, the juvenile court adjudicated OH dependent as to Father because of Father’s history of domestic violence, and use of an inappropriate caregiver. The court ordered Father to complete further domestic violence counseling, among other services, and to obtain “appropriate and necessary items” to care for OH. OH remained in foster care, with a plan of family reunification. In April 2016, however, the

³ Mother was diagnosed with the Intermittent Explosive Disorder manifested by a strong and inappropriate anger expression, sometimes with no provocation. As a result, Mother has a history of domestic violence, for which she was previously arrested. Father also repeatedly called the police to investigate her attacks on him. Mother is not a party to this appeal.

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juvenile court returned physical custody of OH to Father and ordered DCS to expedite family reunification team services. OH's dependency status has not changed.

¶7 AH was born in June 2015 and placed with DCS four days after birth. AH has a complicated medical condition, requiring feeding therapy, ophthalmology, neurology, and MRI services. She also suffers from an abnormally small head (microcephaly) and was being examined for cerebral palsy. The juvenile court found AH dependent as to Father due to his history of domestic violence and also because AH's special needs were much greater than OH's.

¶8 Father timely appealed as to both children. We have jurisdiction pursuant to A.R.S. sections 8-235(A) (2014), 12-120.21(A)(1) (2016), and 12-2101(A)(1) (2016). While this appeal was pending, the juvenile court held an evidentiary hearing and vacated its order as to AH's dependency as to Father and dismissed Father as a party because it determined that Father was not the biological father of AH.

DISCUSSION

¶9 "A parent has a constitutional right to raise his or her child without governmental intervention." *Carolina H. v. Ariz. Dep't of Econ. Sec.*, 232 Ariz. 569, 571, ¶ 6 (App. 2013) (citation omitted). "The government may not interfere with that fundamental right unless a court finds that: (1) the parent is unable to parent the child for any reason defined by statute; and (2) the parent has been afforded due process." *Id.* (citation omitted). But "[t]he primary consideration in a dependency case is always the best interest of the child." *Ariz. Dep't of Econ. Sec. v. Superior Court*, 178 Ariz. 236, 239 (App. 1994) (citation omitted). Therefore, "the juvenile court is vested with 'a great deal of discretion.'" *Id.* (quoting *Cochise Cty. Juvenile Action No. 5666-J*, 133 Ariz. 157, 160 (1982)).

¶10 "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, 235, ¶ 21 (App. 2005) (emphasis added) (citations omitted); *In re Maricopa Cty. Juvenile Action No. J-75482*, 111 Ariz. 588, 591 (1975) ("Generally, the decision of the trial court as to the weight and effect of evidence will not be disturbed unless it is clearly erroneous. All reasonable inferences must be taken in favor of supporting the findings of the trial

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court, and if there is any evidence to support the judgment, it must be affirmed.”) (citations omitted).

¶11 Father argues there was insufficient evidence to find either child dependent. In a dependency adjudication, DCS must prove, by a preponderance of the evidence, one of the grounds found in A.R.S. §§ 8-201(15)(a) (2016) and -844(C)(1) (2014). The grounds for dependency include ineffective parental care and control, the child’s home is unfit by reason of neglect, or that the child is not provided with the necessities of life, such as adequate medical care. A.R.S. § 8-201(15)(a)(i)-(iii). Neglect includes “[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 unreasonable risk of harm to the child’s health or welfare” A.R.S. § 8-201(25)(a).

I. Dependency Adjudication of OH

¶12 Father argues no sufficient evidence supported the juvenile court’s finding of neglect, ineffective parental care and control, or failure to provide OH with necessities of life.⁴ We disagree.

¶13 After a trial, the juvenile court found OH dependent as to Father mainly due to Father’s history of domestic violence, but also because Father neglected to provide OH with basic care by using an inappropriate caregiver.

¶14 Our review of the record reveals uncontested evidence that Father was the victim of repeated domestic violence by Mother, which occurred, at times, in front of OH. Although Father ended the abusive relationship with Mother and moved to a new apartment, the juvenile court found the evidence of his need for further assistance and domestic violence counseling both credible and necessary to “gain greater skills and tools to

⁴ Father argues the juvenile court found OH dependent also because Father’s new apartment was not equipped with furniture. This argument is misplaced as the juvenile court considered said evidence only in its placement determination, which was not appealed. Moreover, since OH reunited with Father in April 2016, the issue of whether missing furniture in OH’s home prevented OH from being “provided with necessities of life” has been rendered moot. See *Sandblom v. Corbin*, 125 Ariz. 178, 182 (App. 1980).

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deescalate situations or not find himself in those situations at all.” Because the juvenile court was in the best position to weigh Father’s testimony against CH’s testimony, judge their credibility, and observe their demeanor, *e.g. Matter of Pima Cty. Dependency Action No. 93511*, 154 Ariz. 543, 546 (App. 1987), we accept the juvenile court’s findings of fact; they are not clearly erroneous, *J-75482*, 111 Ariz. at 591.

¶15 Based on the record, further evidence supports the juvenile court’s decision of OH’s dependency due to Father’s improper reliance on grandfather to care for OH in violation of A.R.S. § 8-201(15)(a). It is uncontested that DCS investigated grandfather and found him to be an unsuitable caregiver. CH testified that she sufficiently communicated to Father that grandfather was not to have any contact with OH, and that Father failed to follow the directive. CH also testified about her supervisors’ input in assessing the propriety of OH’s removal from Father’s care. Reasonable evidence supports the juvenile court’s finding and we will not disturb it. *Willie G.*, 211 Ariz. at 235, ¶ 21.

¶16 Moreover, the record supports a dependency finding because OH has special needs. “We will affirm the trial court’s decision if it is correct for any reason, even if that reason was not considered by the trial court.” *Glaze v. Marcus*, 151 Ariz. 538, 540 (App. 1986). It is necessary for OH to receive regular assistance with speech development and aggressive physical behavior. But Father’s work schedule was not flexible to enable him to deliver OH to these services. Father also lacked independent transportation. Therefore, Father was not in a position to provide OH with “basic necessities of life.”

¶17 The juvenile court did not err in finding that DCS met its burden of proof. We affirm its decision to adjudicate OH dependent as to Father.

II. Dependency Adjudication of AH

¶18 Father argues DCS failed to prove, by preponderance of the evidence, the dependency of AH. However, the juvenile court set aside the November 2015 finding of dependency and dismissed Father as a party on January 12, 2016, after paternity tests showed Father was not the biological father of AH. As a result and because no appeal from the order dismissing Father was filed, the issue of dependency of AH is now moot. *Sandblom v. Corbin*, 125 Ariz. 178, 182 (App. 1980) (An issue or case is moot “when an event occurs, pending an appeal, which renders the relief sought either

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impossible or without practical effect on the parties to the action.”)
(citations omitted).

CONCLUSION

¶19 Because sufficient evidence exists to support the juvenile court’s findings of fact and ruling as to the dependency of OH, we affirm its order adjudicating OH dependent as to Father. However, we dismiss the appeal as to the dependency determination of AH because the appeal is moot.



AMY M. WOOD • Clerk of the Court
FILED: AA