

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

SUSAN S., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, D.S., H.S., *Appellees*.

No. 1 CA-JV 18-0023
FILED 7-31-2018

Appeal from the Superior Court in Mohave County
No. L8015JD201607039
The Honorable Derek C. Carlisle, Judge

AFFIRMED

COUNSEL

The Stavris Law Firm PLLC, Scottsdale
By Alison Stavris
Counsel for Appellant

Arizona Attorney General's Office, Mesa
By Ashlee N. Hoffmann
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge Diane M. Johnsen joined.

M c M U R D I E, Judge:

¶1 Susan S. (“Mother”) appeals from a superior court order finding her in default for failing to appear without good cause at an initial severance hearing, and subsequently terminating her parental rights to her two children. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Mother is the biological parent of D.S., born in June 2000, and H.S., born in March 2004. The Department of Child Safety (“DCS”) took temporary custody of the children in November 2016 after receiving multiple reports alleging Mother was mistreating them. When DCS and law enforcement officers arrived at Mother’s hotel room they found the children unsupervised and a bag of marijuana in plain view. DCS petitioned the superior court to find the children dependent, alleging Mother was unable to parent due to substance abuse, neglect, and child abuse. The superior court found the children dependent in March 2017.

¶3 DCS subsequently provided various services to Mother including substance abuse treatment and testing, counseling, and parenting classes. Mother tested with TASC about ten percent of the times she was required, and tested positive for either marijuana or alcohol every time she did test.

¶4 In October 2017, DCS moved to terminate Mother’s parental rights on the grounds of substance abuse, neglect, and willful abuse. Mother failed to appear at the initial severance hearing, but called her counsel to inform the court that her car had broken down. The court continued the initial severance hearing two weeks to allow Mother to appear. At the continued hearing in November 2017, Mother again failed to appear and did not contact the court or her counsel. The superior court found Mother had failed to appear without good cause and proceeded with the severance hearing in her absence. DCS presented evidence and the case worker assigned to Mother’s case testified in support of the motion to

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terminate. At the conclusion of the hearing, the court terminated Mother's parental rights on the grounds of substance abuse and neglect.

¶5 Mother subsequently moved to reconsider the default findings, arguing she had good cause for failing to appear. Mother explained she had two hearings before two different judges in two different superior court divisions on the date of the missed hearing, one in the morning and one in the afternoon. On the date of the scheduled hearings, the judicial assistant to the judge overseeing the afternoon hearing called and left Mother a message stating the hearing before that judge was cancelled. Mother asserted she believed the morning hearing had been cancelled as well, and therefore did not appear. DCS objected to Mother's motion to reconsider, and after oral argument the court denied the motion. Mother timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 8-235(A) and Arizona Rule of Procedure for the Juvenile Court 103(A).

DISCUSSION

¶6 On appeal, Mother asserts that the superior court erred by finding she failed to appear without good cause. A superior court's finding that a parent failed to appear without good cause is reviewed for an abuse of discretion and will not be overturned unless it is "manifestly unreasonable." *Adrian E. v. ADES*, 215 Ariz. 96, 101, ¶ 15 (App. 2007).

¶7 If a parent fails to appear without good cause at an initial severance hearing, the superior court may find waiver and proceed with the final adjudication of the severance motion. Ariz. R. P. Juv. Ct. 64(C); *Adrian E.*, 215 Ariz. at 99, ¶ 9. To establish good cause for failure to appear at an initial severance hearing, a parent must only prove mistake, inadvertence, surprise, or excusable neglect. *Trisha A. v. DCS*, 1 CA-JV 17-0126, 2018 WL 2976798, at *4, *6, ¶¶ 17, 22 (Ariz. App. June 14, 2018).¹ "Excusable neglect exists if the neglect or inadvertence 'is such as might be the act of a reasonably prudent person in the same circumstances.'" *Christy*

¹ In its brief, filed before this court's decision in *Trisha A.*, DCS argued that the parent must also present a meritorious defense. As *Trisha A.* makes clear, that additional requirement does not apply when a parent fails to appear at an initial severance hearing, pretrial conference, or status conference. 2018 WL 2976798, at *6, ¶ 22.

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A. v. ADES, 217 Ariz. 299, 304, ¶ 16 (App. 2007) (quoting *Ulibarri v. Gerstenberger*, 178 Ariz. 151, 163 (App. 1993)).

¶8 Mother argues her failure to appear after receiving the message cancelling the other hearing scheduled on the same day in a different division and before a different judge constituted excusable neglect. Specifically, Mother contends she reasonably mistook the message regarding her other case as cancelling the hearing in this case. However, we agree with the superior court's finding that "a reasonable person . . . would not necessarily assume" that the continuation or cancelling of one hearing meant that both hearings were continued. Mother knew she had two separate hearings before two different judges on the same day, and if she was unsure about the continuation of the morning hearing based upon the continuation of the afternoon hearing, she could have called the court or consulted with counsel rather than simply not appearing for the morning hearing. *See City of Phoenix v. Geyler*, 144 Ariz. 323, 332 (1985) ("[D]iligence is the final arbiter of whether mistake or neglect is excusable."). Furthermore, Mother knew of the possible consequences of failing to appear because she was previously admonished just two weeks prior when she failed to appear at the previous initial severance hearing. The superior court did not abuse its discretion.

CONCLUSION

¶9 Affirmed.



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