

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

LOUIS C.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND J.C.,
Appellees.

No. 2 CA-JV 2016-0056
Filed September 9, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
Nos. JD20140107 and SP20140889 (Consolidated)
The Honorable Jennifer P. Langford, Judge Pro Tempore

AFFIRMED

COUNSEL

The Law Office of Mark F. Willimann, LLC, Tucson
By Mark F. Willimann
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Laura J. Huff, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

LOUIS C. v. DEP'T OF CHILD SAFETY
Decision of the Court

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Miller concurred.

ECKERSTROM, Chief Judge:

¶1 Appellant Louis C. challenges the juvenile court's order of March 15, 2016, adjudicating his son, J.C., dependent after Louis failed to appear at a contested dependency hearing. On appeal, Louis does not address whether the court erred by adjudicating the child dependent by default. Rather, he challenges the juvenile court's subject matter jurisdiction, argues he had a justification defense, and contends the court improperly delayed the dependency proceedings as a whole. Because Louis has waived any argument the default was improper and because we conclude the court had jurisdiction, we affirm.

¶2 Louis and J.C.'s mother at one time lived in Puerto Rico and a court there awarded Louis custody of J.C. In 2013 Louis and J.C. moved to Arizona, and the mother moved to Texas. J.C. was adjudicated dependent in September 2014, but the dependency was dismissed in February 2015, after both parents completed their case plan.¹

¶3 In September 2015, the Department of Child Safety (DCS) received a report that Louis had, as in the previous dependency allegations, hit J.C. with a belt. DCS filed a dependency petition in October 2015 and, after Louis made multiple requests for change of judge and continuance, the dependency proceeding was

¹This court affirmed the dependency adjudication on appeal. *Louis C. v. Dep't of Child Safety*, 237 Ariz. 484, 353 P.3d 364 (App. 2015).

LOUIS C. v. DEP'T OF CHILD SAFETY
Decision of the Court

consolidated with a proceeding for modification of custody orders which J.C.'s mother had initiated.

¶4 A contested dependency hearing was scheduled to begin on January 5, 2016. The day before the hearing, however, Louis filed motions requesting settlement and pretrial conferences, and the juvenile court granted the request for a facilitated settlement conference, continuing the hearing to February 2. Louis again filed a motion for change of judge which was denied, and on January 21, the court determined no agreement had been reached and affirmed the February 2 hearing date.

¶5 On February 1, Louis filed motions requesting conclusions of law, asking that "Civil Discovery Methods" be employed, and challenging jurisdiction under the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA), codified in Arizona at A.R.S. §§ 25-1001 to 25-1067. The scheduled hearing was continued and the juvenile court set a hearing on the motions, rescheduling the hearing to March 10, 2016. At the hearing Louis again asked to delay the hearing, and the court denied that request and rejected Louis's other motions as well. Louis filed another request for change of judge, which the court denied.

¶6 On March 2 the juvenile court issued an order concluding it had jurisdiction in both cases because no party lived in Puerto Rico, and Louis and J.C. had resided in Arizona since at least August 2013. The court also determined it had emergency jurisdiction over the matter. Louis filed a motion to dismiss the dependency, arguing the dependency adjudication had not been timely held and a motion to vacate the custody hearing until the dependency was adjudicated. The court denied the first motion, but agreed to continue the custody hearing pending receipt and registration of the Puerto Rico child custody orders. The court affirmed the dependency hearing date for March 15.

¶7 Louis failed to appear on March 15, and his attorney stated he was "voluntarily absent" from the hearing for reasons he was not at liberty to discuss. The juvenile court deemed Louis to have admitted the allegations in the dependency petition and found

LOUIS C. v. DEP'T OF CHILD SAFETY
Decision of the Court

DCS had established by a preponderance of the evidence that J.C. was dependent. This appeal followed.

¶8 Entry of a default in dependency adjudications is authorized by A.R.S. § 8-844(F) and Rule 55(D)(2), Ariz. R. P. Juv. Ct., which allow a juvenile court, upon proper admonition to the parent, to adjudicate a “child dependent based upon the record and evidence presented.” Such a default may be set aside if the parent shows good cause for failure to appear. *Christy A. v. Ariz. Dep’t of Econ. Sec.*, 217 Ariz. 299, ¶16, 173 P.3d 463, 468 (App. 2007). But Louis has made no argument on appeal that he had good cause. Any such argument is therefore waived. *See Bob H. v. Ariz. Dep’t of Econ. Sec.*, 225 Ariz. 279, ¶ 10, 237 P.3d 632 (App. 2010) (argument waived when appellant “cite[d] no legal authority” in support of claim).

¶9 Indeed Louis does not address whether the court abused its discretion in deeming him to have admitted the allegations and entering the default, except to the extent his reply brief challenges whether DCS presented sufficient evidence to establish dependency. He asserts the court had “no evidence at all” to support its ruling because DCS did not present evidence at the scheduled hearing. Arguments raised for the first time in a reply are waived.² *See Nelson v. Rice*, 198 Ariz. 563, n.3, 12 P.3d 238, 242 n.3 (App. 2000) (party waives argument by failing to raise it in opening brief); *Wasserman v. Low*, 143 Ariz. 4, n.4, 691 P.2d 716, 721 n.4 (App. 1984) (“An issue first raised in a reply brief will not be considered on appeal.”); *see also* Ariz. R. Civ. App. P. 13(c) (“[A] reply brief . . . must be strictly confined to rebuttal of points made in the appellee’s answering brief.”); Ariz. R. P. Juv. Ct. 106(A) (“ARCAP 13 and 14 shall apply in appeals from final orders of the

²Even if not waived, however, the court had been presented with numerous reports and photographs to consider in the course of the proceedings. And *Manuel M. v. Ariz. Dep’t of Econ. Sec.*, on which Louis relies, addressed termination of parental rights and Rule 66, Ariz. R. P. Juv. Ct., not Rule 55, which controls in dependency hearings. 218 Ariz. 205, 181 P.3d 1126 (App. 2008).

LOUIS C. v. DEP'T OF CHILD SAFETY
Decision of the Court

juvenile court”). Because he failed to appear and has not established any error in the court’s default ruling, we need not address his arguments relating to A.R.S. § 13-403 or the time limits for dependency trials.

¶10 We write further only to address Louis’s claim that the juvenile court lacked subject matter jurisdiction to adjudicate J.C. dependent. See *Green v. Lisa Frank, Inc.*, 221 Ariz. 138, ¶ 57, 211 P.3d 16, 35 (App. 2009) (“[S]ubject matter jurisdiction cannot be waived and may be raised at any stage of a proceeding.”); *Arvizu v. Fernandez*, 183 Ariz. 224, 226, 902 P.2d 830, 832 (App. 1995) (“this court has the duty to inspect its jurisdiction sua sponte”). Louis claims the court lacked jurisdiction because a child custody order that was issued by Puerto Rico had not been registered in Arizona and based on full faith and credit principles. The UCCJEA controls questions of subject matter jurisdiction in dependency proceedings. A.R.S. § 25-1002(4)(a).

¶11 To the extent Louis relies on A.R.S. § 25-1056(A) for his position that the Puerto Rico custody order had to be registered for a dependency to proceed, he is mistaken; that section applies to enforcement of an existing decision. The dependency action does not involve enforcement of the Puerto Rico determination, which on the record before us had placed J.C. with Louis. Assuming for the purpose of addressing Louis’s argument that § 25-1056(B) would apply, it dictates that an existing order may be modified in accordance with “article 2 of this chapter.” Arizona is J.C.’s “home state” as defined in § 25-1002(7). And § 25-1033 allows a court to modify a child custody determination made by another state if it “has jurisdiction to make an initial determination under § 25-1031, subsection A” and either the other state’s court determines it does not have jurisdiction or the Arizona court determines “that the child, the child’s parents and any person acting as a parent do not presently reside in the other state.” Such is the case here.

¶12 We affirm the juvenile court’s order adjudicating J.C. dependent as to Louis.