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

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JOSE L., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and LORRAYNE M., Appellees.	2 CA-JV 2012-0086 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J19417300

Honorable Jane Butler, Judge Pro Tempore

AFFIRMED

Sanders & Sanders, P.C.
By Ken Sanders
Tucson
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E C K E R S T R O M, Presiding Judge.

¶1 Jose L., father of Lorrayne M.,[1] born in November 2009, appeals from the juvenile court's August 1, 2012, order terminating his parental rights to Lorrayne on the grounds of abandonment and failure to file a notice of claim of paternity.[2] *See* A.R.S. § 8-533(B)(1), (6). On appeal, Jose argues the termination order is void for lack of personal jurisdiction due to improper service of process in the dependency matter. We affirm for the reasons stated below.

¶2 Viewed in the light most favorable to sustaining the juvenile court's ruling, *see Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 12, 153 P.3d 1074, 1078 (App. 2007), the evidence established Child Protective Services, a division of the Arizona Department of Economic Security (ADES), removed Lorrayne from the mother's care after the then four-month old child was found in a vehicle containing cocaine and guns. According to the mother, Jose had been deported before Lorrayne was born and had never had any contact with the child. In March and October 2010, ADES filed dependency petitions alleging, inter alia, that Jose was the purported father of Lorrayne, whom he had abandoned. On November 3, 2010, ADES filed an affidavit of service by publication of the dependency petition, and the court ordered ADES to "attempt personal service" on Jose. On December 3, 2010, ADES filed an affidavit of diligent search signed by a private investigator on November 17, 2010, just a few days before Jose was arrested for murder, in which the investigator attested he had "not been able to locate or

[1]Lorrayne is also referred to as "Ailin."

[2]The parental rights of Lorrayne's mother, who is not a party to this appeal, were terminated in December 2011.

confirm" a current address for Jose. The affidavit also stated "[t]he accompanying 'Parent Locator Search' form will outline in detail our specific efforts" to locate Jose. However, the parent locator form was not attached to the affidavit.[3]

¶3 The juvenile court determined that service was complete[4] and adjudicated Lorrayne dependent as to Jose on December 8, 2010. Jose did not appeal from or move to set aside the dependency adjudication. On January 27, 2012, ADES personally served Jose in prison with a motion to sever his parental rights to Lorrayne based on grounds of out-of-home placement, abandonment, and failure to file a notice of paternity.[5] *See* A.R.S. 8-533(B)(8)(c), (B)(1), (B)(6). Following a contested severance hearing held in May and July 2012, which Jose attended, the court terminated his parental rights to Lorrayne based on abandonment and failure to file a notice of claim of paternity. The court also found severance was in Lorrayne's best interests.

¶4 Jose has appealed solely from the juvenile court's August 1, 2012, order terminating his parental rights to Lorrayne. But, he challenges neither the statutory grounds for termination nor the court's best-interests determination on the merits. Rather, he challenges the court's December 8, 2010, ruling adjudicating Lorrayne

[3]In its order terminating Jose's parental rights, the juvenile court accordingly noted "there is no evidence to demonstrate what specific efforts were taken to locate [Jose]," and "[t]here is no evidence that [ADES] ever attempted to locate [Jose] after the [dependency] adjudication." Finding that ADES "did not make diligent efforts to locate [Jose]," the court denied severance based on the allegation of out-of-home placement.

[4]Proper service is service that conforms to the requirements of Ariz. R. Civ. P. 4.1 or 4.2. *See* A.R.S. § 8-535(A), and Ariz. R. P. Juv. Ct. 64(D)(3).

[5]ADES filed the original motion to terminate Jose's parental rights in October 2011 and subsequently filed an amended motion in April 2012.

dependent as to him, an order not mentioned in his notice of appeal. He asserts that because the dependency adjudication was invalid for lack of personal jurisdiction due to improper service of process of the dependency petition, the termination ruling also was invalid. He argues: "Given that the Juvenile Court never had jurisdiction over [Jose] in the dependency proceedings, it was without jurisdiction over [Jose] when it purported to terminate his parental rights." However, our jurisdiction is limited to reviewing that which is specified in the notice of appeal, which must "designate the judgment or part thereof appealed from." Ariz. R. Civ. App. P. 8(c); *see also Lee v. Lee*, 133 Ariz. 118, 124, 649 P.2d 997, 1003 (App. 1982) (court of appeals lacks jurisdiction to review matters not contained in notice of appeal). Because Jose has appealed solely from the severance order, a ruling he does not challenge on the merits on appeal, we have no basis for disturbing that order.

¶5 Moreover, Jose did not appeal from the order adjudicating Lorrayne dependent as to him. That order and all orders following the dependency review hearings were appealable orders. *See Rita J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 512, ¶ 4, 1 P.3d 155, 156 (App. 2000) ("Orders declaring a child dependent, reaffirming a finding of dependency, or dismissing a dependency proceeding are final, appealable orders."); *In re Maricopa Cnty. Juv. Action No. JD-6236*, 178 Ariz. 449, 451, 874 P.2d 1006, 1008 (App. 1994) ("[O]rders arising from periodic review of dependency placement arrangements are appealable."). Notably, Jose not only appeared at numerous hearings at which the juvenile court found the dependency continued to exist, but he also challenged the motion to terminate on the merits, requested additional time to disclose his witness list for trial,

submitted to paternity testing, requested parental visitation and grandparent visitation, and participated in the severance trial itself.[6]

¶6 Although Jose apparently was not aware of Lorrayne's dependency status when it first occurred, he neither sought leave to file a delayed appeal when he learned of it, *see* Rule 108(B), Ariz. R. P. Juv. Ct., nor did he appeal from the orders continuing her dependency status, of which he clearly was aware. Therefore, we will not address Jose's argument insofar as he is attempting to challenge the propriety of the juvenile court's adjudication of Lorrayne as dependent. Moreover, the propriety of that ruling is rendered moot by the order terminating his parental rights. *Cf. Rita J.*, 196 Ariz. 512, ¶ 10, 1 P.3d at 158 (even if appealable, order entered after permanency hearing "essentially . . . rendered moot" by order terminating parental rights); *Sandblom v. Corbin*, 125 Ariz. 178, 182, 608 P.2d 317, 321 (App. 1980) (issue or case moot if outcome would have no "practical effect" on parties).

¶7 Additionally, even assuming the arguments Jose raises regarding the sufficiency of process and its impact on the validity of the dependency adjudication could be raised in this appeal, by making a general appearance below, Jose has waived the right to do so. *See Montano v. Scottsdale Baptist Hosp., Inc.*, 119 Ariz. 448, 452, 581 P.2d 682, 686 (1978) ("A general appearance by a party who has not been properly served has exactly the same effect as a proper, timely and valid service of process."). Jose nevertheless argues he did not waive the issue of personal jurisdiction because he raised it

[6]Although Jose referred to the state's lack of diligence in contacting him at trial, he did so in relation to the state's burden to prove the asserted grounds for severance, and not in the context of personal jurisdiction.

in the juvenile court. Although Jose did in fact raise this issue both at the initial dependency hearing on February 8, 2012, and in his March 1, 2012, pro se response to the amended motion to terminate his parental rights, his conduct, as outlined above, unequivocally confirmed his general appearance in this matter. *See Kline v. Kline*, 221 Ariz. 564, ¶ 18, 212 P.3d 902, 907 (App. 2009) ("A party has made a general appearance when he has taken any action, other than objecting to personal jurisdiction, that recognizes the case is pending in court.").

¶8 For all of the reasons set forth above, we affirm the juvenile court's order terminating Jose's parental rights to Lorrayne.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge*

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed August 15, 2012.