

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

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JAMES L.,  
*Appellant,*

*v.*

DEPARTMENT OF CHILD SAFETY AND I.L.,  
*Appellees.*

No. 2 CA-JV 2014-0021  
Filed July 28, 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NOT FOR PUBLICATION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. JD178759  
The Honorable Catherine M. Woods, Judge

**AFFIRMED**

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COUNSEL

James L., Tucson  
*In Propria Persona*

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

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**MEMORANDUM DECISION**

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

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E C K E R S T R O M, Chief Judge:

¶1 James L. appeals from the juvenile court’s order finding his seventeen-year-old son, I.L., a dependent child. He argues: (1) the court erred in entering a preliminary custody order without performing a custody review because it did not conduct a colloquy to determine whether James had knowingly and voluntarily waived his right to review; (2) reasonable evidence does not support the court’s dependency finding; and (3) the court erred because it did not “enforce” its granting of his motion for an independent medical examination of I.L.

¶2 “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) (citations omitted). I.L. has been diagnosed with schizophrenia and has an extensive history with the juvenile system. On January 31, 2013, I.L.’s mother, who is not a party to this appeal, took him to a crisis center because he had threatened suicide. James—who also has been diagnosed with schizophrenia—contacted the center, stating that he intended to remove I.L. from the facility because I.L. did not have schizophrenia. He came to the center the next day in an attempt to remove I.L. from the facility and was extremely belligerent and aggressive. The Department of Child Safety (DCS) then took I.L. into custody, placing him at the crisis center, and filed a dependency petition alleging I.L. was dependent

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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 to serve on this case pursuant to orders of this court and the supreme court.

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as to both his parents on the basis of abuse and/or neglect. *See* A.R.S. § 8-201(14)(a)(iii).<sup>2</sup>

¶3 At the preliminary protective hearing, James’s counsel informed the juvenile court it was unnecessary to review the temporary custody order because I.L. was at a mental health treatment facility. James later filed a pro se motion to dismiss the dependency proceeding or, in the alternative, to have the court review the temporary custody order arguing, *inter alia*, that in the absence of “imminent danger” to I.L., the court was not permitted to remove I.L. from his home.<sup>3</sup> In its response, DCS pointed out that James had waived his right to a review of the preliminary custody order. James responded that his right to review required a personal waiver, which had not occurred and, moreover, that his counsel had been ineffective in waiving the hearing.

¶4 In denying James’s motion, the juvenile court noted James had waived review of the temporary custody order but did not discuss his argument that a personal waiver was required. The court concluded the issue was moot because it had made subsequent custody orders. It further observed that “it is certainly far from clear on the record that [James] received ineffective assistance from counsel.”

¶5 I.L.’s mother admitted the allegations in an amended dependency petition, and the juvenile court found I.L. dependent as to her. After a contested dependency hearing, the court found I.L. dependent as to James on the basis of neglect. It found James’s

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<sup>2</sup>The statute has been amended effective May 29, 2014. 2014 Ariz. Sess. Laws 2d Spec. Sess., ch. 1, § 10. Because the changes are not material to the issues presented in this appeal, we refer to the current version of the statute.

<sup>3</sup>At the time James filed the motion, he was represented by counsel—his second appointed attorney. After that attorney and a subsequently appointed attorney withdrew from representation, James opted to proceed in propria persona, after which the juvenile court denied his motion.

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attempt to remove I.L. from treatment “at a time when [he] presented a danger to himself or others,” as well as James’s “ongoing efforts to persuade I[L.] to not follow[] treatment recommendations, caused and still continues to cause an unreasonable risk of harm to I[L.]’s health or welfare.” It further concluded that James’s “threatening, unreasonably angry, and aggressive” behavior “has been detrimental to the goal of accomplishing stability for I[L.],” who, without treatment, “is a danger to himself and others.” Finally, the court concluded that James’s own mental health issues prevented him from recognizing I.L.’s “diagnoses and needs for treatment.”

¶6 On appeal, James repeats his argument that he must personally waive his right to review of the temporary custody order and, thus, the court erred in denying his motion asking the court to review that order. But he ignores the juvenile court’s conclusion that, even assuming a personal waiver is required, the issue is moot because the court entered subsequent custody orders. We agree the issue is moot. As the court noted, it had placed I.L. with his mother and, thus, there was no reason to revisit the temporary custody determination.<sup>4</sup> See *Slade v. Schneider*, 212 Ariz. 176, ¶ 15, 129 P.3d 465, 468 (App. 2006) (“Generally, a court will not consider moot questions.”).

¶7 James also repeats his claim that counsel was ineffective in failing to ask for a custody review. Even assuming James is entitled to the effective assistance of counsel in these circumstances, he does not develop this argument in any meaningful way; we therefore decline to address it. See *Polanco v. Indus. Comm’n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393 n.2 (App. 2007); see also *John M. v. Ariz. Dep’t of Econ. Sec.*, 217 Ariz. 320, ¶¶ 11, 12, 14, 173 P.3d 1021, 1024 (App. 2007) (noting Arizona law has not squarely addressed

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<sup>4</sup>James asserts he was “prejudice[d]” by the lack of a waiver because I.L. “was in a mental institution” and he was refused “access to [I.L.]” But he does not explain how this mattered to the juvenile court’s dependency finding, nor to its decision to place I.L. with his mother. Nor does he argue the court erred in denying his motion to dismiss.

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whether “ineffective assistance of counsel [can] justify reversal of a juvenile court’s order terminating parental rights”).

¶8 James contends the juvenile court erred in determining that I.L. was dependent as to him based on neglect. A child is dependent if his or her “home is unfit by reason of abuse, neglect, cruelty or depravity by a parent.” § 8-201(14)(a)(iii). Neglect, as defined by § 8-201(24)(a), means “[t]he inability or unwillingness of a parent . . . to provide [a] 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.”

¶9 James asserts there was no evidence supporting the juvenile court’s findings that he had intended to remove I.L. from mental health treatment and that his own mental illness impairs his ability to recognize I.L.’s schizophrenia diagnosis and need for treatment. His argument, however, consists mainly of a general criticism of the diagnosis and treatment of mental disorders. None of the authority he cites suggests the court was required, as a matter of law, to disregard the medical evidence presented.<sup>5</sup> The court was in the best position to weigh that evidence. *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). And James cites no evidence in the record suggesting that he, or I.L., have been misdiagnosed.

¶10 James also argues, based on A.R.S. § 8-201.01(2), that the juvenile court was not permitted to find I.L. dependent. That statute provides: “A child whose parent . . . refuses to put the child on a psychiatric medication or questions the use of a psychiatric medication shall not be considered to be an abused, neglected or dependent child for that reason alone.” § 8-201.01(2). James insists

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<sup>5</sup>James cites numerous articles purporting to support his argument, but he did not attempt to introduce these materials as evidence during the contested severance hearing. The case law he cites is irrelevant, consisting of decades-old criticisms of psychiatric evaluation with no application to the facts of this case. *See, e.g., Foucha v. Louisiana*, 504 U.S. 71, 109 (1992) (Thomas, J., dissenting); *Parham v. J.R.*, 442 U.S. 584, 629 (1979) (Brennan, J., dissenting).

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the evidence shows he objected only to I.L.'s medication and he otherwise did not attempt to interfere with I.L.'s mental-health treatment. His argument essentially asks us to reweigh the evidence presented, which we will not do. *Oscar O.*, 209 Ariz. 332, ¶ 14, 100 P.3d at 947. And he ignores the court's finding that his own mental illness prevented him from properly understanding I.L.'s needs. We have reviewed the record and conclude that ample evidence supports the court's determination that James refused to recognize I.L.'s mental health issues; those issues placed I.L. at risk of harm; and, I.L. would not receive adequate medical treatment if placed in James's care.

¶11 James also seems to assert the juvenile court improperly relied on hearsay evidence in making certain findings "in violation of [his] rights to confrontation and cross-examination." But he does not identify the purportedly improper evidence nor cite to anything in the record suggesting he raised an objection below. *See State v. McGann*, 132 Ariz. 296, 299, 645 P.2d 811, 814 (1982) (hearsay evidence admitted without objection competent evidence). We do not address claims raised for the first time on review. *Trantor v. Fredrikson*, 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994). Moreover, an appellate argument must be supported by citations to the record. Ariz. R. Civ. App. P. 13(a)(6); Ariz. R. P. Juv. Ct. 106(A). Thus, James has waived this argument on appeal, and we do not address it further. *See State Farm Mut. Auto. Ins. Co. v. Novak*, 167 Ariz. 363, 370, 807 P.2d 531, 538 (App. 1990). For the same reasons, we do not address his argument that he had a First Amendment right to threaten and verbally abuse members of I.L.'s case management team because they are government officials and, thus, the court's reliance on his conduct in finding I.L. dependent violated his free-speech rights.

¶12 Finally, James claims the juvenile court failed to enforce its order granting his motion for an independent medical examination of I.L., thus violating his due process rights. This argument is without merit. As DCS correctly points out, the court's grant of the motion was conditioned on James "identifying a suitable person with the appropriate credentials" to conduct the examination. As the court noted, James never complied with that

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requirement. And James cites no authority, and we find none, suggesting the court was required to sua sponte identify and appoint an alternative examiner.

¶13 For the reasons stated, we affirm the order adjudicating I.L. dependent.