

NOTICE: NOT FOR PUBLICATION.
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

Alicia L., Appellant,

v.

Arizona Department of Economic Security, M.L., Appellees.

No. 1 CA-JV 13-0168
FILED 12-10-2013

Appeal from the Superior Court in Maricopa County
No. JD510324
The Honorable Brian K. Ishikawa, Judge

AFFIRMED

COUNSEL

Office of the Maricopa County Public Advocate, Mesa
By Suzanne W. Sanchez

Counsel for Appellant

Arizona Attorney General, Tucson
By Erika Z. Alfred

Counsel for Appellees

MEMORANDUM DECISION

Judge Patricia A. Orozco delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Samuel A. Thumma joined.

O R O Z C O, Judge:

¶1 Alicia L. (Mother) appeals from the juvenile court's (1) denial of her motion to set aside and (2) the order terminating her parental rights to her son M.L. (Child). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In July 2012, Child was taken to the hospital with a burn allegedly caused by a crack cocaine pipe. At the time, Child was less than two years old. Shortly thereafter, Arizona Department of Economic Security (ADES) filed a Dependency Petition alleging Mother's inability to care for the child due to neglect and Mother's substance abuse. On July 31, 2012 the juvenile court found Child dependant as to Mother and adopted a case plan of family reunification. ADES offered Mother a myriad of services to assist with the case plan.

¶3 After a case plan change, ADES moved to terminate Mother's parental rights in March 2013. In its motion, ADES alleging that Mother had history of chronic substance abuse that would "continue for a prolonged indeterminate period" and Child had been in out-of-home placement for six months or longer and Mother had "substantially neglected or willfully refused" to remedy the circumstances that caused Child's out-of-home placement. ADES also alleged that termination of Mother's parental rights would benefit Child because it would allow Child to gain permanency through adoption. The juvenile court set the matter for mediation and a pretrial conference on May 21, 2013.

¶4 After Mother failed to attend both the mediation and the pretrial conference, the juvenile court found that Mother had been properly served with notice of both the mediation and the hearing, had failed to appear without good cause and was previously provided a Form

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3.¹ The hearing proceeded in Mother's absence but with mother's court-appointed counsel present. The ADES case manager testified. After reviewing the evidence presented including progress reports, the juvenile court found by clear and convincing evidence that Mother has been unable to discharge her parental responsibilities because of a history of chronic drug abuse and reasonable evidence existed for the court to find that the condition would continue for a prolonged, indeterminate period. The court also found Child had been in out-of-home placement for six months or longer and Mother had substantially neglected or willfully refused to remedy the circumstances that caused Child's out-of-home placement. Furthermore, the court found termination to be in Child's best interest.

¶5 Mother filed a timely notice of appeal from the severance order. On the same day, Mother also moved to set aside the termination order arguing she had good cause for her failure to appear. The juvenile court thereafter denied the motion to set aside. Mother did not file a supplemental or subsequent notice of appeal challenging that denial. We have jurisdiction for the issues set forth in the notice of appeal pursuant to Arizona Revised Statute (A.R.S.) §§ 8-235 (2007) and 12-120.21 (2003). As discussed *infra*, we do not have jurisdiction over the denial of the motion to set aside.

DISCUSSION

I. Motion to Set Aside

¶6 Mother challenges the juvenile court's order denying her motion to set aside arguing she established good cause for her nonappearance. Pursuant to Arizona Rule of Procedure for the Juvenile Court 104(B), a notice of appeal must "designate the final order or part thereof appealed from." This court lacks jurisdiction over issues not included in a notice of appeal. *Lee v. Lee*, 133 Ariz. 118, 124, 649 P.2d 997, 1003 (App. 1982) (collecting cases). Here, Mother's notice of appeal

¹ Form 3 admonishes a parent that "[i]f you fail to attend the . . . Termination Pre-trial Conference . . . without good cause, the Court may determine that you have waived your legal rights and admitted the grounds alleged in the motion/petition for termination. The Court may go forward with the Termination Adjudication Hearing in your absence and may terminate your parental rights to your child based on the record and the evidence presented." Ariz. R.P. Juv. Ct., Form 3.

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specifically states she is appealing from the termination order. Furthermore, she could not have appealed from the motion to set aside when she filed her notice of appeal because the juvenile court had not yet ruled on her motion.

¶7 Nevertheless, Mother argues that we have jurisdiction over this issue because the “motion to set aside is not a separate appealable order.” However, an order granting or denying a motion to set aside a severance order is appealable as a “special order made after final judgment.” *See* A.R.S. § 12-2101.A.2 (2011). As such, Mother should have filed a separate notice appealing the court’s ruling on the motion to set aside.

¶8 Because Mother did not file a separate notice of appeal as to the juvenile court’s denial of her motion to set aside, we do not have jurisdiction to review that order.

II. Grounds for Severance

¶9 Next, Mother contends the juvenile court did not make sufficient findings of fact to support severance based on the substance abuse grounds as required by A.R.S. § 8-533.B.3. *See Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, 95, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). As applicable here, the juvenile court may terminate the parent-child relationship when finding, by clear and convincing evidence, of at least one of the statutory grounds set forth in A.R.S. § 8-533. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 249, ¶ 12, 995 P.2d 682, 685 (2000).

¶10 In this case, Mother does not challenge the juvenile court’s termination of her parental rights pursuant to A.R.S. § 8-533.B.8.6, the length of time in out-of-home care. Nor does she challenge the juvenile court’s finding that severance would be in Child’s best interests. *See* A.R.S. § 8-533.B. Because an adequate and sufficient independent basis exists to justify severance, which were not challenged, we need not address the statutory basis that is challenged. *See Michael J.*, 196 Ariz. at 251, ¶ 27, 995 P.2d at 687.

¶11 Thus, we need not decide whether the juvenile court abused its discretion in granting severance based on Mother’s substance abuse.

CONCLUSION

¶12 For the above stated reasons, we find this court lacks jurisdiction over Mother’s claim regarding the motion to set aside and

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affirm the juvenile court's order terminating the parent-child relationship,
based on Child's length of time in out-of-home care.



Ruth A. Willingham · Clerk of the Court
FILED : mjt