

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 10/04/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

FRANCISCO G.,)
) 1 CA-JV 12-0040
)
Appellant,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Ariz. R.P. Juv. Ct. 103(G);
SECURITY, THUNDER B., STORMY B.,) ARCAP 28)
)
Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD11820

The Honorable Colleen McNally, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Nicholas Chapman-Hushek, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

Larson Law Office PLLC Mesa
By Robert L. Larson
Attorneys for Appellant

N O R R I S, Judge

¶1 Francisco G. ("Father") timely appeals from the juvenile court's order terminating his parental rights. He argues the juvenile court should have ordered the Arizona

Department of Economic Security ("Department") to provide a full, independent psychological evaluation of his mother ("Grandmother") as a preliminary step to determining whether a kinship placement with her was in the best interests of his children. As we explain, we disagree.¹

FACTS AND PROCEDURAL BACKGROUND

¶2 In May 2010, the Department placed twins, Thunder B. and Stormy B., with a foster home. On the Department's motion, the court adjudicated the children dependant as to Father. Fourteen months later, the Department moved to terminate Father's parental rights. Father then asked the court to order the Department to conduct a psychological evaluation of Grandmother so she could be considered for kinship placement. The Department objected, and after oral argument, the juvenile

¹The Department argues the superior court's order denying Father's request for kinship placement was an appealable order and because Father did not separately appeal that order, we do not have jurisdiction to consider the issue he has raised on appeal. The Department's argument would be well taken if Father had actually moved for an unequivocal change in placement. Although Father's initial motion was titled "Motion for Kinship Placement with Paternal Grandmother," what Father actually requested was an independent psychological evaluation of Grandmother. The record reflects the juvenile court denied that request and further refused to require the Department to evaluate Grandmother as a possible placement. That order was an interlocutory order and thus was not appealable. See *Rita J. v. Ariz. Dept. of Econ. Sec.*, 196 Ariz. 512, 515, ¶ 8, 1 P.3d 155, 158 (2000) (order is interlocutory if it directs inquiry into matter of fact preparatory to final decision and is not final decision in the case). Thus, we agree with Father; this court has jurisdiction to consider the issue he has raised on appeal.

court denied Father's motion, but stated it would be willing to reconsider if Father provided it with additional information regarding Grandmother's "conservatorship . . . and . . . psychological/psychiatric evaluation." After providing additional information, Father asked the court to reconsider its denial. After considering Father's additional information and the Department's objections to his request for reconsideration, the court refused to reconsider its denial.

DISCUSSION

¶3 Father argues the juvenile court abused its discretion in failing to order the Department to conduct a psychological evaluation of Grandmother, thus precluding kinship placement of Thunder B. and Stormy B. with Grandmother.² We disagree.

¶4 We review a placement order for an abuse of discretion. See *Maricopa County Juvenile Action No. JD-6236*, 178 Ariz. 449, 451, 874 P.2d 1006, 1008 (App. 1994). A juvenile court abuses its discretion when "the reasons given by the court for its action are clearly untenable, legally incorrect, or amount to a denial of justice." *State v. Chapple*, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983).

²Although Arizona Revised Statutes ("A.R.S.") section 8-514(B) (2007) prefers placement with a relative over placement in foster care, placement according to the statutory preferences is not mandatory. See *Antonio P. v. Ariz. Dept. of Econ. Sec.*, 218 Ariz. 402, 404, ¶ 8, 187 P.3d 1115, 1117 (2008).

¶15 The record supports the grounds given by the juvenile court in refusing to require the Department to conduct a psychological evaluation of Grandmother. The juvenile court found the Department had provided a psychological consultation for Grandmother. The clinical psychologist who performed that consultation reported, "I think that she has her hands full with all of her present duties and I think that CPS would want [to] consider an alternate placement for the children." The psychologist also noted Grandmother was "verbose, with rambling and tangential thought processes."³ The juvenile court stated that it "share[d] the concerns raised by the Department that the psychological/psychiatric records" Father submitted to the court about Grandmother were incomplete and failed to "clearly address her ability or limitations due to her condition."

¶16 Further, the court found Father's delay in requesting an evaluation of Grandmother "caused a situation where the children have been placed for more than 18 months in the home of foster parents who are willing to adopt them." Accordingly, the court concluded "the best interests of the children would [not] be served by making a change in placement at this time and the scarce resources of the State of Arizona need not be utilized for the investigation of a placement that would not be in the

³Although disputed, the court also found Grandmother failed to timely appeal the Department's decision to decline her kinship placement.

