

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

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

---

BRITNEY S., *Appellant*,

*v.*

DEPARTMENT OF CHILD SAFETY, BABY GIRL S., G.S., *Appellees*.

No. 1 CA-JV 15-0422  
FILED 5-31-2016

---

Appeal from the Superior Court in Maricopa County  
No. JD508879  
The Honorable Rodrick J. Coffey, Judge

**AFFIRMED**

---

COUNSEL

Maricopa County Public Advocate, Mesa  
By Suzanne W. Sanchez  
*Counsel for Appellant*

Arizona Attorney General's Office, Tucson  
By Laura J. Huff  
*Counsel for Appellee Department of Child Safety*

**MEMORANDUM DECISION**

Judge John C. Gemmill delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Maurice Portley joined.

---

**G E M M I L L**, Judge:

¶1 Britney S. (“Mother”) appeals from the juvenile court’s order declaring her minor daughter (“B.G.S.”) dependent. She alleges the court erred by admitting a Department of Child Safety (“DCS”) report into evidence when the author was not present to testify. For the following reasons, we affirm.

**BACKGROUND**

¶2 DCS filed a dependency petition in September 2015. The petition alleged Mother was unable to parent B.G.S. due to substance abuse, neglect, a separate open dependency, and termination of parental rights of two other children. The petition further alleged that both Mother and B.G.S. tested positive for several drugs, including methamphetamine, at the time of B.G.S.’s birth.

¶3 During the preliminary protective hearing (“PPH”) – attended by Mother and her attorney – the trial court received and reviewed a DCS report, including attachments, without objection from Mother. Rachel Delatorre, the report’s author, was present. Mother received a Form 1 Notice to Parent in Dependency Action.<sup>1</sup> The court then set a date and time for a court-ordered mediation and pretrial conference.

---

<sup>1</sup> Form 1 says:

As part of this case, there will be additional court hearings. You are required to attend all court hearings. If you cannot attend a court hearing, you must prove to the Court that you had good cause for not attending. If you fail to attend the Pre-trial Conference, Settlement Conference, or Dependency Adjudication Hearing without good cause, the Court may determine that you have waived your legal rights and admitted the allegations in the dependency petition. The

BRITNEY S. v. DCS, et al.  
Decision of the Court

¶4 Mother failed to appear at court-ordered mediation and the pretrial conference. The court proceeded with a dependency hearing in her absence after confirming that Mother had been notified of the pretrial conference hearing, had previously received Form 1, was not in attendance, and that no good cause had been shown for her failure to attend. When DCS moved to admit the same report considered at the PPH, Mother's counsel objected claiming the author of the report was not present and available for cross-examination.<sup>2</sup> The court admitted the report over the objection and DCS introduced no other testimony or evidence. Based on the allegations in the petition, which were deemed admitted, and the report, the court found that the allegations of the petition were true by a preponderance of the evidence and that B.G.S. was dependent as to Mother. Mother appeals, and we have jurisdiction under Arizona Revised Statutes ("A.R.S.") sections 8-235(A), 12-120.21(A)(1), and 12-2101(A)(1).

ANALYSIS

¶5 We presume that trial courts know the relevant law and apply it correctly. *State v. Moody*, 208 Ariz. 424, 443, ¶ 49 (2004).

¶6 Under Arizona Rule of Procedure for Juvenile Court ("Rule") 55(D)(2), if a parent has been given the proper warning and fails to appear at a pretrial conference, the court may find that the parent has waived her legal rights and admitted the allegations of the dependency petition. The court may then "make a determination of dependency and disposition based on the record and evidence presented." *Id.*; see also A.R.S. § 8-844 (F).

¶7 Mother claims the juvenile court violated her due process rights by admitting the DCS report into evidence. She further claims the court's ruling was based solely on the report. She argues, therefore, that the dependency order is invalid because there was no "evidence presented" upon which the court could base its decision other than the erroneously admitted DCS report.

---

Court may go forward with the Dependency Adjudication Hearing in your absence and may rule that your child is dependent based on the record and evidence presented.

Ariz. R. P. Juv. Ct. Form 1.

<sup>2</sup> The record does not reveal why the report's author was not available to testify, either in person or telephonically, at the pretrial conference.

BRITNEY S. v. DCS, et al.  
Decision of the Court

¶8 DCS contends the report was already part of the record that the court could consider and, in the alternative, that Mother has failed to show prejudice. We need not determine whether the trial court erred in admitting the report into evidence at the pretrial hearing because we conclude, on the record before us, that the report was already legally admitted as evidence in the record from the PPH.

¶9 Rule 45(C) specifically contemplates introduction of a report into evidence at a PPH:

Prior to any dependency hearing, the court may review reports prepared by the child safety worker and shall admit those reports into evidence if the worker who prepared the report is available for cross-examination and the report was disclosed to the parties no later than: 1. One (1) day prior to the *preliminary protective hearing*; or 2. Ten (10) days prior to any other hearing.

(Emphasis added). Therefore, if DCS offers a report at the PPH that was disclosed one day before the hearing and the author is available for cross-examination, the court can admit the report into evidence.<sup>3</sup>

¶10 At the PPH, the court received and reviewed the DCS report. Delatorre, the author of the report, was present and available for cross-examination at that hearing. Although the record does not affirmatively reveal if the report was disclosed a day before the PPH, the record does not demonstrate that Mother objected to the consideration of the report at that time, and therefore any potential disclosure objection was waived. *See Kimu P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 39, 45, n.3, ¶ 19 (App. 2008). The court accepted the report at the PPH, and referenced the report in its order. For this reason and because Rule 45(C) plainly states that the court shall admit those reports "into evidence," the report became evidence at the PPH and part of the record. Later, at the dependency hearing the court could

---

<sup>3</sup> We interpret the phrase "shall admit" as directory rather than mandatory. *See Joshua J. v. Ariz. Dep't of Econ. Sec.*, 230 Ariz. 417, 421, ¶ 11 (App. 2012) ("shall" can be interpreted as directory, not mandatory, if the "legislative purpose is best achieved by such an interpretation" and "failure to comply with [the] directory provision does not invalidate the proceeding to which it relates") (quoting *HCZ Constr., Inc. v. First Franklin Fin. Corp.*, 199 Ariz. 361, 364 n. 1, ¶ 9 (App. 2001)).

BRITNEY S. v. DCS, et al.  
Decision of the Court

properly consider the report as part of the “record and evidence” under Rule 55(D)(2).

**CONCLUSION**

¶11 Because the report was part of the record and the juvenile court did not improperly consider it, we affirm the court’s order declaring B.G.S. dependent as to Mother.



Ruth A. Willingham · Clerk of the Court  
FILED : AA