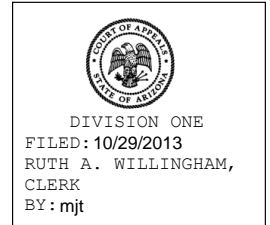


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



CONSTANCE C., ) No. 1 CA-JV 13-0152  
)  
Appellant, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ARIZONA DEPARTMENT OF ECONOMIC ) Rule 103(G) Ariz. R. P.  
SECURITY, B.C., D.C., A.C., ) Juv. Ct., ARCAP 28)  
)  
Appellees. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. JD23197

The Honorable Joan M. Sinclair, Judge

**AFFIRMED**

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Christina Phillips, Maricopa County Public Advocate Mesa  
By Suzanne W. Sanchez, Deputy Public Advocate  
Attorneys for Appellant

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

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**B R O W N**, Judge

¶1 Constance C. ("Mother") appeals the juvenile court's order finding that the Arizona Department of Economic Security ("ADES") met its burden of proving the allegations of its

dependency petition relating to Mother's three children. Mother argues that the court's order is deficient because it does not include findings of fact. For the following reasons, we affirm.

#### **BACKGROUND**

¶12 Mother has three children, B.C., D.C., and A.C. ("the children") who were born in 1996, 2002, and 2011, respectively.<sup>1</sup> In September 2012, Child Protective Services ("CPS") received a report that Mother had been selling prescription medications in her children's presence. The report also alleged that Mother had made B.C. deliver medications to strangers. As part of CPS's investigation, Mother tested positive for methamphetamine ("meth"). CPS then placed the children with their maternal grandparents for thirty days.

¶13 At the request of CPS, Mother participated in substance abuse treatment through TERROS. There, she struggled to acknowledge her substance-abuse problem, indicating that she was not addicted to meth and only used socially.

¶14 In January 2013, CPS received a second report on Mother. The report alleged that she had taken eight sleeping pills in D.C.'s presence, causing the child to sleep with Mother to ensure Mother did not stop breathing. CPS met with D.C. and verified the report. On February 4, 2013 CPS held a team

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<sup>1</sup> Neither Mark V. (B.C.'s father) nor Frederick P. (D.C. and A.C.'s father) is a party to this appeal.

decision-making meeting with Mother. During the meeting, Mother blamed one of the children for CPS's involvement and admitted to using meth in December 2012. CPS took the children into temporary physical custody and again placed them with their maternal grandparents. ADES filed a petition alleging the children were dependent because Mother (1) neglected the children due to substance abuse, (2) failed to provide a safe and stable home environment, and (3) neglected the children due to criminal activity.

¶15 At the dependency hearing, evidence was presented regarding Mother's substance abuse. Mother, who was age thirty-three at the time of the hearing, has had a history of substance abuse involving meth, starting at age fifteen. Mother also admitted to selling prescription drugs on at least one occasion. At any given time since the age of fifteen, Mother's longest period of sobriety was approximately two years. Despite Mother's history of substance use, she consistently maintained that she does not have a meth addiction.

¶16 At the conclusion of the hearing, after noting it had reviewed all the exhibits and carefully listened to the testimony, the court found "that the allegations of the petition are true by a preponderance of the evidence[;] these children are dependent as to their Mother based on neglect due to substance abuse." The court explained that although it was not

persuaded regarding the allegation of criminal activity, Mother had "failed to maintain a normal parent-child relationship" with B.C. The court's primary concern, however, was substance abuse. Shortly after giving its ruling, the court addressed the need for an array of services, noting its ongoing concerns about Mother's substance abuse problem:

Okay. So, you need to do the services. I want you to participate in all of them. [You've] got to show me you're clean, going to stay clean; you're committed to your sobriety. I understand your position is that you're not really addicted, but I can tell you that I have a much broader viewpoint of what addicted means. And frankly, if you've used a substance, even recreationally, for half of your life and it's caused us to be here today with all of this going on, I'd say that's a huge problem in your life. So, whether you call it addicted or not, . . . I think it's an issue you need to work on, okay.

¶17 The court later issued a signed minute entry stating the following:

THE COURT FINDS, pursuant to the Rules of Procedure for the Juvenile Court, that the allegations of the petition are true by a preponderance of the evidence and the children . . . are dependent as to [M]other as defined by the Arizona Revised Statutes.

IT IS ORDERED making [the children] wards of the Court as dependent children committed to the care, custody and control of the Arizona Department of Economic Security.

Mother's timely appeal followed.

## DISCUSSION

¶18 Mother argues that the juvenile court's dependency order failed to comply with Rule 55(E) of the Arizona Rules of Procedure for Juvenile Court ("Rule 55(E)"), which requires the court, in a signed order or a minute entry, to "[s]et forth specific findings of fact in support of a finding of dependency and adjudicate the child dependent." Mother asserts that the court's order does not comply with Rule 55(E) because it contains no findings of fact.<sup>2</sup> ADES counters that Mother waived her argument because she failed to challenge the sufficiency of the order in the juvenile court, and even if the waiver rule is not applied, any possible error did not deprive Mother of a fair hearing.

¶19 "We generally do not consider objections raised for the first time on appeal." *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, 452, ¶ 21, 153 P.3d 1074, 1081 (App. 2007). "This is particularly so as it relates to the alleged lack of detail in the juvenile court's findings." *Id.* Alleged errors should be called to the juvenile court's attention to permit the court to correct alleged errors, "thereby perhaps avoiding needless appellate delay and the wasted judicial effort necessarily involved if a different rule were applied." *Bayless*

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<sup>2</sup> Ariz. Rev. Stat. (A.R.S.) § 8-844(C)(ii) also requires the court during a dependency adjudication hearing to state "[t]he factual basis for the dependency."

*Inv. & Trading Co. v. Bekins Moving & Storage Co.*, 26 Ariz. App. 265, 271, 547 P.2d 1065, 1071 (1976). Under ordinary circumstances, a party may not "sit back and not call the trial court's attention to the lack of a specific finding on a critical issue, and then urge on appeal that mere lack of a finding on that critical issue as a ground[] for reversal." *Id.*

¶10 Here, if Mother had concerns about the adequacy of the juvenile court's factual findings, she should have brought those concerns to the attention of the juvenile court. Because she did not do so, Mother has waived her ability to challenge the sufficiency of the court's findings on appeal. See *Christy C.*, 214 Ariz. at 452, ¶ 21, 153 P.3d at 1081 (declining to address appellant's challenge to the juvenile court's order because appellant had not asked the court for more specific findings and raised the challenge for the first time on appeal).

¶11 Mother asserts nonetheless that there is no meaningful opportunity for a party to object to a court's dependency order, other than to immediately appeal, and therefore she cannot have waived her challenge to the sufficiency of the court's findings. While Mother is correct that she must file her notice of appeal pursuant to Ariz. R.P. Juv. Ct. Rule 104(A) within 15 days of the signed minute entry, pursuant to Ariz. R.P. Juv. Ct. Rule 103(F)(2), the trial court retains jurisdiction to rule on "issue[s] [that] would be in furtherance of the appeal." Thus,

Mother could have objected by filing an appropriate motion asking the juvenile court to amend its order and make specific findings of fact. Pursuant to the court's authority under Rule 103(F)(2), it could have amended its minute entry to include the findings it made at the dependency hearing and comply with Rule 55(E). Therefore, we disagree that Mother's only avenue to challenge the trial court for failure to comply with Rule 55(E) was to appeal.

¶12 Even if she did not waive her argument, Mother has failed to meet her burden of establishing reversible error. The Arizona Constitution provides that "[n]o cause shall be reversed for technical error in pleadings or proceedings when upon the whole case it shall appear that substantial justice has been done." Ariz. Const. art. VI, § 27. Consistent with this constitutional provision, in the context of rules of procedure for the juvenile court, we have found that failure to comply with those rules "does not necessarily require a reversal." *Monica C. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 89, 94, ¶¶ 21-22, 118 P.3d 37, 42 (App. 2005). "Instead, noncompliance with the rules falls under either the harmless error (if an objection was made) or fundamental error (if no objection was made)

framework." *Id.* As Mother failed to object, we address whether fundamental error occurred.<sup>3</sup>

¶13 To establish fundamental error, Mother has the burden of showing that the juvenile court's failure to include specific factual findings in its written order "'goes to the foundation of [her] case, takes away a right that is essential to [her] defense, and is of such magnitude that [she] could not have received a fair trial.'" *Monica C.*, 211 Ariz. at 94, ¶ 24, 118 P.3d at 42 (quoting *State v. Henderson*, 210 Ariz. 561, 568, ¶ 24, 115 P.3d 601, 608 (2005)). Additionally, Mother must show that she was prejudiced by the error. *Henderson*, 210 Ariz. at 568, ¶ 25, 115 P.3d at 608.

¶14 After the half-day evidentiary hearing, the court made its ruling from the bench, referencing the testimony regarding Mother's substance abuse, the history of her interactions with CPS, and her unsteady relationship with B.C. The court also pointed to the "substance abuse[,]. . . the strained relationship with the oldest child[,] and [] the father coming and going from the home." Given that the court made findings of

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<sup>3</sup> Application of waiver is not an absolute principle and may be suspended in "extraordinary circumstances." See *Trantor v. Fredrikson*, 179 Ariz. 299, 300, 78 P.2d 657, 658 (1994) ("[A]bsent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal" because "a trial court and opposing counsel should be afforded the opportunity to correct any asserted defects[.]"). The court in *Trantor* suggested that "extraordinary circumstances" is akin to applying a fundamental error analysis. *Id.*



fact on the record during the dependency hearing, a point Mother does not dispute, we conclude that Mother cannot establish prejudice, even assuming she could establish the existence of fundamental error. Therefore, we find no reversible error.

¶15 Notwithstanding our decision to affirm the juvenile court's dependency order, we urge strict compliance with Rule 55(E). See *Ruben M. v. Arizona Dep't of Econ. Sec.*, 230 Ariz. 236, 240, ¶ 24, 282 P.3d 437, 441 (App. 2012) ("The primary purpose for requiring a court to make express findings of fact and conclusions of law is to allow the appellate court to determine exactly which issues were decided and whether the lower court correctly applied the law."). The requirement that the juvenile court include specific findings of fact in a signed order or a minute entry is prevalent throughout the rules that govern the procedures for handling dependency and termination hearings. See Ariz. R.P. Juv. Ct. 50-66. Moreover, in addition to aiding appellate review, the inclusion of specific findings establishes a baseline against which the juvenile court can measure the progress of a parent's efforts to regain custody of his or her child. See e.g., A.R.S. § 8-533(A)(8)(c) (describing as a partial ground for termination that "the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement"); cf. *Reid v. Reid*, 222 Ariz. 204, 209, ¶ 18, 213 P.3d 353, 358 (App. 2009) ("The rationale for

this requirement is not simply to aid appellate review . . . but also to provide the family court with a necessary 'baseline' against which to measure any future petitions by either party based on "changed circumstances.").

**CONCLUSION**

¶16 Based on the foregoing, we affirm the juvenile court's dependency order.

\_\_\_\_\_/s/\_\_\_\_\_  
MICHAEL J. BROWN, Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
ANDREW W. GOULD, Presiding Judge

\_\_\_\_\_/s/\_\_\_\_\_  
DONN KESSLER, Judge