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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 03/13/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

DIANA R.) No. 1 CA-JV 11-0176
)
Appellant,) DEPARTMENT E
)
) **MEMORANDUM DECISION**
v.)
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Ariz. R.P. Juv. Ct. 103(G);
SECURITY and ANGEL R., GABRIEL) ARCAP 28)
R., MATTHEW R., and NADIA R.)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. JD18137

The Honorable Joan Sinclair, Judge

AFFIRMED

Ann M. Williams
Attorney for Appellant

Tempe

Thomas C. Horne, Arizona Attorney General
By David M. Osterfeld, Assistant Attorney General
Attorneys for Appellee

Phoenix

H A L L, Judge

¶1 Diana R. (Mother) appeals the juvenile court's order severing her parental rights to Angel R., Gabriel R., Matthew R., and Nadia R. For the following reasons, we affirm.

FACTUAL¹ AND PROCEDURAL BACKGROUND

¶12 Mother is the biological mother of Angel, born in October, Gabriel, born in August, Matthew, born in June, and Nadia, born in February, (collectively, the children).²

¶13 In June 2009, the Arizona Department of Economic Security (ADES) filed a dependency petition, alleging that Mother neglected the children and left them in the care of other relatives the majority of their lives, and Mother was unable to parent due to homelessness and substance abuse of methamphetamines and marijuana.

¶14 The juvenile court found the children dependent as to Mother, committed them to the care, custody, and control of ADES, and made them temporary wards of the court. The court also issued a case plan of family reunification.

¶15 The court, however, changed the case plan to severance and adoption at a May 2011 hearing attended by Mother, due, in part, to Child Protective Services (CPS) specialist Elizabeth Cortopassi's recommendation for termination. Cortopassi stated

¹ We review the evidence and draw all reasonable inferences in the light most favorable to upholding the juvenile court's factual findings. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 282, ¶ 13, 53 P.3d 203, 207 (App. 2002).

² Angel's father, Mario Valenzuela, had his rights terminated, as did Matthew's father, Lucas McCord, Nadia's alleged father, Jose Ortiz-Contreras or John Doe, and Gabriel's alleged father, John Doe. John Doe is a fictitious name used when the identity of the father is unknown. Neither father is a party to this appeal.

that Mother had been noncompliant with a substance abuse program, random drug testing, counseling services, and parent-aide sessions. She also expressed concerns of Mother's ongoing and continued substance abuse and unaddressed mental-health issues. The court provided Mother with a Form 3 Notice to Parent in Termination Action.³

¶16 ADES moved for termination of Mother's parental rights, alleging Mother was unable to parent due to chronic and continuing substance abuse as well as the children being cared for in an out-of-home placement for a cumulative total period of nine months or longer.

¶17 On June 15, 2011, Mother attended a severance by motion hearing, during which the juvenile court set a pretrial conference for August 2, 2011 at 10:00 a.m.

³ Form 3 states in pertinent part:

You are required to attend all termination hearings. If you cannot attend a court hearing, you must prove to the Court that you had good cause for not attending. If you fail to attend the Initial Termination Hearing, Termination Pre-Trial Conference, Status Conference, or Termination Adjudication Hearing 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 evidence presented.

¶18 Mother failed to appear at the August 2, 2011 hearing. The juvenile court began the hearing at 10:21 a.m., twenty-one minutes after the scheduled hearing time. Mother's counsel informed the juvenile court that he had not had any contact with Mother since the last hearing. The court found that Mother had been served appropriately and had waived her rights by not appearing.

¶19 The juvenile court admitted exhibits and CPS Specialist Cortopassi testified that although ADES had made a diligent effort to provide Mother with reunification services, Mother had been largely non-compliant with after-care substance abuse services, drug testing, counseling, and parent-aide sessions. Cortopassi testified that it was in the children's best interests to terminate Mother's parental rights in order to provide the children with "permanency, support and stability." She stated that the children were residing in three licensed foster placements and those placements were the least restrictive given the needs of the children. The court terminated Mother's rights to the children due to her substance abuse and the children's out-of-home placement for nine months or longer.

¶10 Mother timely appealed. Mother also moved to set aside the default with the juvenile court in a separate motion. This court suspended the appeal and revested jurisdiction in the

juvenile court in order for the juvenile court to conduct any proceedings and rule on Mother's motion.

¶11 Mother argued in her motion to set aside that "CPS failed to send transportation in a timely manner and that she arrived at the court after the hearing had concluded." Mother included information in her motion that a caseworker confirmed that Mother had not been picked up for the hearing until 10:15 a.m. However, the caseworker stated that the transportation company reported it had been to Mother's residence at 9:10 a.m., "knocked on the door and the driver was told that no transportation had been ordered by the occupants." Mother subsequently contacted the transportation company's dispatcher and said that no one had been to her residence. Mother therefore requested the court set aside its ruling terminating her rights to the children.

¶12 ADES responded that the transportation company's notes stated that the driver arrived at 9:10 a.m. on August 2, and was informed that no one had ordered transportation. The driver, however, noted that he waited approximately ten minutes before leaving the residence. ADES argued that Mother's failure to appear at the pretrial conference did not constitute good cause or excusable neglect, pursuant to Arizona Rules of Civil Procedure 60(c), or Arizona Rules of Procedure for the Juvenile Court 65(C)(6)(c) and 66(D)(2). ADES further maintained that

Mother had been properly served, had notice of the hearing, and had previously been admonished about the consequences of her failure to appear. ADES also stated that Mother's attorney was present at the hearing and was given the opportunity to cross-examine the witness and make arguments and objections.

¶13 The juvenile court denied Mother's motion to set aside the judgment. It found that there was some dispute about whether the transportation arrived in a timely manner. However, the court stated that even assuming the transportation was not timely, Mother failed to provide good cause or excusable neglect. The court elaborated that:

While Mother may have relied on this transportation, it was her responsibility to get to court on time. She did not do that, nor did she contact her attorney to request to appear telephonically or to let the Court or her attorney know that she was running late. Mother was not hospitalized, incarcerated or otherwise physically incapable of attending court. She simply had transportation issues. This does not constitute good cause for not appearing in court on time for her hearing. Furthermore this also does not support a finding of excusable neglect sufficient to provide her with relief under Rule 60(c).

¶14 We have jurisdiction under Arizona Revised Statutes (A.R.S.) sections 8-235 (2007) and 12-120.21 (2003) and Arizona Rule of Procedure for the Juvenile Court 103(b).

DISCUSSION

¶15 Mother argues on appeal that the juvenile court erred by failing to hold a hearing before it denied her motion to set aside the judgment.

¶16 We review a juvenile court's finding of no good cause for failure to appear for an abuse of discretion. *Bob H. v. Ariz. Dep't of Econ. Sec.*, 225 Ariz. 279, 281-82, ¶ 9, 237 P.3d 632, 634-35 (App. 2010).

¶17 The juvenile court properly provided Mother with a Form 3 notice, which set forth the potential consequence of termination for failing to appear at a pre-trial conference. See also Ariz. R.P. Juv. Ct. 65(C)(6)(c) and 66(D)(2). The court additionally notified Mother of the scheduled August 2 pre-trial conference well in advance of the conference. Mother failed to appear, and, as the court later noted, she failed to notify her attorney or the court of her impending absence. Mother also failed to attempt to make alternative arrangements, such as asking the court if she could appear telephonically or requesting that the hearing be rescheduled.

¶18 Mother also contends that she was deprived "of her opportunity to be heard, to present evidence, and to contest the severance of her parental rights all because of CPS's failure to provide adequate and timely transportation to the hearing." We disagree. First, Mother's attorney attended the hearing and was

given the opportunity to cross-examine the witness, present evidence, and contest Mother's severance. Additionally, Mother moved for the court to set aside its judgment, and explained the circumstances surrounding her failure to attend the hearing. The court considered Mother's motion and her reason for not appearing at the pre-trial conference before it denied the request. See *Bob H.*, 225 Ariz. at 282, ¶¶ 11-12, 237 P.3d at 635 (Mother's excuse that she was required to arrange her own transportation to court was not sufficient to establish good cause for failing to appear).

¶19 Further, although Mother is arguing on appeal that the court erred by not holding a hearing regarding good cause, Mother failed to request such a hearing. Mother also failed to provide this court with any authority that a juvenile court must conduct an evidentiary hearing in order to determine whether the failure to appear constitutes good cause, and we are aware of no such authority. Moreover, Mother does not assert that she would have provided any additional explanation for her non-appearance had the court held a hearing.

¶20 We conclude that the juvenile court did not err by not holding an evidentiary hearing to determine whether Mother had good cause for failing to appear at the pre-trial conference, particularly when Mother did not request such a hearing. We

also hold that the juvenile court did not abuse its discretion in finding that Mother failed to appear without good cause.

CONCLUSION

¶21 For the foregoing reasons, we affirm.

_____/s/_____
PHILIP HALL, Judge

CONCURRING:

_____/s/_____
PATRICIA A. OROZCO, Presiding Judge

_____/s/_____
JOHN C. GEMMILL, Judge