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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 6/13/2013  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

KALLIA S., ) 1 CA-JV 12-0272  
)  
Appellant, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) 103(G) Ariz.R.P. Juv.  
SECURITY, K.S.,<sup>1</sup> ) Ct.; Rule 28 ARCAP)  
)  
Appellees. )  
)  
)

Appeal from the Superior Court in Maricopa County

Cause No. JD21258

The Honorable Aimee L. Anderson, Judge

**VACATED AND REMANDED**

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Thomas C. Horne, Attorney General Phoenix  
By Michael Valenzuela, Assistant Attorney General  
Attorneys for Appellee Arizona Department of Economic Security

David W. Bell Mesa  
Attorney for Appellant

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O R O Z C O, Judge

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<sup>1</sup> The caption has been amended to safeguard the identity of the juvenile pursuant to Administrative Order 2013-0001.

¶1 Kallia S. (Mother) appeals the juvenile court's dependency order and its order terminating her parent-child relationship with K.S. For the following reasons, we vacate the dependency and severance orders and remand to the juvenile court for additional proceedings consistent with this decision.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

¶2 Mother is the biological mother of K.S., born in July 2011. In January 2012, K.S.'s maternal grandmother (Grandmother) filed a dependency petition.<sup>2</sup> In the petition, Grandmother alleged that seventeen-year-old Mother (1) ran away from home with K.S., (2) gave K.S. improper baby formula, which nearly resulted in K.S.'s death due to the child's severe allergy to milk and eggs, and (3) jumped out of a window at her boyfriend's house with her boyfriend to escape police and leaving K.S. behind.<sup>3</sup> In light of the allegations in the dependency petition, the juvenile court ordered that K.S. be placed in the temporary physical custody of ADES.

¶3 Grandmother testified that a few days after she filed the dependency petition, Mother left home with her boyfriend and K.S. and failed to return. She stated that she did not know

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<sup>2</sup> The Arizona Department of Economic Security (ADES) later moved to substitute in as petitioner, and the juvenile court granted the motion.

<sup>3</sup> Grandmother sent the police to Mother's boyfriend's house to search for Mother and K.S. because Grandmother had not seen or heard from them in four days.

Mother's whereabouts for several months.

¶4 In September 2012, Mother and K.S. were located in Kansas. With the help of Kansas police, the ADES case manager took custody of K.S. At that time, K.S. had multiple bruises on her body, her ear was bleeding and she appeared malnourished. The case manager returned K.S. to Arizona and placed her in the physical custody of Grandmother.

¶5 Mother attended a report and review hearing on October 2, 2012. During the hearing, the court scheduled mediation, a dependency pretrial conference, and an initial severance hearing for November 5, 2012.

¶6 On October 11, 2012, ADES filed a motion to terminate Mother's parental rights to K.S. on the grounds of neglect pursuant to Arizona Revised Statutes (A.R.S.) section 8-533.B.2 (Supp. 2012) and out-of-home placement of K.S. for a total period of six months or more pursuant to § 8-533.B.8(b).

¶7 On November 5, 2012, Mother failed to appear at the mediation that was scheduled for 9:30 a.m. At 9:40 a.m., Grandmother, who was already at the courthouse, called Mother to find out where she was and to tell her that she needed to be at the courthouse. Mother's case manager also spoke with Mother at that time and told her that transportation had been arranged for her.

¶8 Mother still had not arrived at 11:00 a.m. when the

initial hearing on the motion for termination began. Because Mother's attorney had no explanation for her absence, the juvenile court determined that Mother had failed to appear without good cause shown and found it appropriate to proceed in her absence. The court found K.S. dependent as to Mother and affirmed the custody orders. After hearing the evidence presented, the court also found that severance was proper based on the grounds alleged in ADES's severance motion and it determined that severance was in K.S.'s best interest.

¶9 After the hearing, ADES lodged its proposed Findings of Fact, Conclusions of Law, and Order (FFCLO) for the severance matter. Before the juvenile court signed the FFCLO, however, Mother filed a motion to set aside default findings. In a declaration that accompanied her motion to set aside, Mother explained that her failure to appear at the November 5, 2012 hearing was the result of problems with transportation that had been scheduled for her by ADES. The juvenile court later signed and filed both a minute entry that contained its dependency findings and the FFCLO without ruling on Mother's motion to set aside.

¶10 Mother timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235.A (2007), 12-120.21.A.1 (2003) and -2101.A.1 (Supp. 2012).

## DISCUSSION

¶11 Mother contends the juvenile court erred by not setting aside its dependency and termination orders after Mother demonstrated to the court that there was good cause for her failure to appear at the November 5, 2012 hearing. We note that in its answering brief, ADES concedes that the juvenile court abused its discretion by implicitly denying Mother's motion to set aside without conducting an adequate investigation into whether Mother established good cause and a meritorious defense.

¶12 A juvenile court may proceed with a dependency hearing or an initial termination hearing if the parent fails to appear "without good cause shown." Ariz. R.P. Juv. Ct. 48.C, 65.C.6.c. "In order to show good cause, the moving party must show that (1) mistake, inadvertence, surprise or excusable neglect exists and (2) a meritorious defense to the claims exists." *Christy A. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 299, 304, ¶ 16, 173 P.3d 463, 468 (App. 2007).

¶13 Because a finding of good cause for failure to appear is largely discretionary, we review the finding for an abuse of discretion. *Adrian E. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 96, 101, ¶ 15, 158 P.3d 225, 230 (App. 2007). We generally will reverse only if "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).

¶14 In her declaration that accompanied her motion to set aside, Mother set forth the following reasons for her failure to appear at the hearing: She stated that ADES had scheduled transportation to the hearing for her. However, the driver of the first taxi that arrived at 7:15 a.m. was under the mistaken assumption that Mother was to be dropped off in Avondale to visit with K.S., rather than taken to Phoenix for the hearing. Mother did not accept the ride and called her case manager several times for assistance, but the case manager did not answer or return her calls.<sup>4</sup> Mother then contacted the taxi company and was informed that another taxi would arrive at 10:00 a.m to take her to the hearing. However, the second taxi did not arrive until 11:00 a.m. because of traffic. When Mother arrived at the courthouse at 11:25 a.m., a court employee told her that the hearing had already concluded. Mother also stated that if she had appeared at the hearing, she would have denied the allegations and introduced evidence to prove that K.S. was not dependent and her parental rights should not be terminated.

¶15 We find that Mother set forth sufficient facts in her motion to warrant an evidentiary hearing to determine whether she had a meritorious defense and good cause for her failure to

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<sup>4</sup> Mother finally spoke with her case manager at approximately 9:40 a.m. when Grandmother called Mother from the courthouse to find out where Mother was.

appear at the November 5, 2012 hearing. Therefore, the juvenile court's failure to conduct such a hearing was an abuse of discretion.

**CONCLUSION**

¶16 For the foregoing reasons, we vacate the juvenile court's dependency order and order severing Mother's parental rights to K.S. and remand for further proceedings consistent with this decision.

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PATRICIA A. OROZCO, Judge

CONCURRING:

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ANDREW W. GOULD, Presiding Judge

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MARGARET H. DOWNIE, Judge