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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

MYKEL P., *Appellant,*

v.

DEPARTMENT OF CHILD SAFETY, B.P., *Appellees.*

No. 1 CA-JV 17-0071
FILED 8-31-2017

Appeal from the Superior Court in Maricopa County
No. JD31139
The Honorable John R. Ditsworth, Judge

DISMISSED

COUNSEL

Elizabeth D. Tate, Attorney at Law, Phoenix
By Elizabeth D. Tate
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Cathleen E. Fuller
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Kenton D. Jones delivered the decision of the Court, in which Judge Maria Elena Cruz and Judge Patricia A. Orozco¹ joined.

J O N E S, Judge:

¶1 Mykel P. (Mother)² appeals the juvenile court’s orders denying her motions to return B.P. (Child) to her care and for contempt and sanctions against the Department of Child Safety (DCS). For the following reasons, we dismiss Mother’s appeal.

FACTS³ AND PROCEDURAL HISTORY

¶2 In August 2015, DCS removed Child from Mother’s care and filed a petition alleging Child was dependent as to Mother on the grounds of abuse, neglect, mental health concerns, and domestic violence. At the time, Child was minimally verbal, not potty-trained, and had an individualized education plan to address speech and behavioral issues. Child was not interested in toys or cartoons, did not interact with other children, acted out sexually, and spent the majority of her time “sleeping, laying on the couch or laying in a fetal position on the floor.”

¹ The Honorable Patricia A. Orozco, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Sections 3 and 20, of the Arizona Constitution.

² In 2012, as part of a separate dependency proceeding, Child was placed with Mother, her then-paternal aunt; Child’s biological parents’ rights were severed, and, in June 2014, Mother adopted Child.

³ We view the facts in the light most favorable to upholding the juvenile court’s order terminating parental rights. *Marianne N. v. DCS*, 240 Ariz. 470, 471 n.1, ¶ 1 (App. 2016) (citing *Ariz. Dep’t of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, 549, ¶ 7 (App. 2010)).

¶3 By June 2016, substance abuse was ruled out through ongoing urinalysis testing and Mother had completed supervised visitation, parent aide services, a psychological evaluation, and parenting classes, and continued to participate in ongoing psychiatric services, medication management, and individual therapy. DCS reported the only barrier to reunification was Mother's continued cohabitation with Child's alleged abuser. Meanwhile, Child continued to exhibit concerning behavioral issues, including encopresis, enuresis, physical violence, sensory issues, poor concentration, and tantrums.

¶4 In September 2016, Mother petitioned the juvenile court to hold a DCS caseworker in contempt for allegedly concealing Child's participation in a psychiatric evaluation from her and then following the psychiatrist's recommendation that Child take medication to treat attention deficit/hyperactivity disorder (ADHD) without first consulting Mother. By that time, Mother had ceased all communication with the caseworker and, in October, amended the petition to include allegations that DCS "fail[ed] to conduct two Foster Care Review Board meetings [and] only conduct[ed] on[e] [Child Family Team meeting]," had not scheduled any visitation between Mother and Child in thirty days, and had not conducted fourteen make-up visits. Mother also moved separately to dismiss the dependency petition, for an award of attorneys' fees as a sanction for DCS's failure to disclose medical records related to the ADHD diagnosis, and to return Child to her care.

¶5 A two-day evidentiary hearing was held in November and December 2016, after which the juvenile court denied Mother's motions. This appeal followed.

DISCUSSION

I. This Court Lacks Jurisdiction to Review the Juvenile Court's Orders Denying Mother's Motions for Contempt and Sanctions.

¶6 As an initial matter, this Court has an independent duty to determine whether it has jurisdiction over the appeal. *Maricopa Cty. Juv. Action No. J-79149*, 25 Ariz. App. 78, 78 (1975) (citations omitted). "The Court of Appeals is a court of limited jurisdiction and has only jurisdiction specifically given to it by statute." *Francisco F. v. Ariz. Dep't of Econ. Sec.*, 228 Ariz. 379, 381, ¶ 6 (App. 2011) (quoting *Campbell v. Arnold*, 121 Ariz. 370, 371 (1979)). Generally, any aggrieved party may appeal from a final order

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of the juvenile court. Ariz. Rev. Stat. (A.R.S.) § 8-235(A)⁴; Ariz. R.P. Juv. Ct. 103(A). “To qualify as an aggrieved party, the judgment must operate to deny the party some personal or property right or to impose a substantial burden on the party.” *Pima Cty. Juv. Action No. B-9385*, 138 Ariz. 291, 293 (1983) (citing *In re Gubser*, 126 Ariz. 303, 306 (1980), and *Chambers v. United Farm Workers Org. Comm., AFL-CIO*, 25 Ariz. App. 104, 107 (1975)). And, a final order is one “that disposes of an issue such that it conclusively defines the rights and/or duties of a party in a dependency proceeding.” *Francisco F.*, 228 Ariz. at 381, ¶ 7 (citing *Rita J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 512, 513, ¶ 4 (App. 2000)). In contrast, a juvenile court order is interlocutory if “it directs an inquiry into a matter of fact preparatory to a final decision and . . . contemplate[s] further proceedings that will determine the outcome of the case.” *Rita J.*, 196 Ariz. at 515, ¶ 8 (citation and quotation omitted). Whether we have jurisdiction presents a question of law subject to *de novo* review. *Francisco F.*, 228 Ariz. at 381, ¶ 6 (citing *State v. Flores*, 218 Ariz. 407, 410, ¶ 6 (App. 2008)).

¶7 In evaluating our jurisdiction, we do not employ a “narrow, technical conception,” but rather, “examine the practical effect of the juvenile court’s order” on the appealing party’s rights. *Maricopa Cty. Juv. Action No. JD-5312*, 178 Ariz. 372, 374 (App. 1994) (citing *Yavapai Cty. Juv. Action No. J-8545*, 140 Ariz. 10, 14 (1984)).

¶8 Mother first appeals the denial of her motions to hold the assigned DCS caseworker in contempt. However, the juvenile court’s resolution of this motion did not affect an adjudication of the underlying dependency or otherwise impact Mother’s ability to participate in reunification services or interact with Child. *See Francisco F.*, 228 Ariz. at 381-82, ¶ 8 (concluding a parent is aggrieved by an order terminating visitation and reunification services). The case was not dismissed, nor was it resolved in DCS’s favor. *See J-8545*, 140 Ariz. at 15 (concluding “an order declaring a child or children dependent and an order dismissing a dependency proceeding *in toto*, [are] final order[s] subject to appeal by an aggrieved party”). Following the denial of Mother’s motions, Mother maintained the same rights and responsibilities with regard to Child as she did before the motions were resolved. Thus, we conclude the juvenile court did not, through these orders, “conclusively define” Mother’s “rights and/or duties . . . in a dependency action.” *See Francisco F.*, 228 Ariz. at 381, ¶ 7 (citation omitted).

⁴ Absent material changes from the relevant date, we cite a statute’s current version.

¶9 Moreover, no fact relevant to the dependency adjudication was resolved in the orders or would be resolved absent further proceedings. *See Rita J.*, 196 Ariz. at 515, ¶ 8 (holding that an order approving a concurrent plan of severance and adoption was not final and appealable because it “contemplate[s] further proceedings that will determine the ultimate outcome of the case”). Indeed, the orders themselves affirm a previously scheduled dependency adjudication hearing. Therefore, neither of the orders related to contempt and sanctions are final for purposes of A.R.S. § 8-235(A). For these reasons, we dismiss Mother’s appeal as it relates to those orders.

II. Mother’s Appeal of her Motion to Dismiss the Dependency Petition is Moot.

¶10 Mother also appeals the juvenile court’s order denying her motion to dismiss the dependency petition, return Child to her care, and for an award of attorneys’ fees as a sanction against DCS premised upon a purported disclosure violation. However, while this matter was on appeal, the court adjudicated Child dependent as to Mother and terminated Mother’s parental rights to Child based upon the length of time Child was in out-of-home care.

¶11 The termination of Mother’s parental rights renders this Court’s analysis of Mother’s motion to dismiss moot, particularly where Mother has failed to appeal that order, because it precludes us from granting Mother the requested relief: Child’s return to Mother’s care. *See Cardoso v. Soldo*, 230 Ariz. 614, 617, ¶ 5 (App. 2012) (“[W]e will dismiss an appeal as moot when our action as a reviewing court will have no effect on the parties.”) (citing *Bank of N.Y. Mellon v. De Meo*, 227 Ariz. 192, 194, ¶ 8 (App. 2011)); *Progressive Specialty Ins. v. Farmers Ins. of Ariz.*, 143 Ariz. 547, 548 (App. 1985) (“It is not an appellate court’s function to declare principles of law which cannot have any practical effect in settling the rights of litigants.”) (citation omitted); *see also Rita J.*, 196 Ariz. at 515, ¶ 10 (noting an appeal from the juvenile court’s ruling after a permanency hearing “would essentially be rendered moot” after a severance order enters). Accordingly, we dismiss Mother’s appeal as to this issue.

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CONCLUSION

¶12 Mother's appeal of the juvenile court's orders is dismissed.



AMY M. WOOD • Clerk of the Court
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