

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: 6/13/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

SONJA C.,) No. 1 CA-JV 13-0019
)
Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) 103(G) Ariz. R.P. Juv.
SECURITY, I.C.,¹) Ct.; Rule 28 ARCAP)
)
Appellees.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. JD 9095

The Honorable Joan M. Sinclair, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General
By Erika Z. Alfred, Assistant Attorney General
Attorneys for Appellee ADES

Tucson

¹ The caption has been amended to safeguard the identity of the minor child pursuant to Administrative Order 2013-0001.

D O W N I E, Judge

¶1 Sonja C. ("Mother") challenges the juvenile court's order terminating her parental rights to daughter I.C. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY²

¶2 The Arizona Department of Economic Security ("ADES") filed a dependency petition regarding I.C. four days after her April 2012 birth. Mother and I.C. both tested positive for methamphetamine, and Mother had an open dependency case regarding two older children. Mother's parental rights to those children were terminated in July 2012 based on chronic substance abuse and time in care. See Ariz. Rev. Stat. ("A.R.S.") § 8-533(B)(3), (B)(8)(b).

¶3 In October 2012, ADES moved to terminate Mother's parental rights to I.C., alleging: (1) inability to discharge parental responsibilities due to chronic substance abuse; (2) out-of-home placement for six months or longer and substantial neglect or willful refusal to remedy the circumstances leading to the child's removal; and (3) parental rights to another child

² We view the evidence in the light most favorable to affirming the juvenile court's order. *Maricopa County Juv. Action No. JS-8490*, 179 Ariz. 102, 106, 876 P.2d 1137, 1141 (1994) (citation omitted).

terminated within the preceding two years for the same cause. See A.R.S. § 8-533(B)(3), (B)(8)(b), (B)(10).

¶14 Mother failed to appear for a December 2012 pretrial conference. The court found no good cause for her absence and concluded she had waived her right to contest the severance motion. See A.R.S. § 8-537(C) (if parent fails to appear for pretrial conference after appropriate notice, court "may find that the parent has waived the parent's legal rights and is deemed to have admitted the allegations of the petition by the failure to appear").

¶15 A Child Protective Services ("CPS") case manager testified that ADES offered Mother substance abuse counseling, options for in-patient treatment, transportation, random drug testing, psychological consultation, and parent aide services. The case manager further testified that Mother failed to participate in services and failed to drug test during the pendency of I.C.'s dependency case. The court took judicial notice of the previous terminations of Mother's parental rights as to her two older children.

¶16 The court ruled that ADES had proven by clear and convincing evidence that Mother's parental rights to I.C. should be severed based on chronic substance abuse, time in care, and the termination of rights to another child within the preceding two years for the same cause. It also concluded termination was

in I.C.'s best interests -- a finding Mother does not challenge on appeal. Mother timely appealed. We have jurisdiction pursuant to A.R.S. § 8-235(A).

DISCUSSION

¶17 Mother contends she established good cause for failing to appear at the pretrial conference and that the court erred by concluding otherwise. We disagree.

¶18 "[A] finding of good cause for a failure to appear is largely discretionary." *Adrian E. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 96, 101, ¶ 15, 158 P.3d 225, 230 (App. 2007) (alteration in original). "We therefore review the finding for an abuse of discretion and generally will reverse only if the juvenile court's exercise of that discretion was manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Id.* (internal quotation marks omitted). In reviewing for an abuse of discretion, "[t]he question is not whether the judges of this court would have made an original like ruling, but whether a judicial mind, in view of the law and circumstances, could have made the ruling without exceeding the bounds of reason. We cannot substitute our discretion for that of the trial judge." *Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 571, 694 P.2d 1181, 1185 (1985).

¶19 Mother does not deny receiving notice of the December 2012 hearing, as well as notice that her failure to appear for

scheduled hearings could result in the waiver of her legal rights and an admission of ADES' allegations. She instead argues there was good cause for her absence at the pretrial conference.

¶10 Mother was at the courthouse before the pretrial conference began. The CPS case manager testified that Mother said she was "going outside for a smoke." However, the case manager saw Mother get into a waiting vehicle with a man and drive away. Mother telephoned her lawyer, stating she "just received word that her grandfather was ill and was dying in the hospital." Counsel informed the court that she had explained to Mother the consequences of not appearing in person. The court stated: "Mother has been in court on a number of occasions and I think we've done this already with other children. So, mother, I think, is perfectly well aware of what the result is going to be if she's not present in court for these matters."³

¶11 The court found no good cause for Mother's failure to appear and directed counsel to "file the appropriate motion" if additional information came to light establishing good cause for Mother's absence. Mother filed nothing further and never offered corroboration of her claim that a family emergency had unexpectedly required her to leave the courthouse. Based on the

³ Mother had also failed to appear for scheduled hearings relating to her two older children, resulting in the termination of her parental rights as to them.

record before it, the juvenile court did not abuse its discretion in finding no good cause for Mother's absence.

¶12 Mother also contends the court erred by not making a specific written finding that ADES had made diligent reunification efforts. Mother, however, has waived this argument by not raising it below. In *Christy C. v. Arizona Department of Economic Security*, 214 Ariz. 445, 452, ¶ 21, 153 P.3d 1074, 1080 (App. 2007), we refused to consider a parent's claim that the juvenile court failed to make findings required by statute, stating:

We generally do not consider objections raised for the first time on appeal. This is particularly so as it relates to the alleged lack of detail in the juvenile court's findings. . . . [A] party may not "sit back and not call the trial court's attention to the lack of a specific finding on a critical issue, and then urge on appeal that mere lack of a finding on that critical issue as a grounds for reversal."

Because Mother failed to alert the juvenile court to the alleged deficiency in its findings of fact and conclusions of law, she may not raise this issue for the first time on appeal.

CONCLUSION

¶13 For the reasons stated, we affirm the order terminating Mother's parental rights to I.C.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
ANDREW W. GOULD, Presiding Judge

/s/
PATRICIA A. OROZCO, Judge