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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS  
AUTHORIZED. ARIZ. R. SUP. CT. 111(c).

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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MICHAEL E., *Appellant*,

*v.*

ARIZONA DEPARTMENT OF ECONOMIC SECURITY, D.E., *Appellees*.

No. 1 CA-JV 13-0201

FILED 12-26-2013

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Appeal from the Superior Court in Maricopa County

No. JD21302

The Honorable Joan M. Sinclair, Judge

**AFFIRMED**

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COUNSEL

Robert D. Rosanelli, Attorney at Law, Phoenix  
By Robert D. Rosanelli

*Counsel for Appellant*

Arizona Attorney General's Office, Phoenix  
By Michael Valenzuela

*Counsel for Appellee ADES*

**MEMORANDUM DECISION**

Judge Patricia K. Norris delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Kenton D. Jones joined.

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**NORRIS**, Judge:

¶1 Michael E. appeals from the juvenile court's order terminating his parental rights to his minor child on the grounds of substance abuse and 15 months out-of-home placement. On appeal, Michael argues the juvenile court abused its discretion in finding he waived his right to contest the termination motion filed by the Arizona Department of Economic Security ("ADES") because he failed to appear in person at a pretrial conference on the motion even though he was present telephonically. We disagree.

¶2 As an initial matter, Michael did not raise this argument below, and it is therefore waived. *See Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, 452, ¶ 21, 153 P.3d 1074, 1081 (App. 2007) (citations omitted) ("We generally do not consider objections raised for the first time on appeal."). However, even if not waived, the juvenile court did not abuse its discretion in finding Michael failed to appear for the pretrial conference.

¶3 A parent faced with termination of his or her parental rights must appear for the initial hearing, pretrial conference, status conference, and termination adjudication hearing or demonstrate good cause for his or her failure to appear; otherwise, the court may find the parent has waived his or her legal rights and is deemed to have admitted the allegations in the motion or petition for termination. *Adrian E. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 96, 99, ¶ 9, 158 P.3d 225, 228 (App. 2007); *see Ariz. R.P. Juv. Ct. 64(C)*. The hearings may proceed in the parent's absence and "may result in the termination of parental rights based upon the record and evidence presented." *Ariz. R.P. Juv. Ct. 64(C)*. Although Rule 42 of the Arizona Rules of Procedure for the Juvenile Court allows the juvenile court to authorize telephonic testimony or argument, such participation is not an "appearance" under the Rules unless expressly authorized by the court. *See Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, 234, ¶ 14, 119 P.3d 1034, 1037 (App. 2005).

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¶4 Here, Michael received a notice of hearing on the motion for termination filed by ADES. The notice advised Michael in bold lettering that, *inter alia*, “your failure to *personally* appear in court . . . may result in a finding that you have waived your legal rights and have admitted the allegations in the Motion.” (emphasis added). At the initial severance hearing, the juvenile court also gave Michael a copy of “Form III.” Consistent with Rule 64(C), that form advised Michael:

If you fail to attend the . . . Termination Pre-trial Conference . . . without good cause, the Court may determine that you have waived your legal rights and admitted the grounds alleged in the motion/petition for termination. The Court may go forward with the Termination Adjudication Hearing in your absence and may terminate your parental rights to your child based on the record and evidence presented.

Ariz. R.P. Juv. Ct. Form III. Indeed, at the pretrial conference, Michael did not dispute that the court “[made] it very clear from day one in these cases that parents need to be here for all hearings” and “certainly, once the severance motion is filed, that you’ve got to be here and you’ve got to be here on time, otherwise the Court, unless there’s good cause is going to find . . . that the parent has waived their rights.” Nonetheless, Michael did not personally appear for the pretrial conference and did not seek permission from the court to appear telephonically.

¶5 In addition, Michael failed to demonstrate good cause for his failure to personally appear. We will not set aside a juvenile court’s discretionary determination of good cause unless the court’s exercise of discretion was “manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *Adrian E.*, 215 Ariz. at 101, ¶ 15, 158 P.3d at 230 (citation omitted) (quotation marks omitted). The parent bears the burden of showing good cause for his or her failure to appear. *See* Ariz. R.P. Juv. Ct. 66(D)(2). Michael informed the court he was called in to work to cover for an ill co-worker. He gave no details -- either at the pretrial hearing or by subsequent motion -- as to when he was called in to work, whether he explained to his employer he was required to attend the hearing, or whether he would have suffered significant consequences, such as loss of his job, if he had not covered for his co-worker.

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¶6 Given the notice provided to Michael of the consequences of failing to personally appear for the pretrial conference and the meager record presented by Michael regarding his failure to personally appear, we cannot say the juvenile court abused its discretion in finding Michael failed to appear and in proceeding to terminate his parental rights based on the record and evidence presented. Indeed, there was “sufficient support” for the termination of Michael’s parental rights. See *Manuel M. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 205, 214, ¶ 31, 181 P.3d 1126, 1135 (App. 2008) (“[T]he rule requires that there be sufficient support for terminating a parent’s rights.”). ADES presented testimony that Michael had tested positive for marijuana in July 2012, had admitted to hospital staff in May 2013 he was using oxycodone daily, and had refused to participate in reunification services. Additionally, the court made findings on the record that “[t]ermination of parental rights as to the Father is appropriate based on chronic substance abuse and 15 months time in care” and “termination is in this child’s best interests and welfare so [the child] can be legally freed up for adoption.” Father has not appealed these findings.

¶7 For the foregoing reasons, we affirm the juvenile court’s order terminating Michael’s parental rights to his minor child on the grounds of substance abuse and 15 months out-of-home placement.



Ruth A. Willingham - Clerk of the Court  
FILED: mjt