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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 05/15/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

TARA G.,) No. 1 CA-JV 11-0196
)
Appellant,) DEPARTMENT E
)
v.) MEMORANDUM DECISION
)
ARIZONA DEPARTMENT OF ECONOMIC) (Not for Publication -
SECURITY, M.L., D.L., I.G.,) Ariz. R.P. Juv. Ct. 103(G);
) ARCAP 28)
Appellees.)
)
)

Appeal from the Superior Court in Mohave County

Cause No. B8015JD200904014

The Honorable Richard Weiss, Judge

SPECIAL ACTION JURISDICTION ACCEPTED; RELIEF DENIED

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J O H N S E N, Judge

¶1 Tara G. ("Mother") appeals the superior court's order
granting a motion by the Arizona Department of Economic Security

("ADES") to suspend her visits with three of her children. For the reasons that follow, we accept special action jurisdiction of Mother's appeal but deny relief, thereby affirming the superior court's order.

FACTS AND PROCEDURAL HISTORY

¶2 Mother has five children: M.L., S.L., D.L., I.G. and E.M.¹ On October 27, 2009, the superior court found all five dependent as to Mother. At the time, the case plan for all the children was family reunification concurrent with adoption by a relative. Mother was granted supervised visitation.

¶3 On September 28, 2010, ADES filed a motion to suspend Mother's visitation with her children, alleging that her behavior during the visits had grown increasingly aggressive and inappropriate and was adversely affecting the children. The court found Mother had violated the terms of her visitation agreement by behaving inappropriately, such as screaming and yelling at the children; that the children were upset by Mother's behavior; and that it was in the best interests of the children to suspend visitation. On March 23, 2011, Mother filed a motion to resume visitation. Mother cited her hard work on the case plan, her progress in counseling and the success of recent phone visits. Mother also noted that because the case

¹ We view the facts in the light most favorable to sustaining the superior court's order. *Maricopa County Juv. Action No. JD-5312*, 178 Ariz. 372, 376, 873 P.2d 710, 714 (App. 1994).

plan continued to be family reunification, she wished to continue to "build a relationship with her children" through visits. The court granted Mother's motion and ordered that supervised visits resume.

¶14 On July 22, 2011, an incident occurred that caused Child Protective Services ("CPS") to seek another suspension of Mother's visitation. Although Mother did not have visitation on that day, she believed E.M.'s father had made up a story about taking E.M. out of town to prevent her from seeing E.M. As a result, Mother went to the police station and persuaded an officer to question E.M.'s father at his work place and to search his home. E.M. was not at the home, but her father was able to show the officer proof that CPS had approved an out-of-state vacation for E.M. with the father's girlfriend. As a result of this incident, CPS administratively suspended Mother's visitation, citing "concern that had the child been [at her father's home], what would have occurred at that point."

¶15 On August 24, 2011, ADES filed a Motion to Continue Suspension of Mother's Visitation with M.L., S.L., D.L., I.G. and E.M. After a two-day hearing, the court suspended Mother's visits with M.L., D.L. and I.G., but denied the motion with regard to S.L.²

² While the motion was pending, the court dismissed the dependency as to E.M., releasing her from the wardship of the

¶6 Mother timely appealed the order.

DISCUSSION

A. Jurisdiction.

1. General principles.

¶7 Arizona Rule of Procedure for the Juvenile Court 103(A) provides that an aggrieved party may appeal to this court from "a final order of the juvenile court." Ariz. R.P. Juv. Ct. 103(A); Arizona Revised Statutes ("A.R.S.") section 8-235(A) (West 2012).³ Mother argues this court has jurisdiction over her appeal because the superior court's order was effectively an order entered pursuant to Arizona Rule of Procedure for the Juvenile Court 57, and because the order "had the practical effect of terminating visits." ADES argues the order was not entered pursuant to Rule 57, but does not otherwise contest that it was a final, appealable order. Regardless, we "have an independent duty to examine our own jurisdiction." *Riendeau v. Wal-Mart Stores, Inc.*, 223 Ariz. 540, 541, ¶ 4, 225 P.3d 597, 598 (App. 2010). Whether we have jurisdiction is a question of law that we review *de novo*. *Francisco F. v. Ariz. Dep't of*

court because her father had been awarded sole custody in the related family court case. She therefore was no longer subject to the motion.

³ Absent material revisions after the date of the events at issue, we cite a statute's current version.

Econ. Sec., 228 Ariz. 379, 381, ¶ 6, 266 P.3d 1075, 1077 (App. 2011).

2. Rule 57.

¶8 After removing a child from the home, ADES must make reasonable efforts to provide reunification services. A.R.S. § 8-846(A) (West 2012). This requirement is waived, however, if the court finds one of the aggravating circumstances listed in A.R.S. § 8-846(B)(1), including severe mental illness, by clear and convincing evidence. In such a situation, Rule 57 requires the court to hold a hearing and make findings in accordance with the procedure set out by the Rule.

¶9 We have held that a ruling on a Rule 57 motion is a final, appealable order. *Francisco F.*, 228 Ariz. at 381-82, ¶ 8, 266 P.3d at 1077-78. Mother argues that the court's order amounted to a "de facto finding" under Rule 57. The clear language of the Rule, however, contemplates a situation in which ADES ceases the overall process of reunification services, rather than suspends a single service. See Ariz. R.P. Juv. Ct. 57(A) (requiring the hearing to find that "[s]ervices . . . designed to facilitate the reunification of the family" are not required). The court in this case suspended visitation but did not modify any other services. Because the order was not made

pursuant to A.R.S. § 8-846 and Rule 57, we do not have jurisdiction on that basis.⁴

3. Termination of visitation.

¶10 An order terminating a parent's visitation rights is a final, appealable order because "it conclusively defines [a parent's] rights regarding visitation of her children: she is not to have any." *Maricopa County Juv. Action No. JD-5312*, 178 Ariz. 372, 374, 873 P.2d 710, 712 (App. 1994). Mother argues that, although the order here formally suspended her visitation, it "had the practical effect of terminating visits" because the case plan had changed to guardianship for two of the children and severance and adoption for the other.

¶11 "Because of the 'important and fundamental right to raise one's children,' we will not apply a 'narrow, technical conception of what constitutes a final order.'" *Francisco F.*, 228 Ariz. at 381, ¶ 7, 266 P.3d at 1077 (quoting *Yavapai County Juv. Action No. J-8545*, 140 Ariz. 10, 14, 680 P.2d 146, 150 (1984)). Instead, we consider "the practical effect that the . . . order would have on that right." *Maricopa County Juv. Action No. JD-5312*, 178 Ariz. at 374, 873 P.2d at 712. A final, appealable order is one that "disposes of an issue such that it

⁴ Because the superior court's order was not entered subject to Rule 57, we reject Mother's contention that the court abused its discretion by not entering written findings in compliance with the Rule.

conclusively defines the rights and/or duties of a party in a dependency proceeding in the juvenile court of this state." *Rita J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 512, 513, ¶ 4, 1 P.3d 155, 156 (App. 2000) (quoting *Yavapai County Juv. Action No. J-8545*, 140 Ariz. at 15, 680 P.2d at 151). An order of the juvenile court is interlocutory, however, "if it directs an inquiry into a matter of fact preparatory to a final decision and is not the final decision in the case." *Rita J.*, 196 Ariz. at 513, ¶ 8, 1 P.3d at 156 (quotations omitted).

¶12 Because of the importance of Mother's fundamental right to associate with her children, rather than decide whether the order suspending visitation is final and therefore appealable, we will exercise our discretion to consider the matter as a special action. See *State v. Perez*, 172 Ariz. 290, 292, 836 P.2d 1000, 1002 (App. 1992); see also A.R.S. § 12-120.21(A)(4) (West 2012) (jurisdiction for special actions).

B. The Superior Court Did Not Abuse Its Discretion by Granting the Motion to Suspend Mother's Visitation.

¶13 A parent should be denied visitation only "under extraordinary circumstances." *Maricopa County Juv. Action No. JD-5312*, 178 Ariz. at 375, 873 P.2d at 713. Nevertheless, in considering matters of visitation, the superior court "has broad discretion . . . because the trial judge is in the most favorable position to determine what is best for the children."

Id. (quotations omitted). We will not disturb the court's decision on the weight and effect of the evidence unless it is "clearly erroneous," and we will affirm the order "if there is any evidence to support" it. *Id.*

¶14 There is evidence in the record supporting the superior court's order suspending Mother's visitation. As the CPS case manager testified, Mother had a history of erratic and inappropriate behavior during visits with the children prior to the previous suspension of visitation. Mother's most recent psychological evaluation prior to entry of the order found she was "exhibiting psychological dysfunction of mild to moderate severity." The report described Mother as having a personality disorder with paranoid, obsessive and histrionic features. Mother also had "persecutory ideations" concerning her relationships with CPS and E.M.'s father. She had become "obsessed" with the situation with CPS and was angry and fearful. Mother argues that the psychologist who examined her did not opine that her mental state had declined since the court previously reinstated her visitation rights. In this context, however, the evidence supported a finding by the court that Mother's obsession, anger and paranoia caused her to act out by going to the police about E.M.'s father. The court did not abuse its discretion by concluding that under the circumstances,

it was in the children's best interests to suspend Mother's visitation.

¶15 Mother also argues the superior court abused its discretion in allowing the wishes of the children to "govern" its best interests finding. We disagree. The court took into account the wishes of the children in its ruling, suspending visitation with M.L. and D.L., who did not want visitation, and with I.G., who was indifferent, and refusing to suspend visitation with a fourth child, S.L., who indicated she wanted to continue visitation with Mother. At the time of the hearing, the children who expressed a desire not to have visitation, M.L. and D.L., were 14 and 10 years old, respectively. They were old enough to express their wishes regarding visitation, and the court acted within its discretion when it considered their wishes in determining whether visitation was in their best interests.⁵

CONCLUSION

¶16 For the foregoing reasons, we accept special action jurisdiction of Mother's appeal but deny relief, thereby

⁵ Although the superior court did not abuse its discretion in suspending Mother's visitation based on the facts and circumstances at the time of the hearing, nothing in our decision precludes Mother from asking the court to reinstate her visitation with any of the children should circumstances change.

affirming the superior court's order suspending Mother's visitation.⁶

/s/
DIANE M. JOHNSEN, Judge

CONCURRING:

/s/
MAURICE PORTLEY, Presiding Judge

/s/
PHILIP HALL, Judge

⁶ The caption in this appeal is amended to refer to the children by their initials.