DIVISION ONE
FILED: 09/23/2010
RUTH WILLINGHAM, ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

COURTNEY N.,	)	No. 1 CA-JV 10-0043
	)	
Appellant,	)	DEPARTMENT B
	)	
v.	)	**MEMORANDUM DECISION**
	)	
ARIZONA DEPARTMENT OF ECONOMIC SECURITY, M.C., and E.C.,	)	(Not for Publication – Ariz. R.P. Juv. Ct. 103(G); ARCAP 28)
	)	
Appellees.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. JD15744

The Honorable Aimee Anderson, Judge

AFFIRMED

Courtney N. Phoenix
In Properia Persona

Terry Goddard, Arizona Attorney General Mesa
By Amanda Holguin, Assistant Attorney General
Attorneys for Appellee Arizona Department of Economic Security

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J O H N S E N, Judge

¶1 Courtney N. ("Appellant") appeals the superior court's order denying her request for physical custody of her two great-

grandchildren and dismissing her as a party in their dependency proceedings.

FACTS AND PROCEDURAL HISTORY

¶2 M was born in March 2007. Child Protective Services ("CPS") removed him from the custody of his mother ("Mother") in May 2007 because of Mother's mental health issues. CPS placed M with Appellant when he was about three months old. E was born in March 2008 and immediately was placed with Appellant.

¶3 Having accepted physical custody of M and E, Appellant frequently permitted the children to stay at the home of another woman without CPS approval or a background check. Through her church, Appellant met the children's current foster parents ("Foster Parents"). Shortly after E was born, Foster Parents and Appellant began discussing the possibility that Foster Parents would become the permanent placement for both children. Appellant eventually contacted the CPS case manager and indicated that she was overwhelmed with the children and needed help. In August 2008, Appellant wrote an email to the case manager saying that she prayed that Foster Parents could "become the foster/adopt parents" for M and E. That same month, CPS placed the children with Foster Parents.

¶4 Foster Parents allowed Appellant regular visits with the children, but when Foster Parents reduced her visits, Appellant decided she wanted the children returned to her. In

June 2009, Appellant filed a motion for change in physical custody and a motion to intervene in the dependency. In August 2009, the superior court granted the motion to intervene over the objection of all other parties. After an evidentiary hearing, the court denied Appellant's motion for change of physical custody.

¶5 Appellant then filed a "Request for Review of Evidentiary Trial and Motion of Change in Physical Custody." The court treated the filing as a motion for reconsideration, and denied it. Appellant next filed a document titled "Reasonable Efforts Mandates and Motion for Physical Change of Custody." At a subsequent report and review hearing, counsel for the Arizona Department of Economic Services ("ADES") orally moved to dismiss Appellant as a party and objected to the motion for change in custody. The court denied Appellant's motion for change of custody and granted ADES's motion to dismiss her as a party.

¶6 Appellant timely appealed from the court's orders. We have jurisdiction of her appeal from the dismissal of her intervention pursuant to Arizona Revised Statutes ("A.R.S.") section 8-235(A) (2007); *Bechtel v. Rose*, 150 Ariz. 68, 71, 722 P.2d 236, 239 (1986) (denial of motion to intervene is appealable final order).

DISCUSSION

A. Motion to Dismiss Intervention.

¶7 Appellant's notice of appeal states she is appealing the ruling dismissing her as a party to the dependency proceeding, but her briefs contain no legal authority supporting the proposition that the court erred in entering that order.[1]

¶8 Because we review the superior court's denial of a motion to intervene for an abuse of discretion, *id.* at 72, 722 P.2d at 240, we will apply the same standard in reviewing the dismissal of Appellant's intervention. *Bechtel* instructs that "grandparents should be allowed to intervene in their parentless grandchildren's dependency proceedings unless it would not be in the child's best interest." 150 Ariz. at 74, 722 P.2d at 242.[2] We have interpreted *Bechtel* to be "fundamentally a case about the best interests of the child." *William Z. v. Ariz. Dep't of*

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[1] Many of the factual assertions in Appellant's briefs are not supported by citations to the record. "We will not consider such unsupported assertions." *State v. 1810 E. Second Ave.*, 193 Ariz. 1, 2 n.2, 969 P.2d 166, 167 n.2 (App. 1997). Moreover, Appellant attached several documents to her briefs, but we only consider evidence presented to the superior court. *See GM Dev. Corp. v. Cmty. Am. Mortg. Corp.*, 165 Ariz. 1, 4, 795 P.2d 827, 830 (App. 1990).

[2] The court in this case terminated Mother's rights to the children just prior to denying Appellant's motion for change of custody. Termination proceedings against the father of the children also were underway.

Econ. Sec., 192 Ariz. 385, 388, ¶ 13, 965 P.2d 1224, 1227 (App. 1998).

¶9 In denying Appellant's motion for custody and in finally dismissing her as a party, the superior court made specific findings about the children's best interests. Our review of the record persuades us that substantial evidence supported the court's findings.

¶10 According to the record, CPS had custody of Appellant's five grandchildren years ago and agreed to place them in Appellant's physical custody. Appellant at some point asked CPS to remove the children, however, because of her health. At the time of trial, two of her grandchildren remained in CPS custody; one of them was with Appellant, but her 16-year-old granddaughter was no longer living with her because the granddaughter had a daughter of her own and Appellant had not felt she "could keep her safe" when she was 13 years old. Mother, who was one of Appellant's granddaughters and had been raised in part by Appellant, testified that her siblings did not attend school while they were in Appellant's custody, and she did not want her own children "placed with [Appellant] because of the past neglect that [she] and [her] siblings had suffered and as children the abuse that we also suffered."

¶11 Regarding M and E, Appellant testified that she originally introduced Foster Parents "to CPS for the possibility

of their becoming maybe the permanent placement." She admitted that two of the reasons she had been looking for another family to take the children were her health (she suffers from fibromyalgia) and her age; she was 63 at the time of the evidentiary hearing. Foster Parents told the case manager that after E and M were placed with them, Appellant would pick up the children from daycare without letting them know. Moreover, Appellant represented to CPS that she was not married, when in fact she was, though separated, and a background check had not been performed on her husband. Finally, Appellant had told the case manager she felt overwhelmed when M and E were in her physical custody. The case manager testified that because of safety concerns, it would not be in the children's best interests to be returned to Appellant. By contrast, the case manager testified that Foster Parents "were an appropriate placement."

¶12 After hearing the evidence, the superior court made the following findings on the record:

> The Court finds that it clearly would not be in the best interests of either child to be removed from their current foster-adopt placement. The Court further finds that it would not be in their best interest to be placed back into the home of the maternal great grandmother, [Appellant].

Moreover, in its subsequent Findings of Fact, Conclusions of Law and Order, the court concluded that Appellant is "not an appropriate placement for" the children.

¶13 The record contains substantial evidence to support the court's finding of fact that the best interests of the children would not be served by returning them to the physical custody of Appellant. Accordingly, based on that conclusion, the court properly granted the motion to dismiss Appellant as an intervenor in the dependency. *See Bechtel*, 150 Ariz. at 74, 722 P.2d at 242 (intervention by grandparent should be denied if intervention would not be in the best interest of the child).

B. Motion for Change in Physical Custody.

¶14 Because we have affirmed the superior court's dismissal of Appellant as a party to the intervention, Appellant's appeal from the denial of her motion for change of custody is moot, and we need not address it.[3]

[3] Appellant argued that in denying her motion for change of physical custody, the superior court erroneously disregarded federal and state statutes that establish a preference for placement of dependent children with relatives. *See* 42 U.S.C. § 671(a)(19) (2006); *see also* A.R.S. § 8-514(B) (2007). Although these provisions establish a preference in favor of placement with a family member, they do not require placement with a relative; the best interests of the child remain paramount. *See, e.g., In Re S.P.*, 168 S.W.3d 197, 210-11 (Tex. App. 2005) (interpreting 42 U.S.C. § 671(a)(19)); A.R.S. § 8-845 (2007); *Antonio P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 402, 405, ¶ 12, 187 P.3d 1115, 1118 (App. 2008) (§ 8-514(B) is "a preference, not a mandate"). Therefore, even though placement

CONCLUSION

¶15 For the foregoing reasons, we affirm the superior court's order dismissing Appellant as a party to the dependency.[4]

/s/
DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/
MICHAEL J. BROWN, Judge

/s/
JOHN C. GEMMIL, Judge

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with relatives is preferred, the child's best interests remain paramount.

[4] We amend the caption to refer to the children by their initials.