

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

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MANUEL M.,  
*Appellant,*

*v.*

ARIZONA DEPARTMENT OF ECONOMIC SECURITY AND S.M.,  
*Appellees.*

No. 2 CA-JV 2013-0126  
Filed March 7, 2014

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See Ariz. R. Civ. App. P. 28(c); Ariz. R. P. Juv. Ct. 103(G).*

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Appeal from the Superior Court in Pima County  
No. JD205060  
The Honorable Wayne E. Yehling, Judge Pro Tempore

**AFFIRMED**

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COUNSEL

Peter G. Schmerl, P.C., Tucson  
By Peter G. Schmerl  
*Guardian Ad Litem for Appellant*

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Thomas C. Horne, Arizona Attorney General  
By Erika Z. Alfred, Assistant Attorney General, Tucson  
*Counsel for Appellee Arizona Department of Economic Security*

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**MEMORANDUM DECISION**

Presiding Judge Vásquez authored the decision of the Court, in which Judge Miller and Judge Brammer<sup>1</sup> concurred.

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V Á S Q U E Z, Presiding Judge:

¶1 Manuel M. appeals from the juvenile court's October 2013 order adjudicating his daughter S.M. a dependent child on the grounds that he "is unable to independently parent his children" and ordering the Arizona Department of Economic Services (ADES) to provide appropriate reunification services, which ADES indicated would include a psychosexual evaluation. For the reasons that follow, we affirm.

¶2 In June 2013, Child Protective Services (CPS), a division of ADES, received a report of possible sexual abuse towards a child, J. It was unclear who had committed the abuse. J.'s mother has two other children, one of them, S.M., is Manuel's child and the subject of the instant dependency. Manuel's parental rights to several other children were severed in 2006, and he did not participate in services in connection with those proceedings. There are also two "substantiated sex abuse cases against him." After the report about J. was received, S.M. was placed with her maternal grandmother.

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<sup>1</sup>The Hon. J. William Brammer, Jr., a retired judge of this court, is called back to active duty and is assigned to serve on this case pursuant to orders of this court and the supreme court.

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¶3 ADES thereafter filed a dependency petition, alleging Manuel had taken unsupervised “bubble baths” with J. and had “an extensive CPS and criminal history,” including “substantiated allegations of physical abuse, sexual abuse and domestic violence.” A contested dependency hearing and dependency disposition was held, at which the CPS case manager testified that among other services planned for Manuel, she had scheduled a psychosexual evaluation for him. She explained that because Manuel has cognitive limitations she would speak with the evaluator before the test to make sure those limitations were understood.

¶4 At the close of the hearing, the juvenile court adjudicated S.M. dependent as to Manuel and adopted a case plan of family reunification. The court ordered ADES to provide Manuel with services and, “in providing such services, to take into account [his] cognitive limitations.” It specified that persons conducting evaluations of Manuel shall be “cognizant of [his] limited cognitive abilities and qualified to conduct the evaluation, especially the psychosexual evaluation given [his] cognitive limitations.”

¶5 Manuel objected to the psychosexual evaluation, arguing it was not “in his best interest to participate in that evaluation,” given his cognitive limitations. He further asserted that “there were no findings . . . in the current petition of any ruling on the allegations of sexual abuse,” and therefore such an evaluation was not “an appropriate service.” The court stated, “my standard for ordering services is below a preponderance of the evidence. I don’t think I need to find by a preponderance of the evidence that sexual abuse took place, . . . to have some concerns or issue in this case.” Manuel’s appeal from the court’s minute entry followed. *See Lindsey M. v. Ariz. Dep’t of Econ. Sec.*, 212 Ariz. 43, ¶ 8, 127 P.3d 59, 61 (App. 2006) (dependency disposition order after adjudication of dependency is final appealable order).

¶6 On appeal, Manuel maintains the juvenile court “erred and abused its discretion by ordering [him] to participate in a psychosexual evaluation based upon a standard of below a preponderance of the evidence.” He contends that because “there is no reasonable evidence in the record to suggest any sexual

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misconduct by [him] in this case,” we should “vacate the requirement of the psychosexual evaluation.”

¶7 The juvenile court did not, however, directly order Manuel to undergo a psychosexual evaluation. Rather, as part of its dependency and disposition order, the court ordered ADES to provide Manuel with appropriate services and directed that if it were to provide a psychosexual evaluation as one such service it must ensure that the evaluation was given in a manner appropriate to Manuel’s cognitive impairments. We therefore construe Manuel’s argument here as one that the services provided by the state are not appropriate under the circumstances and that the court should not have approved them.<sup>2</sup> We review a court’s dependency orders for an abuse of discretion, and we will affirm its decisions unless its factual findings are clearly erroneous. *Antonio P. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 402, ¶ 8, 187 P.3d 1115, 1117 (App. 2008); *In re Pima Cnty. Juv. Dependency Action No. 118537*, 185 Ariz. 77, 79, 912 P.2d 1306, 1308 (App. 1994).

¶8 As the state points out, Manuel arguably waived his objection to the juvenile court’s statements about its evidentiary standard by failing to make a contemporaneous objection to the use of the standard. In any event, however, we need not determine here whether a preponderance of the evidence standard applies to a juvenile court’s determination of whether ADES’s proposed services are appropriate because the evidence in the record is sufficient to meet that standard. *Cf. Navajo Nation v. Ariz. Dep’t of Econ. Sec.*, 230 Ariz. 339, ¶ 14, 284 P.3d 29, 34 (App. 2012) (“We will affirm the juvenile court for any correct reason supported by the record.”).

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<sup>2</sup>The proper method to challenge the appropriateness of services provided by ADES is to request an evidentiary hearing under Rule 58(D), Ariz. R. P. Juv. Ct. *See Christina G. v. Ariz. Dep’t of Econ. Sec.*, 227 Ariz. 231, n.8, 256 P.3d 628, 632 n.8 (App. 2011). In this case, however, the service at issue was discussed at the dependency hearing in a manner that allows appellate review of the juvenile court’s decision.

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¶9 We disagree with Manuel's argument that the juvenile court needed to find by a preponderance of the evidence that there had been sexual abuse of the children currently at issue in the dependency. Rather, the question was whether a psychosexual evaluation is an appropriate reunification service.<sup>3</sup> See A.R.S. § 8-846 (providing if child is removed from home "court shall order the department to make reasonable efforts to provide services"). The record contains uncontroverted evidence that substantiated claims of sexual abuse had been made against Manuel and that he had failed to participate in services thereafter. Such evidence of abuse of other children was sufficient to establish that a psychosexual evaluation was an appropriate reunification service under the circumstances. Cf. *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, ¶ 14, 117 P.3d 795, 798 (App. 2005) (parents who abuse their children "can have their parental rights to their other children terminated even though there is no evidence that the other children were abused"); *In re Juv. No. J-2255*, 126 Ariz. 144, 146-47, 613 P.2d 304, 306-07 (App. 1980) (under former severance statute father's felony conviction for molesting another girl showed unfitness to parent daughter).

¶10 Therefore, we affirm the juvenile court's dependency adjudication and disposition order.

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<sup>3</sup>We do not address whether ADES is required to provide reunification services in this circumstance. See A.R.S. § 8-846(B)(1)(e).