

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



DIVISION ONE  
FILED: 12/4/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

ALMA P., ) No. 1 CA-JV 12-0132  
)  
Appellant, ) DEPARTMENT C  
)  
v. ) MEMORANDUM DECISION  
)  
ARIZONA DEPARTMENT OF ECONOMIC ) (Not for Publication -  
SECURITY, ALE. G., ALO. G., ) Ariz. R.P. Juv. Ct. 103(G);  
) ARCAP 28)  
Appellees. )  
)

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Appeal from the Superior Court in Maricopa County

Cause No. JD18129

The Honorable Christopher Coury, Judge

**AFFIRMED**

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Alma P. Phoenix  
*In Propria Persona*

Thomas C. Horne, Attorney General Phoenix  
By Michael F. Valenzuela, Assistant Attorney General  
Attorneys for Appellee Arizona Department of Economic Security

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**T H U M M A**, Judge

¶1 Alma P. appeals the denial of her motion to set aside  
a ruling terminating her parental rights to her children Ale. G.

and Alo. G.<sup>1</sup> Alma claims she was not served with a temporary custody notice when Alo. G. was taken into custody on July 4, 2009. Therefore, Alma argues, the severance ruling is void and must be vacated under Arizona Rule of Civil Procedure 60(c).

¶12 Both children were subject to a dependency proceeding filed in mid-2009. After dependency findings and an initial case plan of family reunification, the case plan was changed to severance and adoption. Following a contested severance trial, on November 17, 2010, the superior court severed Alma's parental rights to both children based on nine and fifteen months time in care and Alma's mental illness. On her appeal, that decision was affirmed by this court and the mandate issued May 24, 2011. The children were adopted a few months later.

¶13 Alma filed her motion to set aside on May 29, 2012, many months after the adoption was finalized, more than a year after the mandate issued on her appeal and more than eighteen months after her parental rights were terminated. Given this timing, Alma correctly concedes that "her appeal can only succeed if the [severance] decree was void under Rule 60(c)(4)."

¶14 Alma does not claim that Child Protective Services (CPS) failed to serve her with the temporary custody notice when Ale. G. was removed from her care in June 2009. That notice

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<sup>1</sup> The caption in this appeal is amended to refer to the children by abbreviation and not their full names.

apparently was handed to Alma at that time and appears to contain Alma's signature. With regard to Ale. G., Alma raises no further issue on appeal. Because Alma was served with the temporary custody notice when Ale. G. was removed from her care, the superior court properly denied the Rule 60(c)(4) motion as it applied to Ale. G.

¶15 The record includes a temporary custody notice when Alo. G. was removed from Alma's care in July 2009. However, Alma's signature is not found on that notice, which contains a notation "parent not available." Although the notice for Alo. G. apparently was left at the same address where Alma was served with the notice for Ale. G. a few weeks earlier, the record before this court does not show that Alma was served with the notice when Alo. G. was removed from her care. That fact, however, does not end the inquiry.

¶16 The notice for Alo. G. states Alma would "be notified if CPS files a petition and a Preliminary Protective Hearing is set." CPS filed a dependency petition regarding Alo. G. and the superior court set a preliminary protective conference and hearing for July 14, 2009. Alma personally attended both the conference and the hearing on July 14, 2009, and was represented by appointed counsel and had a guardian ad litem in both proceedings. Although no affidavit of service is contained in

the record, by personally attending those proceedings, Alma demonstrated that she had notice of them.

¶17 At the preliminary protective conference, at which Alma was personally present, she accepted service of process and waived any defects in service. At the preliminary protective hearing, at which Alma was also personally present, she again accepted service of process and waived any defects in service. More than a year later, at the initial severance hearing where she was personally present, Alma avowed to the court that service of the motion to terminate was complete and she waived any defects in service.

¶18 Alma also attended numerous other court hearings and proceedings for more than a year, contesting both the dependency and severance at trial and on appeal. Yet, throughout this process, Alma never contested service of the dependency petition or the motion to terminate even while she was represented by counsel. Instead, Alma did not challenge service until eighteen months after her parental rights were terminated.

¶19 Sufficiency of service must be raised in a timely fashion, or it is waived. *Snow v. Steele*, 121 Ariz. 82, 85, 588 P.2d 824, 827 (1978) ("The failure to raise the insufficiency of process and insufficiency of service of process constitutes a waiver thereof."). As applicable here, a parent's "appearances and participation [in termination proceedings] constitute a

waiver of [the parent's] claim of insufficient service of process." *Pima County Juv. Action No. S-828*, 135 Ariz. 181, 184, 659 P.2d 1326, 1329 (App. 1982). By personally appearing at numerous court hearings; by failing to timely challenge service; by avowing that service was complete and by waiving any defects in service, Alma waived any challenge she may have had to service in the dependency and severance proceedings. *Id.*; *Snow*, 121 Ariz. at 85, 588 P.2d at 827. Given these actions by Alma herself, the juvenile court's severance ruling was not void. In addition, given these actions by Alma herself, we need not address Alma's claims that her counsel lacked authority to accept service and waive any defects on her behalf. Accordingly, the superior court properly denied Alma's motion to set aside premised on Rule 60(c)(4).

¶10 Alma's motion to set aside alleged grounds other than claiming the severance ruling was void. Alma concedes, however, that such other grounds are subject to time limits. Such a motion to set aside "shall be filed within six (6) months of the final judgment, order or proceeding unless the moving party alleges grounds pursuant to Rule 60(c)(1) (2) or (3), in which case the motion shall be filed within three (3) months of the final judgment." Ariz. R.P. Juv. Ct. 46(E). It is undisputed that Alma's motion to set aside was filed long after these deadlines passed. Accordingly, the superior court properly

denied Alma's motion to set aside to the extent it was based on grounds other than Rule 60(c)(4).

¶11 The superior court's denial of Alma's motion to set aside is affirmed. As Alma is not the prevailing party on appeal, her request for fees and costs is denied.

/S/\_\_\_\_\_  
SAMUEL A. THUMMA, Judge

CONCURRING:

/S/\_\_\_\_\_  
PHILIP HALL, Presiding Judge

/S/\_\_\_\_\_  
PETER B. SWANN, Judge