

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



DIVISION ONE
FILED: 05-25-2010
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BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ERIC K. and GLORIA K.,) 1 CA-JV 09-0210
)
Appellants,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz.R.P. Juv Ct.;
SECURITY, KATHY B.,) Rule 28 ARCAP)
)
Appellees.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JA41421

The Honorable Jeffrey A. Rueter, Judge Pro Tempore

AFFIRMED

Eric K. and Gloria K.
Appellants *in propria persona*

Phoenix

O R O Z C O, Judge

¶1 Eric and Gloria K. (collectively, Appellants) appeal the juvenile court's order denying their motion to reconsider the adoption of A.S. and A.S. (collectively, the Children). For the reasons that follow, we affirm the juvenile court's order.

FACTUAL AND PROCEDURAL HISTORY

¶2 On September 9, 2007, Appellants filed a petition for leave to adopt the Children, their grandchildren. On July 31, 2008, at a status conference on Appellants' petition to adopt, both the Arizona Department of Economic Security (ADES) and a guardian ad litem for the children supported a competing petition for adoption by the Children's then foster mother, Kathy B. ADES moved to dismiss Appellants' petition to adopt. The court's minute entry reflects that ADES had given its consent for Kathy B. to adopt the Children in the competing adoption proceedings, and that ADES would not consent to the adoption by Appellants. After taking the matter under advisement, the court granted ADES' motion to dismiss Appellants' petition to adopt.

¶3 Appellants filed a "Motion to Review and And [sic] Reconsider Adoption" on October 13, 2009 (Motion to Reconsider). After reviewing the motion, the court stated the adoption of the Children by Kathy B. had been granted on August 2, 2008. As such, Arizona Revised Statutes (A.R.S.) section 8-123 (2007) precluded Appellants from attacking the adoption decree and denied Appellants' motion.

¶4 Appellants timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235.A (2007), 12-120.21.A.1 and -2101.B (2003).

DISCUSSION

¶5 Appellants raise various issues on appeal pertaining to (1) error by the juvenile court in dismissing their Motion to Reconsider; (2) the constitutionality and fairness of the proceedings and applicable statutes; (3) the best interests of the children; and (4) the lack of representation by their attorney.¹

¶6 Any irregularities, with the exception of jurisdiction, in an adoption proceeding are deemed cured after one year from the date the adoption decree is entered. A.R.S. § 8-123; *Goclanney v. Desrochers*, 135 Ariz. 240, 242, 660 P.2d 491, 493 (App. 1982) (explaining that jurisdiction is not an "irregularity" under A.R.S. § 8-123 and therefore permitted the mother to attack the jurisdiction of the court that entered the adoption decree).

¶7 In this case, the adoption decree was entered August 2, 2008. Appellants filed their Motion to Reconsider on October 13, 2009, more than one year after the entry of the adoption decree. Assuming without deciding that there was error in the court's

¹ Both ADES and Kathy B. filed notices of nonparticipation in this appeal, indicating they would not file answering briefs in this matter. Appellants filed a "Reply to Notice Non-Participation and Motion to Vacate Adoption Consent" urging us to accept this as "conceding to the claims of this cause." Although we may treat Appellees' failure to file an answering brief as a confession of error as to any debatable issue, in our discretion, we decline to do so. See *Guethe v. Truscott*, 185 Ariz. 29, 30, 912 P.2d 33, 34 (App. 1995).

dismissal of Appellants' petition to adopt, any irregularities in the adoption proceedings are deemed cured. A.R.S. § 8-123. Appellants do not contest the jurisdiction of the juvenile court that entered the adoption decree. See *Goclanney*, 135 Ariz. at 242, 660 P.2d at 493. Accordingly, we find no error in the juvenile court's dismissal of Appellants' Motion to Reconsider.

CONCLUSION

¶18 For the foregoing reasons, we affirm the juvenile court's order denying Appellants' Motion to Reconsider.

/S/

PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

DANIEL A. BARKER, Judge

/S/

LAWRENCE F. WINTHROP, Judge