



DIVISION ONE
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 RUTH A. WILLINGHAM,
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 BY: sls

IN THE COURT OF APPEALS
 STATE OF ARIZONA
 DIVISION ONE

DENESE M.,)	Court of Appeals
)	Division One
Petitioner,)	No. 1 CA-SA 12-0139
)	
v.)	Maricopa County
)	Superior Court
THE HONORABLE MARK F. ACETO,)	No. JD509509
Judge of the SUPERIOR COURT OF)	
THE STATE OF ARIZONA, in and for)	DEPARTMENT D
the County of MARICOPA,)	
)	
Respondent Judge,)	
)	
STATE OF ARIZONA and J.L.,)	
)	
Real Party in Interest.)	DECISION ORDER
)	

The court, Presiding Judge Patricia K. Norris, Chief Judge Lawrence F. Winthrop and Judge Donn Kessler, participating, has considered the petition for special action, the response to the petition and the appendices to the petition and the response. For the reasons that follow, the court determines that no reply is needed. The court accepts jurisdiction of the petition and grants relief.

Petitioner Denese M.¹ ("Mother") seeks special action relief from the trial court's minute entry order dated June 13, 2012 finding that her daughter, J.L., was dependent as to Mother.

¹ We have amended the caption of this case to preserve the privacy of Mother and the child at issue. All future pleadings in this Court should use this amended caption.

While we do not have a transcript of the June 13 hearing, both sides agree the trial court entered its order in part based on the affidavit of Lewis Lane, who claimed he was an employee of the Arizona Department of Economic Security ("DES") and was a specialist in the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1923 ("ICWA"). Lane averred that DES had made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family involved in this case, those efforts were not successful, and that continued custody of the child by Mother or an Indian custodian is likely to result in serious emotional or physical damage to the child. The parties also agree that Mother objected to the use of the affidavit, but the court overruled that objection.²

In its June 13 order, the court held that J.L. was dependent as to Mother, that clear and convincing evidence was presented that continued custody of J.L. by Mother is likely to result in serious emotional and physical danger to the child and that active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family but such efforts were unsuccessful. Accordingly, it made J.L. a ward of the court and committed J.L. to the care of DES

² The juvenile court also apparently relied on Lane's affidavit to find J.L. was dependent as to Father. Father, however, did not seek special action relief and we do not address the dependency as to Father.

outside of Mother's home. Mother then sought special action relief to vacate the dependency order and remand this matter for an evidentiary hearing at which she could cross-examine Lane.

A dependency order is appealable. *Yavapai County Juv. Action No. J-8545*, 140 Ariz. 10, 14, 680 P.2d 146, 150 (1984). However, we can accept jurisdiction over a special action from a dependency order because allowing an appeal to take its course while the child is in outside placement might not provide an adequate and speedy remedy to either Mother or J. *J.D.S. v. Franks*, 182 Ariz. 81, 84, 893 P.2d 732, 735 (1995); *J.A.R. v. Superior Court*, 179 Ariz. 267, 272, 877 P.2d 1323, 1329 (App. 1994). Given that J.L. has been placed outside Mother's home and the juvenile court has set a permanency planning hearing for July 20, 2012, we exercise that discretion here and accept jurisdiction of the petition.

The State concedes that the juvenile court's reliance on the Lane affidavit as to Mother was an abuse of discretion because it precluded Mother from cross-examining Lane. We agree. While nothing in ICWA or the Arizona Rules of Juvenile Procedure preclude use of an affidavit from an ICWA expert, due process includes the right to cross-examine adverse witnesses. *Maricopa County Juv. Action No. JS-7499*, 163 Ariz. 153, 158, 786 P.2d 1004, 1009 (App. 1989). Given that the juvenile court cannot order a dependency without, at a minimum, expert

