

NOTICE: NOT FOR PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION DOES NOT CREATE
LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

D.C., *Petitioner,*

v.

THE HONORABLE JOSE PADILLA, Judge of the SUPERIOR COURT OF
THE STATE OF ARIZONA, in and for the County of MARICOPA,
Respondent Judge,

DEBORAH C.; DANNY C., *Real Parties In Interest.*

No. 1 CA-SA 14-0116
FILED 07-15-2014

Appeal from the Superior Court in Maricopa County
No. FC 2009-071337
The Honorable Jose S. Padilla, Judge

JURISDICTION ACCEPTED; RELIEF GRANTED IN PART

COUNSEL

ASU Alumni Law Group, Phoenix
By Kelly J. Flood, Ijana M. Harris
Counsel for Petitioner

Weiss-Riner Law, P.L.C., Scottsdale
By Melissa Weiss-Riner
Counsel for Real Party in Interest Deborah C.

Law Offices of Dennis G. Bassi, P.L.L.C., Phoenix
By Dennis G. Bassi
Counsel for Real Party in Interest Danny C.

Scaringelli Law Firm P.C., Scottsdale
By Lawrence F. Scaringelli
Best Interest Attorney

DECISION ORDER

Presiding Judge Margaret H. Downie delivered the decision of the Court, in which Judge Patricia K. Norris and Chief Judge Diane M. Johnsen joined.

D O W N I E, Judge:

¶1 D.C., the 17-year-old son of the real parties in interest, seeks special action review of the superior court’s decision denying his request that retained counsel participate in certain post-decree proceedings that involve him. Although the Best Interest Attorney (“BIA”) and real party in interest Danny C. seek dismissal of the special action petition, they cite no statutory authority that would have permitted D.C., a non-party to the family court proceedings, to file a direct appeal of the superior court’s ruling. *See J.A.R. v. Superior Court*, 179 Ariz. 267, 274 n.6, 877 P.2d 1323, 1330 (App. 1994) (In Arizona, “a child is not a party in a domestic relations proceeding under Title 25, although our courts have recognized that a minor child, in spite of his or her minority, ‘clearly is a person with a legitimate interest in his or her own welfare.’”); *Hanania v. City of Tucson*, 123 Ariz. 37, 38, 597 P.2d 190, 191 (App. 1979) (“The appellate court only has such jurisdiction as the legislature has given it.”). Moreover, where time is of the essence, we may accept special action jurisdiction notwithstanding a petitioner’s right of appeal. *See J.A.R.*, 179 Ariz. at 272, 877 P.2d at 1328 (appealability of an order “should not preclude special action jurisdiction where the appeal is not an equally plain, speedy, or adequate remedy.”). We deny the motions to dismiss filed by Danny C.

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and the BIA and, in the exercise of our discretion, accept special action jurisdiction.

¶2 The BIA concedes he has not seen or spoken with D.C. since August 2012. And it is clear from filings in the superior court and this Court that a somewhat adversarial relationship has arisen between the BIA and D.C. It is also apparent that D.C.'s interests, circumstances, and past interactions with his father differ materially from his younger sisters'.

¶3 D.C. did not ask the superior court to appoint counsel for him or to order his parents to compensate his chosen attorney. He has merely sought leave to be heard through counsel he has personally retained.

¶4 The superior court relied on A.R.S. § 25-321, which permits (but does not require) the appointment of counsel for a minor child in matters relating to child support, custody, and parenting time, and Rule 10(A), Arizona Rules of Family Court Procedure, which authorizes (but does not require) appointment of "one or more of the following:" best interests attorney, child's attorney, or court-appointed advisor. But D.C. has not asked the court to *appoint* counsel. He instead requested only that privately retained counsel appear and advocate regarding matters directly affecting him. *See J.A.R.*, 179 Ariz. at 278, 877 P.2d at 1334 ("A court generally has less discretion to interfere with the choice of retained counsel, and is limited to considerations whether the child's attorney is acting independently and whether the child is competent to make a choice of counsel.").

¶5 Given the unique circumstances of this case and the facially colorable claims D.C. seeks to advance through counsel, we direct the superior court to determine whether D.C. is competent to select counsel and whether his chosen attorney is independent. *See id.* at 278, 877 P.2d at 1334. If the court answers those questions in the affirmative, it shall permit D.C.'s chosen counsel to appear and be heard regarding reunification efforts, school attendance, and other post-decree matters that substantially affect D.C.



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