IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

BLANCA G.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND J.C.
Appellees.

No. 2 CA-JV 2015-0177
Filed June 21, 2016

Appeal from the Superior Court in Pinal County
No. S1100JD201300107
The Honorable Henry G. Gooday Jr., Judge

APPEAL DISMISSED

COUNSEL

Gillespie, Shields, Durrant & Goldfarb, Phoenix
By DeeAn Gillespie Strub
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Staring authored the decision of the Court, in which Presiding Judge Howard and Judge Espinosa concurred.

S T A R I N G, Judge:

¶1 Blanca G., paternal grandmother of J.C., born August 2012, appeals from the juvenile court's orders denying her motion to intervene and dismissing the dependency. Because the only issue properly before us is moot, we dismiss the appeal.

¶2 In November 2014, the Department of Child Safety (DCS) moved to terminate the parental rights of J.C.'s parents. At that time, J.C. was placed with Blanca, and had been since the dependency was initiated in 2013. In April 2015, however, J.C.'s mother and DCS separately moved to remove J.C. from Blanca's custody because she allegedly had allowed unauthorized visitation between J.C. and his father.[1] The juvenile court granted the state's motion and placed J.C. with his maternal grandmother after an April 6 hearing at which Blanca appeared telephonically. During the hearing, Blanca claimed the allegations were false, but she did not testify, nor did the court question her or take any evidence.[2] It instead relied on exhibits attached to the state's motion and statements of counsel.[3]

[1]J.C.'s father did not appear for any proceedings or participate in any services; his parental rights were terminated as a result of default and waiver.

[2]Counsel for J.C.'s father appeared at the April 6 hearing and objected to the change of placement from Blanca, essentially representing the same interest as Blanca.

[3] The documentation attached to the motion included photographs depicting J.C. with his father, and a series of disturbing, threatening emails the father sent to J.C.'s mother.

¶3 In May, Blanca filed a motion to intervene. The juvenile court, however, did not rule on that motion before terminating the rights of J.C.'s parents.[4] The court signed its findings of fact and conclusions of law on June 4. On June 8 and 23, Blanca filed handwritten motions requesting a hearing, both of which the court denied. In July 2015, Blanca, through recently retained counsel, filed motions requesting that custody be returned to her and that she be permitted to intervene in the case. The motion to intervene also requested, in the alternative, that if the juvenile court had denied Blanca's first motion to intervene, that it set that judgment aside. The court denied those motions, concluding that intervention was not in J.C.'s best interests because Blanca had not been truthful on April 6. Blanca filed a notice of appeal from that order. On September 28, the court dismissed the dependency proceeding, noting that it had granted the petition and decree for J.C.'s adoption on September 22 under a separate cause number. Blanca filed an amended notice of appeal including the dismissal order.

¶4 On appeal, Blanca argues the juvenile court erred in denying her motion to intervene because that finding was based "on a hearing that itself violated [her] due process rights." She also asserts the court erred in denying her motion to set aside, contending the judgment removing J.C. from her custody is "void as a matter of law" because it "violated procedural due process and was contrary to the requirements under Arizona statute." DCS asserts, inter alia, that these issues are moot because the dependency has been dismissed and J.C. has been adopted.

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[4]The motion was dated May 1, before the May 4 hearing at which J.C.'s mother consented to termination and the court found J.C.'s father had waived the right to contest termination. Although Blanca inquired about the motion at the hearing, the court stated no such motion had been filed. The motion was ultimately filed with a date stamp indicating it had been filed May 15—seven days after DCS had responded to it. DCS notes in its answering brief that Blanca's counsel, who withdrew shortly thereafter, had electronically served the parties but mailed the motion to the court.

¶5 Before we can evaluate DCS's mootness argument, we must first clarify what is properly before us on appeal. An order denying a motion to intervene is a final, appealable order. *Bechtel v. Rose*, 150 Ariz. 68, 71, 722 P.2d 236, 239 (1986). And, if we find the juvenile court erred in denying that motion, we would vacate the underlying judgment—in this case, the court's dismissal of the dependency proceeding. *See Dowling v. Stapley*, 221 Ariz. 251, ¶ 76, 211 P.3d 1235, 1258 (App. 2009). However, an order altering placement is also a final and appealable order, and the time to seek appellate review of that order has long since passed.[5] *See* Ariz. R. P. Juv. Ct. 104(A) (appeal must be filed within fifteen days of final order); *Lindsey M. v. Ariz. Dep't of Econ. Sec.*, 212 Ariz. 43, ¶ 9, 127 P.3d 59, 61-62 (App. 2006) (placement order generally appealable). Thus, we lack jurisdiction to review the propriety of that order in this appeal.[6] And, even assuming Blanca had standing to raise the issue, she does not argue on appeal that the court erred in denying her motion to change custody.

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[5]We recognize that, because she had not sought to intervene in the case and was not a party, Blanca lacked standing to appeal the placement. *See* A.R.S. § 8-235(A) (only "aggrieved party" entitled to appeal from final order). However, that does not change the nature of the order or alter our appellate jurisdiction. And Blanca apparently did not attempt to obtain relief via special action. *See generally* Ariz. R. P. Spec. Actions 1 to 4.

[6]Blanca asserts the order is "void" because it was entered in derogation of her procedural due process rights. Although our supreme court has suggested a judgment entered despite a violation of the right to notice and opportunity to be heard is void and subject to attack at any time, we decline to address this argument because it was raised for the first time on appeal. *See Louis C. v. Dep't of Child Safety*, 237 Ariz. 484, ¶ 20, 353 P.3d 364, 369 (App. 2015). We also observe that, despite her assertion to the contrary, Blanca did not seek to set aside the custody order in the juvenile court, much less assert it was void—her motions sought only to set aside any order denying her first motion to intervene.

¶6 [W]e will dismiss an appeal as moot when our action as a reviewing court will have no effect on the parties." *Cardoso v. Soldo*, 230 Ariz. 614, ¶ 5, 277 P.3d 811, 814 (App. 2012). As we noted above, J.C. has been adopted. Thus, even were we to conclude the juvenile court should have permitted Blanca to intervene, we would have authority only to vacate the judgment dismissing the dependency—which would have no effect on the adoption decree. *Cf. Roberto F. v. Dep't of Child Safety*, 237 Ariz. 440, ¶ 13, 352 P.3d 909, 911 (2015) (court may enter adoption order despite pending appeal in termination proceeding). J.C. was found to be dependent to both his natural parents, not the adoptive parent or parents. *See* A.R.S. § 8-844(C) (requiring finding as to each parent that child is dependent); *see also* A.R.S. § 8-201(14) (defining dependent child). And the adoption decree grants the adoptive parent or parents "all the legal rights, privileges, duties, obligations and other legal consequences" of parenthood. A.R.S. § 8-117(A). Reviving the dependency would not allow the juvenile court to change custody or to reconsider its prior orders in the dependency because the basis for the dependency no longer exists—the rights of J.C.'s natural parents have been terminated. *Cf. Rita J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 512, ¶ 10, 1 P.3d 155, 158 (App. 2000) (otherwise appealable order from permanency hearing essentially moot due to later order terminating parental rights).

¶7 Blanca implicitly argues this appeal is not moot because she could move to set aside the adoption order pursuant to Rule 85(A), Ariz. R. P. Juv. Ct., if we reverse the placement order. *See Roberto F.*, 237 Ariz. 440, ¶ 12, 352 P.3d at 911 (adoption entered after termination properly challenged pursuant to Rule 85(A) "if a termination-of-rights order is vacated"). She reasons that, if not for the placement order, she "would still be the prospective permanent placement" and "[t]here would never have been another adoption proceeding." But, as we have explained, the correctness of that order is not before us. And Blanca has not established how permitting her to intervene in a dependency proceeding that no

longer exists would be meaningful to a motion to set aside J.C.'s adoption.[7]

¶8 For the foregoing reasons, we dismiss the appeal as moot.

[7] The record does not indicate whether Blanca sought to intervene in the adoption proceeding.