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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ALYSSA S., *Appellant,*

v.

DEPARTMENT OF CHILD SAFETY, *V.S., Appellees.*

No. 1 CA-JV 17-0197
FILED 11-28-2017

Appeal from the Superior Court in Maricopa County
No. JD27411
The Honorable Cari A. Harrison, Judge

AFFIRMED

COUNSEL

David W. Bell Attorney at Law, Higley
By David W. Bell
Counsel for Appellant

Arizona Attorney General's Office, Phoenix
By Amber E. Pershon
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Kenton D. Jones delivered the decision of the Court, in which Judge Jon W. Thompson and Judge Thomas C. Kleinschmidt¹ joined.

J O N E S, Judge:

¶1 Alyssa S. (Mother) appeals the juvenile court’s order terminating her parental rights to V.S. (Child), asserting she was deprived of due process after the court proceeded in her absence when she failed to appear for two separate hearings. For the following reasons, we affirm.

FACTS² AND PROCEDURAL HISTORY

¶2 In November 2016, Child was born substance-exposed to methamphetamine. Mother stated she had “minimized” her use of methamphetamine during pregnancy, while at the same time admitting she used the substance four to five times per week for five months of her pregnancy and most recently only three days prior to Child’s birth. She did so despite having already had her parental rights to two other children severed in the preceding two years following her failure to engage in services or make behavioral changes to address concerns regarding substance abuse and domestic violence.

¶3 The Department of Child Safety (DCS) removed Child from Mother’s care and filed a petition alleging he was dependent as to Mother on the grounds of neglect, substance abuse, and mental illness. The juvenile court adjudicated Child dependent and adopted a case plan of family

¹ The Honorable Thomas C. Kleinschmidt, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Section 3, of the Arizona Constitution.

² “We view the facts in the light most favorable to upholding the juvenile court’s order terminating parental rights.” *Ariz. Dep’t of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, 549, ¶ 7 (App. 2010) (citing *Manual M. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 205, 207, ¶ 2 (App. 2008)).

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reunification and a concurrent case plan of severance and adoption.³ Mother was referred for substance abuse testing and treatment, supervised visitation, and psychological counseling.

¶4 By February 2017, Mother was noncompliant with services intended to address DCS's concerns regarding her substance abuse and mental health, and the juvenile court granted a request to change the case plan to severance and adoption. DCS immediately moved to terminate Mother's parental rights, alleging: (1) she was unable to discharge parental responsibilities because of a history of chronic abuse of dangerous drugs, and (2) Mother had not remedied the circumstances causing her parental rights to another child to be terminated within the preceding two years. *See* Ariz. Rev. Stat. (A.R.S.) § 8-533(B)(3), (10).⁴ An initial severance hearing was scheduled for March 31, 2017. The court advised Mother both orally and in writing that it would proceed in her absence if she failed to attend the initial severance hearing, pretrial conference, or termination hearing without good cause, and Mother received, signed, and returned the Form 3: Notice to Parent in Termination Action, which correctly identified the date and time of the hearing. But, Mother did not attend the hearing.

¶5 The juvenile court determined Mother had notice of the March 31 initial severance hearing but lacked good cause for her failure to appear. With that, the court set an evidentiary hearing for April 11, 2017. Mother did not attend the April 11 hearing. The court then accepted Mother's non-appearance at the March 31 hearing as an admission to the allegations of the motion and proceeded with a termination hearing. *See* A.R.S. § 8-863(C); Ariz. R.P. Juv. Ct. 65(C)(6)(c). After receiving exhibits and testimony, the juvenile court found DCS proved both the statutory grounds for severance by clear and convincing evidence and that severance was in Child's best interests by a preponderance of the evidence and entered an order terminating Mother's parental rights. Mother timely appealed. We have jurisdiction pursuant to A.R.S. §§ 8-235(A), 12-120.21(A)(1), -2101(A)(1), and Arizona Rule of Procedure for the Juvenile Court 103(A).

³ Child was also adjudicated dependent as to his father (Father), and Father's parental rights were ultimately severed in April 2017. Father's appeal of that order was dismissed, and he is no longer a party to this action.

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

DISCUSSION

¶6 Mother does not contend she had good cause for failing to attend the March 31 initial severance hearing or find fault with the juvenile court's determination she waived her right to contest the allegations of the termination motion. Rather, Mother argues she had a due process right to participate in the April 11 hearing and had good cause for her failure to appear at that hearing because, she contends, a DCS caseworker erroneously advised her the hearing did not pertain to her.

I. Good Cause

¶7 The juvenile court has discretion to determine whether a parent presents good cause for her failure to appear, and we will reverse only if "the juvenile court's exercise of that discretion was 'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *Adrian E. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 96, 101, ¶ 15 (App. 2007) (quoting *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, 83, ¶ 19 (App. 2005)). In order to show good cause, the parent must show both: "(1) mistake, inadvertence, surprise or excusable neglect exists and (2) a meritorious defense to the claims exists." *Christy A. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 299, 304, ¶ 16 (App. 2007) (citing *Richas v. Superior Court*, 133 Ariz. 512, 514 (1982), and then Ariz. R. Civ. P. 60(c)); accord *Marianne N. v. DCS*, 240 Ariz. 470, 474, ¶ 16 (App. 2016) (considering the parent's lack of a meritorious defense in evaluating whether she had good cause for her failure to appear), *vacated in part on other grounds*, 243 Ariz. 53 (2017).

¶8 A meritorious defense is "nothing more than a good faith basis upon which to contend the petitioner cannot prove a statutory basis for termination and/or termination is not in the best interests of the child." *Christy A.*, 217 Ariz. at 304 n.11, ¶ 15. Mother did not allege a meritorious defense within her motion for reconsideration to the juvenile court; nor does she argue or advance any meritorious defense on appeal. Therefore, even assuming the court erred in proceeding with the April 11 hearing in Mother's absence, Mother has shown no abuse of discretion. See, e.g., *Marianne N.*, 240 Ariz. at 474, ¶ 17 (affirming a finding of lack of good cause where a parent claimed she had been advised the hearing was set on a date different than that contained in the court's notice and did not present a meritorious defense); *Christy A.*, 217 Ariz. at 305, ¶¶ 18-19 (same where the DCS caseworker disputed a parent's claim that she had advised the parent the trial had been continued and the parent did not present a meritorious defense).

II. Due Process

¶9 Whether a party is afforded proper due process presents a question of law we review *de novo*. *Jeff D. v. DCS*, 239 Ariz. 205, 207, ¶ 6 (App. 2016) (citing *Herman v. City of Tucson*, 197 Ariz. 430, 432, ¶ 5 (App. 1999)). Mother has presented no authority suggesting the juvenile court commits a due process violation by proceeding in her absence where she had already waived her right to contest the allegations of the termination motion.⁵ Rather, where the juvenile court has already deemed a non-appearance to constitute an admission to the allegations of the motion, the parent's due process rights are satisfied through the effective participation of counsel. *See Christy A.*, 217 Ariz. at 307, ¶¶ 25, 28 (“[W]here the parent fails to appear but is still represented by counsel, the court may proceed in that parent's absence because his or her rights will be protected by the presence and participation of counsel.”); *see also Brenda D.*, 242 Ariz. at 157, ¶ 25 (identifying a parent's due process rights “to present evidence, cross-exam[in]e witnesses, or object to evidence” – tasks all completed through counsel).

¶10 The record reflects Mother's counsel was present at and effectively participated in the April 11 hearing. Counsel cross-examined DCS's witness and was given the opportunity to comment on the admissibility of evidence and present information and argument to the court. Mother participated in the hearing, through her counsel, and has not shown any due process violation.

CONCLUSION

¶11 The juvenile court's order terminating Mother's parental rights to Child is affirmed.

⁵ We reject Mother's assertion that this case is analogous to *Brenda D. v. DCS*. There, the juvenile court erroneously deemed the parent to have waived her right to contest the termination motion when she presented to the hearing late and, as a result, erroneously denied her a full opportunity to participate in the hearing. *Brenda D. v. DCS*, 242 Ariz. 150, 156, ¶ 18 (App. 2017). Here, in contrast, Mother does not contest the finding of waiver.