

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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MELISSA K., *Appellant*,

*v.*

DEPARTMENT OF CHILD SAFETY, S. K., *Appellees*.

No. 1 CA-JV 15-0334  
FILED 9-20-2016

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Appeal from the Superior Court in Maricopa County  
No. JD29491  
The Honorable Lisa Daniel Flores, Judge

**AFFIRMED**

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COUNSEL

Law Office of Christina M. Lopez, PLLC, Phoenix  
By Christina M. Lopez  
*Counsel for Appellant*

Arizona Attorney General's Office, Mesa  
By Michael F. Valenzuela  
*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Patricia A. Orozco and Judge Jon W. Thompson joined.

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**S W A N N**, Judge:

¶1 Melissa K. (“Mother”) appeals the court’s determination that her child, S. K., is dependent. Mother contends that the trial court failed to make the required findings of fact and that the state failed to prove the dependency by a preponderance of the evidence. Because the court has now made sufficient findings of fact and the evidence was sufficient to show dependency by a preponderance of the evidence, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 The Department of Child Safety (“DCS”) removed S.K. (“Child”) from school on November 17, 2014. Mother and Child had lived in Arizona for a few months, and Mother claimed that she knew of DCS’s involvement only after she contacted Child’s school after Child did not return home.

¶3 The DCS investigator’s report stated that the reason for DCS’s involvement was a tip to the child-abuse hotline that Nevada Child Protective Services (“CPS”) had been investigating Mother for inadequately supervising her older child. The report stated that Mother moved to Arizona while the Nevada CPS investigation was ongoing but that the case was ultimately closed. The report also stated that Mother’s behavior was “erratic” and that she was “minimizing her substance abuse past and present use.” DCS alleged that Child was dependent as to Mother because of substance abuse, mental health issues and lack of stable housing and income. Mother was referred for drug testing and a mental-health evaluation, but the agency did not follow up on the psychological evaluation.

¶4 At the dependency hearing, DCS presented evidence that Mother had moved several times recently: from Minnesota to Nevada in 2013 and from Nevada to Arizona in 2014. After Child was taken into DCS custody, Mother mistakenly believed that Child would be placed in Tucson, so she moved to Tucson, then back to Phoenix when she discovered Child would not be placed in Tucson. Mother also changed

her phone number and e-mail a number of times, making it difficult for service providers to contact her.

¶5 The caseworker also provided records showing that in Minnesota, Mother and her children had extensive contacts with the child-welfare agency. The DCS caseworker testified that Mother had an open CPS case on an older child in Nevada based on the investigator's report, but the case agent had not spoken to a representative from Nevada CPS personally. And DCS failed to disclose supporting documentation for the Minnesota CPS contacts to Mother's counsel before the hearing, and the Nevada records are not in the record here.

¶6 The caseworker testified that Mother had admitted to using marijuana, which Mother denied. Mother completed only one drug test, which came back diluted. She did not complete the court-ordered hair follicle test. Mother admitted she had been diagnosed with post-traumatic stress disorder ("PTSD"), depression and anxiety in the past and had received treatment including medication, but she had stopped seeing a doctor and taking medication sometime after she moved to Nevada.

¶7 Based on the evidence presented, the court found Child dependent and ordered that Child remain in DCS custody. Mother appealed. On January 19, 2016, this court stayed the appeal and revested jurisdiction in the lower court to "permit the Juvenile Court to enter factual findings to support its legal conclusion that the child is dependent." The trial court filed a ruling supplementing the original order on February 17, 2016, thoroughly detailing factual findings from the dependency hearing.

## DISCUSSION

¶8 Mother contends that the trial court did not make the findings of fact required by Ariz. R.P. Juv. Ct. 55(E)(3) and that the state failed to prove its allegations by the preponderance of the evidence as required by Rule 55(C).

¶9 A dependent child includes one who is "[i]n 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" or "[a] child whose home is unfit by reasons of abuse, neglect, cruelty or depravity by a parent . . . having custody or care of the child." A.R.S. § 8-201(14)(a)(i), (iii). The trial court is required to "[s]et forth specific findings of fact in support of a finding of dependency and adjudicate the child dependent, as defined by

law, if the petitioner met the burden of proof," preponderance of the evidence. Ariz. R.P. Juv. Ct. 55(E)(3), (C).

¶10 DCS alleged in its petition that Mother was "unable or unwilling to provide proper and effective parental care and control" because of substance abuse and mental health issues and that Mother was "neglecting her child by failing to provide [her] with the basic necessities of life" because of unstable housing and income. We will not overturn the trial court's disposition in a dependency "unless its findings of fact were clearly erroneous and there is no reasonable evidence to support them." *Andrew R. v. Ariz. Dep't Econ. Sec.*, 223 Ariz. 453, 456, ¶ 15 (App. 2010).

¶11 Any insufficiency in the findings supporting the original order ruling Child dependent were cured by the supplemental ruling. The trial court made specific findings concerning each of DCS's alleged grounds for dependency. The ruling details Mother's conflicting statements about her drug use and her refusal to take the court-ordered hair-follicle test as evidence of her substance-abuse issues. The supplemental ruling also contains detailed findings concerning Mother's many moves and her failure to keep DCS apprised of her current contact information, which impeded her ability to participate in services, especially visitation with Child. Finally, the trial court found that Mother has untreated mental health conditions resulting in "rapid erratic cycles from calmness to aggression" which "impair her ability to provide proper and effective parental care and control of her child." The court made sufficient findings based on the evidence presented by DCS to conclude that Child was dependent by a preponderance of the evidence.

### CONCLUSION

¶12 For the foregoing reasons, we affirm the trial court's finding that Child is dependent as to Mother.



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