

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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LUCY L., *Appellant*,

*v.*

DEPARTMENT OF CHILD SAFETY, K.W., *Appellees*.

No. 1 CA-JV 17-0332  
FILED 10-3-2017

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Appeal from the Superior Court in Mohave County  
No. S8015JD201600044  
The Honorable Richard Weiss, Judge

**VACATED AND REMANDED**

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COUNSEL

Erika Arlington, Flagstaff  
*Counsel for Appellant*

Arizona Attorney General's Office, Mesa  
By Nicholas Chapman-Hushek  
*Counsel for Appellee Department of Child Safety*

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**MEMORANDUM DECISION**

Chief Judge Samuel A. Thumma delivered the decision of the Court, in  
which Judge Jennifer B. Campbell and Judge Kent E. Cattani joined.

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**T H U M M A**, Judge:

¶1 Lucy L. (Mother) appeals from an order terminating her parental rights to her daughter, K.W. Mother argues she was denied her right to present evidence at the termination adjudication and her request for a new attorney was improperly denied. The Department of Child Safety (DCS) concedes error. Accordingly, this court vacates the order terminating Mother's parental rights to K.W. and the order denying her request for a new attorney and remands for further proceedings consistent with this decision.

¶2 In July 2016, DCS filed a dependency petition; in September 2016, the court found K.W. dependent as to Mother and in March 2017, DCS filed a motion to terminate Mother's parental rights to K.W. When Mother failed to attend an initial severance hearing, the court "enter[ed] a default against" her and set trial for May 2017.

¶3 Mother attended the May 2017 trial and asked that the default be set aside and she be appointed a new attorney. The superior court denied both requests. Stating it "imagine[d] she got a form three on the day [] the initial hearing was set," Ariz. R.P. Juv. Ct. Form 3, the court found "I don't think there's anything in the record that would suggest that the Court would remove the finding of default against the [M]other." The court did not inquire about the basis for her request for a new attorney in denying that request. The court also barred Mother from presenting any evidence at trial. After receiving evidence, the court granted the motion for termination, and Mother's timely appeal followed.

¶4 Where a parent has been advised of the consequences for failing to appear and then fails to appear at a termination hearing without good cause, the consequences can include waiver of the parent's legal rights and a deemed admission of the allegations in the motion to terminate. *See* Ariz. Rev. Stat. ("A.R.S.") § 8-863(C) (2017). When that occurs, if the required evidentiary showings were made, the court may terminate parental rights "based on the record and evidence presented." A.R.S. § 8-863(C); Ariz. R.P. Juv. Ct. 65(C)(6)(c). However, even when such a waiver occurs, if a parent appears at the hearing before completion of the presentation of evidence (or, as applicable here, appears at trial after failing to appear at an initial severance hearing), the parent's due process rights are violated if the court restricts his or her participation at trial. *Brenda D. v. Dep't of Child Safety*, 242 Ariz. 150, 156 ¶ 18 (App. 2017). Stated differently, in cases where the parent appears before the "close of the moving party's case," the parent has a due process right to contest the facts supporting the

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statutory basis for termination and to testify regarding the child's best interests. *Id.*; *see id.* at ¶ 22 (recognizing right of parent's counsel to call witnesses to challenge "the legal grounds for termination of the parent-child relationship").

¶5 Mother was present for trial but was admonished at the outset that she was "not able to present evidence." That limitation was in error. *Brenda D.*, 242 Ariz. at 156-57 ¶¶ 19-20. Accordingly, the order terminating Mother's parental rights is vacated and this matter is remanded for a new trial, with Mother allowed to participate, including by providing relevant testimony and evidence should she elect to do so.

¶6 It is also undisputed on appeal that no inquiry was made as to the basis of Mother's request for a new attorney. *See State v. Torres*, 208 Ariz. 340, 343 ¶¶ 7-8 (2004) (citations omitted); *State v. Paris-Sheldon*, 214 Ariz. 500, 504 ¶ 8 (App. 2007). Accordingly, on remand, if Mother continues to press her request for a new attorney, a proper inquiry is required so that the court may then resolve that request.

¶7 Finally, although the point is not conceded on appeal, on remand, the court is to again consider whether Mother received a Form 3 or similar admonition by the court. Such an admonition is a prerequisite to the finding Mother waived her rights and was deemed to have admitted the allegations in the motion to terminate. *See* A.R.S. § 8-863(C). The record on appeal, however, does not identify whether such an admonition was provided and, if it was not, the finding that she waived her rights would appear to be erroneous.



AMY M. WOOD • Clerk of the Court  
FILED: AA