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



DIVISION ONE
FILED: 08/21/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

VICTOR D.,)	1 CA-JV 11-0094
)	
Appellant,)	DEPARTMENT A
)	
v.)	MEMORANDUM DECISION
)	(Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC)	103(G) Ariz.R.P. Juv.
SECURITY, HANAN D.,)	Ct.; Rule 28 ARCAP)
)	
Appellees.)	
)	
)	

Appeal from the Superior Court in Maricopa County

Cause No. JD507982

The Honorable Brian K. Ishikawa, Judge

AFFIRMED

Thomas C. Horne, Attorney General Tucson
By Claudia Acosta Collings, Assistant Attorney General
And Dawn Rachelle Williams, Assistant Attorney General
Attorneys for Appellees

Victor D. Mesa
Appellant

O R O Z C O, Judge

¶1 Victor D. (Father) appeals from the juvenile court's appointment of a permanent guardian for his minor child. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Father and Zinet H. (Mother) are the parents of Hanan D. The Arizona Department of Economic Security (ADES) filed a dependency petition in June 2009 alleging Mother was unable to parent due to neglect and a failure to protect. As to Father, ADES alleged he was unable to parent due to an untreated mental illness and a history of violent behavior. In February 2010, Mother regained physical custody of Hanan, and the court subsequently dismissed the dependency action.

¶3 In May 2010, after Hanan ran away from Mother's home and was arrested for fighting with her brother, ADES filed a new dependency petition, and Hanan was placed in a temporary foster home. Mother was unable to care for Hanan because she had health issues and Father had not received treatment for his mental illness and failed to participate in services during Hanan's prior dependency. Father was personally served with a copy of the dependency petition, a notice of hearing, and a temporary custody notice.

¶4 Father removed the case to the United States District Court for the District of Arizona on May 6, 2010, but the district court immediately ordered Father to show cause why the

action should not be remanded, as it appeared the district court did not have jurisdiction. Meanwhile, Father continued to file documents in juvenile court. Father filed a notice of change of judge for cause and demand for jury trial, a motion to dismiss the dependency and a notice of objection to the ADES report to the court.

¶15 During the initial dependency hearing held on May 25, 2010, Father failed to appear, and the court noted that Father "was in the Courthouse earlier but he will not appear before this Court." Over the objection of Father's attorney, the court proceeded with the hearing in Father's absence. The court denied Father's notice of change of judge for cause and demand for jury trial and his motion to dismiss. The court reviewed ADES's report and the dependency petition and adjudicated Hanan dependent. The court approved a family reunification case plan. Father's attorney then made an oral motion to be relieved of further responsibility in the matter, which the court granted.

¶16 The district court remanded the dependency back to juvenile court on June 2, 2010 for lack of subject matter jurisdiction and removal jurisdiction. Nevertheless, Father again removed the case to the district court, which the district court summarily remanded.

¶17 Thereafter, on August 6, 2010, Father filed a "Motion for Court to Appoint Counsel for Father and to Conduct Tribunal

to Determine Reasonableness [sic] of Referral [sic] by State for Father of Child to Undergo Psychological Evaluation Before Having State Controlled Visitation With His Child Held in Custody of State Child Protective Services." In an unsigned minute entry, the court denied the requests made in Father's motion because Father "ha[d] not made an appearance in this case and ha[d] failed to properly serve the other parties with copies of the document."¹

¶18 In a February 2011 ADES report to the court, the case worker reported that "Hanan has expressed her desire not to return to her mothers [sic] care." She also noted that "[g]uardianship should be pursued as it is Hanan's wish to remain in her current placement," but Hanan wanted to maintain contact with both parents. In discussing Hanan's future plans with the case worker, Mother requested a guardianship. The case worker also reported that she contacted Father by phone and they discussed guardianship as a case plan.

¶19 On March 1, 2011, Father filed a "Motion for Father's Limited Involvement by In-Writing Special Appearance in Projected Guardianship Award of His Subject Child to Present Foster Care Parent." In his motion, Father writes:

¹ Father attempted to appeal the court's denial of his motion, but this court dismissed the appeal for lack of jurisdiction. Father also never attempted to properly serve the motion on the other parties.

[I]n the abundance of caution, Natural Father of child, Victor [D.] has consented to appointment of the present foster parent as a "special guardian" of the child, Hanan [D.] for specifically stipulated purposes that only gives the present foster parent special limited powers over wardship of His child from legal as well as natural perspectives.

In the alternative, Father abstains from the proposal to assume neutral role in the transfer of His child's guardianship where clear and convincing evidence exist [sic] on court record that His parental right to the child has been subtly terminated by the Arizona courts without due process

¶10 That same day, the juvenile court held a permanency planning hearing, which Father did not attend. At the request of the guardian ad litem and counsel for both Hanan and Mother, the court changed the case plan to guardianship. The court ordered the clerk to mail a copy of Form 2 to Father and denied Father's motion.

¶11 ADES filed a motion for appointment of a permanent guardian and a notice of initial hearing on the motion. Copies of both were mailed to Father. At the initial hearing on the motion, the court found that Father had been given proper notice of the proceedings and preserved service on him. The court continued the hearing until the following month.

¶12 Father did not appear at the guardianship hearing and was not represented by counsel. The court proceeded in Father's absence, heard testimony and admitted exhibits. The court found

that Father agreed to the guardianship in his March 1 motion. The court also found that guardianship was in Hanan's best interest and appointed her current placement as her permanent guardian. Finally, the court dismissed the dependency.

¶13 Father's timely appeal followed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 8-235.A (2007).

DISCUSSION²

Statutory Definition of Dependent Child

¶14 Initially, Father claims that the definition of "dependent child" contained in A.R.S. § 8-201.13 (Supp. 2011) is "unconstitutionally vague." In support of his claim, Father

² As ADES has correctly argued, among the many arguments in his Opening Brief, Father raises issues regarding Mother, unrelated matters, and incidents that occurred before the first dependency action was dismissed and before the new dependency petition was filed. To support these claims, he attaches documents that are not part of the record on appeal. Because these alleged claims of error are outside the scope of Father's appeal of the guardianship order, this court will not address these issues. Moreover, Father claims that the juvenile court judge was biased and prejudiced and that Father feared being assassinated in the courtroom; that he was denied equal protection because he was treated differently than Mother; and that he and Hanan were deprived of their religious freedoms because they are Muslims and Hanan was placed in a Christian home and was converted to Christianity. We decline to consider these claims because Father has abandoned and waived them by failing to properly argue the claims with citations to authority or the record. *Polanco v. Indus. Comm'n*, 214 Ariz. 489, 491 n.2, ¶ 6, 154 P.3d 391, 393 n.2 (App. 2007) (an appellant's argument that is merely mentioned in passing in the opening brief without further development or citation to supporting authority is waived).

makes a series of conclusory statements without analysis or support from the record.³ "Merely mentioning an argument is not enough: 'In Arizona, opening briefs must present significant arguments, supported by authority, setting forth an appellant's position on the issues raised. Failure to argue a claim usually constitutes abandonment and waiver of that claim.'" *State v. Moody*, 208 Ariz. 424, 452 n.9, ¶ 101, 94 P.3d 1119, 1147 n.9 (2004) (quoting *State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989)).⁴

Personal Jurisdiction

¶15 Father next argues that the juvenile court lacked personal jurisdiction over him in the new dependency. Father, however, has not timely appealed the dependency adjudication, which was a final order, and has therefore waived any arguments

³ Apparently recognizing the deficiency of his opening brief, Father expanded on his argument in the reply brief. This court "will not consider arguments made for the first time in a reply brief." *Dawson v. Withycombe*, 216 Ariz. 84, 111, ¶ 91, 163 P.3d 1034, 1061 (App. 2007).

⁴ Additionally, we find nothing in the record that indicates Father has served the Speaker of the House of Representatives and President of the Senate with "a copy of the pleading, motion or document containing the allegation" of unconstitutionality. See A.R.S. § 12-1841 (Supp. 2011); see also *DeVries v. State*, 219 Ariz. 314, 322, ¶ 24, 198 P.3d 580, 588 (App. 2008) (holding that "a party raising a facial constitutional challenge to a state statute, ordinance, franchise, or rule in a proceeding, including an appeal, must follow the statutory service requirements"). Because we find Father has waived his constitutional challenge, we do not address the consequences of his failure to comply with the notice requirement.

arising from the dependency finding. See A.R.S. § 8-235.A; Ariz. R.P. Juv. Ct. 104(A); *Edwards v. Young*, 107 Ariz. 283, 284, 486 P.2d 181, 182 (1971) ("It is settled in Arizona that the perfecting of an appeal within the time prescribed is jurisdictional; and, hence, where the appeal is not timely filed, the appellate court acquires no jurisdiction other than to dismiss the attempted appeal.").

Due Process

¶16 Father also argues he was denied due process during the guardianship proceedings. He claims he was never served a copy of the guardianship motion; did not have proper notice of the guardianship proceedings; and was denied a "full and fair opportunity to be heard."

¶17 Parents have "a fundamental liberty interest in the care, custody, and management of their children"; thus, a court may not sever parental rights without "fundamentally fair procedures" that satisfy due process requirements. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284, ¶ 24, 110 P.3d 1013, 1018 (2005) (citing *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982)). "Due process requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner." *Huck v. Haralambie*, 122 Ariz. 63, 65, 593 P.2d 286, 288 (1979). Parents may waive their procedural due process rights by failing to appear at the initial guardianship hearing or guardianship

adjudication hearing without demonstrating good cause. Ariz. R.P. Juv. Ct. 62.C.7.c and 63.D.2. The Rules of Procedure for the Juvenile Court provide that the juvenile court may go forward with the hearings in the absence of the parent and may grant the guardianship based upon the record and the evidence presented. *Id.*

¶18 The record in this case shows the ADES case worker advised Father over the telephone that a guardianship case plan was being considered. Accordingly, Father filed his March 1 "Motion for Father's Limited Involvement . . ." requesting that he be allowed to make a "special appearance" in the guardianship proceedings in writing. This motion indicates Father had notice of the proceedings but chose not to appear in person. The record also shows Father was sent a copy of Form 2, informing him that failure to appear would result in a waiver of rights, including the right to counsel, the right to trial by the court, and the right to cross-examine witnesses. See Ariz. R.P. Juv. Ct. Form 2.

¶19 Father was also mailed copies of the motion for appointment of permanent guardian and the notice of initial hearing. Rule 61.C permits service by mail to the parent's last known address. Ariz. R.P. Juv. Ct. 61.C; see also Ariz. R. Civ. P. 5(c)(2)(C) (service via U.S. mail is complete upon mailing). The court noted at the initial guardianship hearing that Father

had been served by mail and thus had been given proper notice of the guardianship proceedings. The court then preserved service on Father and reset the hearing, presumably to give Father another opportunity to appear in court. Father was mailed a copy of the minute entry, which indicated the date for the next hearing.

¶120 However, Father did not appear and was not represented by counsel at the reset hearing on the motion for permanent guardianship. As the court found Father had notice of the proceedings and had been properly served, the court proceeded in Father's absence. The ADES case worker testified and the court received exhibits into evidence. After considering all of the evidence, the juvenile court entered its findings in support of the guardianship, including a finding that Father consented to the guardianship.

¶121 Father had an opportunity to be heard but chose not to appear before the court and participate in the hearings. The court followed the proper procedures before going forward with the guardianship hearings in Father's absence, and the court considered the record and all of the evidence before establishing the permanent guardianship. The court's denial of Father's request to appear only in writing does not demonstrate that Father was deprived of due process.

¶122 Father also argues that he was denied the right to counsel. The juvenile court denied the request because Father refused to appear in court and did not properly serve his motion on the other parties. However, Father was not denied the right to counsel in the permanent guardianship proceedings because his request for an attorney was made for the limited purpose of determining whether he was required to participate in a new psychological evaluation as part of ADES's reunification case plan. Father did not renew his request for an attorney after the case plan was changed to guardianship. Additionally, once Father was informed that he needed to properly serve the parties with his request for counsel, he could have done so and asked the court to reconsider his request. Because he did not request an attorney for the permanent guardianship, or properly serve the parties with his request, his argument fails.

Sufficiency of the Evidence Supporting Guardianship

¶123 Finally, Father generally objects to the sufficiency of the evidence supporting the establishment of Hanan's permanent guardianship and to the appointment of an unrelated person as the guardian.

¶124 The juvenile court is in the best position to weigh the evidence, judge the credibility of witnesses and make appropriate findings, so we will accept the juvenile court's findings of fact unless no reasonable evidence supports them.

Jesus M. v. Ariz. Dep't of Econ. Sec., 203 Ariz. 278, 280, ¶ 4, 53 P.3d 203, 205 (App. 2002). We will not reverse the juvenile court's order establishing a permanent guardianship unless it is clearly erroneous. *Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 555, 944 P.2d 68, 70 (App. 1997).

¶25 The juvenile court may establish a permanent guardianship if the prospective guardianship is in the child's best interest and: (1) the child has been adjudicated dependent; (2) the child has been in the custody of the prospective guardian for at least nine months as a dependent child; (3) ADES has made reasonable efforts to reunite the parent and child and further efforts would be unproductive; and (4) the likelihood the child would be adopted is remote or termination of parental rights is not in the child's best interests. A.R.S. § 8-871.A (Supp. 2011). The court may consider any adult, including a foster parent, as a permanent guardian. A.R.S. § 8-871.B.

¶26 ADES fulfills its statutory duty to make reasonable reunification efforts when it provides the parent with the time and opportunity to participate in programs designed to help the parent's ability to care for his child. *Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994). However, "[ADES] is not required to provide every conceivable service or to ensure that a parent participates in each service it offers." *Id.*

¶127 Hanan was adjudicated dependent on May 25, 2010. At that time, ADES reported that Father did not participate in reunification services during the first dependency but did complete a psychological evaluation, which recommended that Father not have contact with Hanan. ADES recommended that Father complete a new psychological evaluation and participate in services.

¶128 In February 2011, ADES reported that Father declined to participate in any services, including behavioral health and parent aide services and drug screens. ADES also reported that Mother requested a guardianship and that Hanan wished to maintain contact with both parents but wanted to remain in her current placement with her foster mother. The ADES case worker stated that she discussed guardianship as a case plan with Father.

¶129 The following month, Father filed his "Motion for Father's Limited Involvement . . ." in which he "consented to appointment of the present foster parent as a 'special guardian' of the child." The juvenile court held a permanency planning hearing the same day Father filed this motion and found that the most appropriate case plan would be guardianship.

¶130 At the guardianship hearing, the ADES case worker testified that Hanan was a dependent child and that her prospective permanent guardian was her current foster mother,

whom Hanan had known for "the past couple of years since Hanan came into care." The case worker testified that Hanan had not resided with her foster mother for the requisite nine-month period but the State was asking the court to waive the requirement because Hanan and her foster mother had a relationship and Hanan sought to be placed with her. See A.R.S. § 8-871.A. The case worker further testified that she had discussed guardianship with both Father and Mother and both parents agreed with the guardianship. She testified that ADES made reasonable efforts to reunite the parents and child but further efforts would be unproductive. She opined that reunification with Father would not be in Hanan's best interest because he was unwilling and unable to care for her. The case worker based her opinion on Father's psychological evaluation, which was admitted into evidence and his unwillingness to participate in reunification services. The case worker also testified that termination of parental rights would not be in Hanan's best interest because she maintained a relationship with both of her parents and did not wish to be adopted. Lastly, the case worker testified that Hanan agreed to the guardianship and Hanan's foster mother agreed to take on the duties and responsibilities of becoming Hanan's legal guardian.

¶31 Accordingly, in granting the guardianship the court found the following: (1) Hanan was adjudicated dependent on May

25, 2010; (2) Hanan had been in her foster mother's custody for less than nine months but the nine-month requirement was waived for good cause; (3) Father agreed to the guardianship on March 1, 2011 in his "Motion for Father's Limited Involvement . . ."; (4) ADES made reasonable efforts to reunite the parents and child but further efforts would be unproductive and reunification was not in Hanan's best interest; (5) Father was unable to provide proper care for Hanan and failed to participate in reunification services; (6) termination of parental rights would not be in Hanan's best interest because she did not want to be adopted and wished to maintain contact with her parents; (7) the foster mother was a fit and proper person to become Hanan's permanent guardian; (8) guardianship was in Hanan's best interest, as she wished to remain with her foster mother and Father is unable to properly care for her; and (9) Hanan did not object to the guardianship. These findings were clearly supported by the evidence presented at the hearing and in the record.

CONCLUSION

¶32 For the reasons stated above, we affirm the permanent guardianship.

/S/

PATRICIA A. OROZCO, Judge

/S/

PETER B. SWANN, Presiding Judge

/S/

MARGARET H. DOWNIE, Judge