

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

CHRISTERPHER Z., *Appellant,*

v.

DEPARTMENT OF CHILD SAFETY, B.C., A.C., B.C., E.C., J.C., H.C.,
Appellees.

No. 1 CA-JV 16-0528
FILED 5-16-17

Appeal from the Superior Court in Maricopa County
No. JD530326
The Honorable Karen L. O'Connor, Judge

AFFIRMED

COUNSEL

Thomas A. Vierling, Phoenix
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Ashlee N. Hoffmann
Counsel for Appellee

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Paul J. McMurdie joined.

T H O M P S O N, Judge:

¶1 Christerpher Z. (father) appeals from the juvenile court’s finding that his children B.C., A.C., B.C., E.C., J.C., and H.C. (the children) were dependent as to him. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 In late September 2016, DCS and Phoenix police received a report that B.C. (age 8), E.C. (age 6), J.C. (age 3), and H.C. (age 2) had been left home alone. The police and DCS went to the home and found that there was no food for the children, the refrigerator was inoperable, and the home was unsafe due to exposed electrical wires. The children’s mother¹ (mother) returned home with B.C. (age 12) and A.B. (age 9), and father also came home. Mother and father repeatedly interfered with DCS investigators as they interviewed the children. Police arrested mother and father and cited them for child neglect. DCS removed the children from the home and filed a dependency petition.

¶3 At the preliminary protective hearing, the juvenile court appointed attorneys and guardians ad litem for mother and father due to concerns about their mental health. Both parents disrupted the proceedings and would not cooperate with their attorneys. The court noted that “[t]he parents maintain a philosophy that the court and DCS have no jurisdiction and are illegally acting against them and their children, or as they have said ‘property.’” DCS put services into place, including drug testing, psychological evaluations for both parents, and visitation.

¶4 The court held a pretrial hearing in October 2016. Prior to the hearing, father filed a pro per “Notice” with the court demanding a jury trial and threatening to charge the court \$25,000 for each day the court ordered him to appear. Father also filed several “Joint-Tenancy

¹ Mother is not a party to this appeal.

CHRISTERPHER v. DCS, et al.
Decision of the Court

Agreements” asserting that the children were his property, a pro per motion to dismiss arguing that the juvenile court had no jurisdiction over his “biological property,” and a “notice of dismissal of representation” stating he would charge the court \$100,000 “for each day that counsel tries to speak for me.” At the pretrial hearing, the court expressed concern about the parents’ statements and behavior in the courtroom and spoke to them “at length” about their right to counsel. Father’s attorney and guardian ad litem both asked to withdraw due to father’s lack of cooperation; the juvenile court denied the requests. The court advised the parents that if they became disruptive during the dependency hearing they would be asked to leave the courtroom.

¶5 The court held a contested dependency hearing on November 21, 1017. At the beginning of the hearing, father’s attorney advised the court that father’s guardian ad litem, Ms. Canizales, was running late. The court proceeded with the hearing, and advised the parents that if they disturbed the proceedings they would be asked to leave the courtroom. Father’s attorney requested the court to allow father to represent himself and appoint her as advisory counsel. The court stated it was denying the request for the same reasons the court had previously denied mother’s attorney’s request to withdraw.² The court asked whether there were any objections to the state’s exhibits. Father’s attorney took no position, but father attempted to object. The court told father he was not allowed to make objections because he was represented. Father repeatedly tried to continue talking and the court warned him that if he spoke again he would be asked to leave. (Id. at 9). Father persisted with his efforts to speak, and the court had both parents removed from the courtroom. The court found that “Mother and Father have voluntarily chose[n] to disrupt the proceedings and therefore have waived their right to be present at [the dependency hearing].” The hearing proceeded and the juvenile court found, based on the evidence, that the allegations in the dependency petition were true and the children were dependent as to both mother and father. Ms. Canizales appeared after the court ruled but prior to the end of the hearing. She

² The court denied mother’s attorney’s motion to withdraw (and motion to reconsider that ruling) because “Mother is choosing to not engage with the court to determine a waiver of counsel,” and “unless the court finds Mother knowingly, intelligently and voluntarily waives her right to counsel, she has the right to have counsel represent her at all times during the dependency hearing.”

CHRISTERPHER v. DCS, et al.
Decision of the Court

informed the court that she had nothing productive to add because she had not been able to communicate with father about the case.

¶6 Father timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 8-235(A) (2014), 12-120.21(A)(1) (2016), and 12-2101(A)(1) (2016).³

DISCUSSION

¶7 Father first argues that the juvenile court abused its discretion by 1) refusing to let him represent himself, 2) removing him from the courtroom at the start of the dependency hearing, and 3) proceeding with the dependency hearing without his guardian ad litem.

¶8 We review the juvenile court's decision denying a parent's self-representation request for an abuse of discretion. *See State v. McLemore*, 230 Ariz. 571, 575, ¶ 15, 288 P.3d 775, 779 (App. 2012) (citations omitted). The appointment of counsel for an indigent parent in a dependency proceeding is required by Arizona law. *See* A.R.S. § 8-221(B) (2014) ("If a . . . parent . . . is found to be indigent and entitled to counsel, the juvenile court shall appoint an attorney to represent the [parent] . . . "). Further, "[b]ecause A.R.S. § 8-221(B) implements a due process right, the standard for waiver of counsel under the statute is not different than it is for any other constitutional right. The waiver of constitutional rights is not easily presumed." *Daniel Y. v. Ariz. Dept. of Econ. Sec.*, 206 Ariz. 257, 260, ¶ 15, 77 P.3d 55, 58 (App. 2003). In the criminal context, "[w]hether a defendant can make an intelligent waiver depends on the totality of the facts and the circumstances of the case. Factors the court can consider include a defendant's background and experience; any current or past problems relating to mental competency[,] his understanding of his constitutional rights and the role of counsel within the legal system." *State v. Mott*, 162 Ariz. 452, 458, 784 P.2d 278, 284 (App. 1989) (citations omitted). Before a finding that a defendant has waived the right to counsel can be made, the court must advise him about the dangers of self-representation and the difficulties it presents. *Daniel Y.*, 206 Ariz. at 261, ¶ 15, 77 P.3d at 58 (citation omitted).

¶9 We find no abuse of discretion. The juvenile court spoke to father at length about his right to counsel at the pretrial conference. The court later found that father had chosen not to participate with the court in

³ We cite the current version of the applicable statute unless revisions material to this decision have occurred since the events in question.

CHRISTERPHER v. DCS, et al.
Decision of the Court

a way that would allow the court to find a knowing, intelligent and voluntary waiver of his right to an attorney under A.R.S. § 8-221(B).

¶10 Father's statements and behaviors in court, as well as his proper filings threatening the court with sanctions and calling his children "property," demonstrated that he lacked an understanding of the dependency proceedings and the roles of DCS, the juvenile court, and his attorney in those proceedings. The juvenile court also had legitimate concerns about father's mental competency based on both DCS's observations and the court's own observations. Based on a totality of the circumstances here, we find no abuse of discretion in the juvenile court's decision denying father's request to represent himself. *See Mott*, 162 Ariz. at 458, 784 P.2d at 284. Father cites no authority for his argument that the juvenile court abused its discretion by removing him from the courtroom after giving him numerous warnings not to disrupt the proceedings. (see OB at 8). Nonetheless, we find no abuse of discretion. *See State v. Delvecchio*, 110 Ariz. 396, 400, 519 P.2d 1137, 1141 (1974) ("A trial judge has not only the right but the responsibility of seeing that trials are conducted properly and without disruption When a defendant insists upon disobeying the rules of the court, the judge may, among other measures, remove the defendant from the courtroom.").

¶11 We also find no abuse of discretion in the court's decision to proceed to disposition in the absence of father's guardian ad litem, Ms. Canzales, who was late to the hearing. Father's attorney, Ms. Carroll, was present and represented father during the entire dependency hearing. Father did not object to the dependency hearing proceeding without Ms. Canzales; he has therefore waived this argument on appeal. *See Trantor v. Fredrikson*, 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994). Moreover, even if father had not waived this argument, he does not show how he was prejudiced by his guardian ad litem's absence. *See Monica C. v. Ariz. Dept. of Econ. Sec.*, 211 Ariz. 89, 94-95, ¶¶ 26-27, 118 P.3d 37, 42-43 (App. 2005) (to establish fundamental error in a severance case a parent must demonstrate prejudice). When Ms. Canzales arrived late to the hearing, she informed the court that she had "nothing productive" to add to the case because she had not been able to effectively communicate with father about the case.

¶12 Father next argues that the evidence was insufficient to support a finding that the children were dependent as to him. This court "will not disturb the juvenile court's ruling in a dependency action unless the findings upon which it is based are clearly erroneous and there is no

CHRISTERPHER v. DCS, et al.
Decision of the Court

reasonable evidence supporting them.” *Pima Cty. Juv. Dependency Action No. 118537*, 185 Ariz. 77, 79, 912 P.2d 1306, 1308 (App. 1994) (citations omitted). The allegations of the dependency petition must be proven by a preponderance of the evidence. *Id.* (citation omitted).

¶13 Under A.R.S. § 8-201(15)(a)(i) (Supp. 2016), a dependent child is one “[i]n need of proper and effective parental care and control and who has no parent or guardian, or one who has no parent or guardian willing to exercise or capable of exercising such care and control.” A child may also be adjudicated dependent if the child’s home is unfit due to abuse or neglect by a parent. A.R.S. § 8-201(15)(a)(iii).

¶14 Reasonable evidence supported the juvenile court’s finding of dependency. Police and DCS found the four younger children at home alone without food and in hazardous conditions. Father interfered with DCS’s investigation and subsequently refused to participate in a scheduled meeting with DCS. He also refused to provide a rule out drug screen. Father argues that the evidence supporting the juvenile court’s decision was “stale” because the court relied on DCS’s report to the court dated September 29, 2016 and a Phoenix police report dated September 22, 2016. However, the dependency hearing took place less than two months after DCS completed its report to the juvenile court and filed the dependency petition. There was no evidence at trial that any of the conditions causing the children’s removal had been rectified, and the only service father had participated in by the time of the dependency hearing was visitation even though he had been asked to participate in a psychological evaluation and random drug testing. Accordingly, the juvenile court’s finding that the children were dependent was not clearly erroneous.

CONCLUSION

¶15 For the foregoing reasons, we affirm the juvenile court’s

CHRISTERPHER v. DCS, et al.
Decision of the Court

finding that the children were dependent.



AMY M. WOOD • Clerk of the Court
FILED: JT