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



DIVISION ONE
FILED: 3/26/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

SYLVIA S.,) 1 CA-JV 12-0266
)
Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz. R.P. Juv.
SECURITY, S.S., M.V., G.V.,) Ct.; Rule 28 ARCAP)
)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD21010

The Honorable Joan Sinclair, Commissioner

AFFIRMED

Christina Phillis, Maricopa County Public Advocate Mesa
By Suzanne Sanchez, Deputy Public Advocate
Attorneys for Appellant

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By Nicholas Chapman-Hushek,
Assistant Attorney General
Attorneys for Appellee Arizona Department of
Economic Security

T H O M P S O N, Judge

¶1 Sylvia S. (Mother) appeals from the juvenile court's order terminating her parental rights to S.S., and twins M.V. and G.V. (collectively the children).¹ For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY²

¶2 Child Protective Services (CPS) took custody of the children in October 2011 because Mother tested positive for methamphetamines at the birth of the twins and admitted that she used methamphetamines during the pregnancy.³ In December, the juvenile court found the children dependent as to Mother and approved a concurrent case plan of family reunification with severance and adoption. CPS offered Mother parent-aide services, substance-abuse assessment and treatment, random urinalysis testing, a psychological consultation and services, and transportation. In November and December 2011, Mother

¹ On the court's own motion, it is hereby ordered amending the caption for this appeal to protect the identity of the minor children. The above referenced caption shall be used on all documents filed in this appeal.

² We view the facts in the light most favorable to sustaining the juvenile court's ruling. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, 82, ¶ 13, 107 P.3d 923, 928 (App. 2005). We do not reweigh the evidence, and we defer to the fact-finder's resolution of any conflicts in the evidence. See *Vanessa H. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 252, 257, ¶ 22, 159 P.3d 562, 567 (App. 2007); *Lashonda M.*, 210 Ariz. at 82, ¶ 16, 107 P.3d at 928.

³ Frankie T. and Mario V. (the Fathers) are not parties to this appeal.

tested positive for methamphetamines seven times. Because of Mother's continuous methamphetamine use, CPS referred her for an inpatient substance-abuse treatment program at Casa de Amigas. Mother successfully completed the program, but in February and March of 2012, Mother failed to submit to any of her sixteen scheduled urinalysis tests. In April, Mother tested positive for methamphetamines six times. She also tested positive in May. She failed to comply with the urinalysis testing altogether in June and July.

¶3 In June, Mother appeared at a report and review hearing. The juvenile court ordered that the case plan be changed to severance and adoption and set an initial termination hearing for July 17. The Arizona Department of Economic Security (ADES) filed a motion to terminate Mother's parental rights on substance-abuse grounds under Arizona Revised Statutes (A.R.S.) section 8-533(B)(3) (Supp. 2012). ADES sent the motion and a notice of hearing reminding Mother that the court set the initial termination hearing for July 17, 2012, at 9:30 a.m. The notice of hearing contained the following admonition:

You have a right to appear as a party in this proceeding. You are advised that your failure to personally appear in court at the initial hearing . . . without good cause shown, may result in a finding that you have waived your legal rights and have admitted the allegations in the Motion. In addition, if you fail to appear, without good cause, the hearing may go forward in your absence

and may result in an adjudication of . . .
termination of your parental rights . . .
based upon the record and the evidence
presented to the court.

¶14 Mother did not appear at the July 17 hearing. The court found that Mother had failed to appear and had waived her rights to contest the termination motion. The court set the pretrial conference for August 14. Mother appeared at the pretrial conference and asked the court to reconsider its finding that she had waived her right to contest the termination motion. Mother alleged that she missed the hearing because she was in urgent care for a medical emergency. The court continued the pretrial conference to October 10, and ordered Mother to provide written proof to her counsel as to why she failed to appear for the initial severance hearing. Mother did not provide documentation to her counsel. Instead, at the October 10 pretrial conference she alleged that she had pelvic issues throughout the year that caused her to go to urgent care on July 17, but urgent care would not see her because she did not have the proper insurance. When she returned to obtain documentation of her visit, urgent care would not provide her with proof of attendance. Mother did have bills from different hospitals on different dates, but nothing from July 17. At this explanation, the court responded:

So, they went to an Urgent Care, not an
emergency room, checked in, sat and waited;

got nothing in writing, didn't even get medical treatment and then left.

. . . .

All right. Well, I'm not hearing good cause.

. . . .

I mean, Urgent Care just means you're going to the doctor, you just didn't have an appointment. And I understand, but, I mean, we're not talking emergency room, we're not talking, you know, car accidents, we're not talking, you know, major reasons why you cannot be in court. . . .

Well, I'm not going to change my ruling then, I just don't think it's sufficient under the circumstances here.

The court then proceeded with the termination adjudication hearing. At the conclusion of the hearing, the juvenile court held that ADES proved by clear and convincing evidence that Mother is unable to discharge her parental responsibilities because of chronic substance abuse of dangerous drugs and that there are reasonable grounds to believe the condition will continue. A.R.S. § 8-533(B)(3). The court further found that ADES proved by a preponderance of the evidence that termination of Mother's parental rights was in the best interests of the children.

¶15 Mother timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235(A) (2007), 12-120.21(A)(1) (2003), and 12-2101(A)(1) (Supp. 2012).

DISCUSSION

¶16 Mother argues that the juvenile court's default finding was erroneous because she demonstrated good cause for her failure to appear at the initial severance hearing on July 17. We disagree.

¶17 When a parent fails to appear at an initial severance hearing, the juvenile court may proceed in absentia and terminate parental rights "based upon the record and evidence presented" if the parent failed to appear "without good cause shown," the parent had notice of the hearing, and the parent "had been previously admonished regarding the consequences of failure to appear." Ariz. R.P. Juv. Ct. 65(C)(6)(c). "In order to show good cause, the moving party must show that (1) mistake, inadvertence, surprise or excusable neglect exists and (2) a meritorious defense to the claims exists." *Christy A. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 299, 304, ¶ 16, 173 P.3d 463, 468 (App. 2007). Good cause for a parent's non-appearance exists when the absence "is such as might be the act of a reasonably prudent person in the same circumstances." *Id.* The juvenile court has broad discretion in determining what constitutes good cause for a party's failure to appear at a hearing. *Adrian E. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 96, 101, ¶ 15, 158 P.3d 225, 230 (App. 2007).

¶18 Mother contends she established good cause because she "experienced a medical emergency" and "checked into an urgent care facility and waited to see a medical professional." Under the circumstances, we cannot find that the trial court erred in holding Mother did not demonstrate good cause for her failure to appear. The facts explaining Mother's absence are extremely vague and are not indicative of a reasonably prudent mother seeking to gain back the custody of her children. Mother does not state what kind of medical emergency she had other than that she had been experiencing "pelvic issues" throughout the year. Instead of seeking treatment from an emergency facility, Mother says she attended an urgent care facility where she was turned away because they did not accept her insurance. Then, after being turned away, Mother did not seek any further medical treatment.

¶19 These circumstances cannot reasonably be considered a medical emergency sufficient to excuse an absence from an important termination hearing. At best, Mother has an ongoing medical problem that was not urgent. It is unclear whether Mother experienced any corresponding symptoms on the day of the hearing. Mother has not demonstrated that she could not have attended the hearing on July 17. Mother does not dispute that she had adequate notice that her presence was required and that the proceedings could occur in her absence. Accordingly, the

juvenile court did not abuse its discretion in determining that Mother failed to demonstrate good cause for her failure to appear.

CONCLUSION

¶10 For the foregoing reasons, we affirm the juvenile court's termination of Mother's parental rights.

/s/
JON W. THOMPSON, Judge

CONCURRING:

/s/
JOHN C. GEMMILL, Presiding Judge

/s/
DONN KESSLER, Judge