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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

TIA L., *Appellant*,

v.

DEPARTMENT OF CHILD SAFETY, T.J., T.J., *Appellees*.

No. 1 CA-JV 18-0138
FILED 12-20-2018

Appeal from the Superior Court in Maricopa County
No. JD21849
The Honorable Jeanne M. Garcia, Judge

AFFIRMED

COUNSEL

Czop Law Firm PLLC, Higley
By Steven Czop
Counsel for Appellant

Arizona Attorney General's Office, Tucson
By Autumn Spritzer
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge David D. Weinzweig delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge Peter B. Swann joined.

WEINZWEIG, Judge:

¶1 Tia L. (“Mother”) appeals the superior court’s order terminating her parental rights to her two children. Because Mother has shown no error on appeal, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Mother and Christopher J. (“Father”) are the natural parents of two boys, T.J., born in 2005, and T.J., born in 2008.¹ The Department of Child Safety (“DCS”) took custody of the children in 2012 after learning that Mother was abusing substances, had failed to protect the children from sexual abuse and neither properly supervised them nor met their needs. DCS returned the children to Mother’s custody in 2013 after she complied with the case plan.

¶3 In March 2015, DCS again took custody of the children because Mother was not properly supervising them or meeting their mental-health needs, and they were missing a lot of school. Mother also abused marijuana. Three months later, the court found the children dependent and set a case plan of family reunification, concurrent with severance and adoption. DCS provided Mother with reunification services, including substance abuse testing and treatment, a psychological evaluation, individual counseling, a parent-aide with visitation and transportation.

¶4 For the next three years, Mother would initially embrace services for a short period and then refuse them. Mother accepted substance abuse treatment in 2016, but she continued to miss and fail drug tests. She relapsed on methamphetamine in February 2017. The case plan was changed to severance and adoption in September 2017 and DCS moved to terminate Mother’s parental rights on grounds that the children had been

¹ The court terminated Father’s parental rights and he is not a party to this appeal.

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in out-of-home placement for at least fifteen months. Mother then refused to submit to further drug testing. Around this time, DCS learned that Mother was in an abusive domestic relationship.

¶5 Mother attended visits with the children for much of the dependency, but struggled to grab their attention or control their behavior. Mother failed to achieve the parent-aide goals and her referral closed around October 2017. She refused to attend visits for several weeks thereafter, and DCS briefly halted visits for a short period due to the children's behavior problems. Mother resumed therapeutic visits with the children in November 2017.

¶6 The court scheduled a contested severance hearing to hear evidence for March 23, 2018. In January 2018, DCS amended its termination motion to add grounds for substance abuse and nine months in out-of-home placement.

¶7 The court held a pretrial conference on February 23, 2018. Mother received notice of the hearing and the consequences for failing to appear, but missed the hearing. The court waited approximately 30 minutes before finding Mother had failed to appear without good cause and thus waived her right to contest the allegations in the pending termination motion. The court did not have time on that date, however, to hold an immediate termination hearing, and instead scheduled the hearing for March 12 while also preserving its waiver findings "until testimony [could be] provided." Given the already-scheduled March 23 termination hearing, the net effect was to expedite the hearing from March 23 to March 12 for a difference of 11 days.

¶8 Mother appeared at the March 12 termination hearing. She explained she missed the pretrial conference because of health issues, but provided no documentation to support her claims. The court was not persuaded and confirmed that Mother lacked good cause for her failure to appear at the pretrial conference and proceeded with the termination hearing.²

¶9 The court allowed Mother and her counsel to fully participate in the hearing. After disrupting the proceedings several times, however, Mother abruptly and voluntarily left at the halfway point of the hearing. At

² Mother does not challenge the merits of the court's waiver findings on appeal.

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the hearing's conclusion, the superior court found that DCS proved all three termination grounds alleged in its petition and that termination was in the children's best interests. The court filed its final order on May 22. Mother filed her notice of appeal on June 22.

DISCUSSION

A. Jurisdiction and Waiver

¶10 We independently review our own jurisdiction. *Riendeau v. Wal-Mart Stores, Inc.*, 223 Ariz. 540, 541, ¶ 4 (App. 2010). Mother filed her notice of appeal three days late. She had moved the superior court to extend the deadline and the court intended to grant relief, but neglected to do so. Meanwhile, DCS argues the court should not have granted the extension because the rules required Mother to file her motion with the presiding judge of the juvenile court and she failed to show excusable neglect.

¶11 We need not consider this issue and argument, however, because we accept special action jurisdiction. The ramifications of this proceeding are substantial for Mother and she has no "equally plain, speedy, and adequate remedy by appeal." Ariz. R.P. Spec. Act. 1(a); *see Stuard v. Bean*, 27 Ariz. App. 350, 351 (App. 1976) (special action jurisdiction particularly appropriate where child welfare is concerned).

B. Due Process

¶12 Mother claims the superior court violated her due process rights by accelerating the severance adjudication under Arizona Rule of Procedure for the Juvenile Court ("Rule") 64(C) after she failed to appear at the pretrial conference. DCS counters that the court properly applied Rule 64(C) because "a parent's appearance after the court's decision to accelerate the proceedings entitles the parent to participate in the accelerated hearing, not to reinstate the original adjudication date." Moreover, DCS asserts that Mother's argument is unavailing because she failed to show any resulting harm.³

¶13 The superior court has discretion to accelerate a final severance adjudication when a duly-noticed parent fails to appear at a pretrial conference without good cause. *See A.R.S. § 8-537(C)* (a failure to appear without good cause at the enumerated hearings may result in a waiver of the parent's legal rights); Ariz. R.P. Juv. Ct. 64(C) (same);

³ DCS argues for a fundamental error standard, but we find no error.

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Marianne N. v. Dep't of Child Safety, 243 Ariz. 53, 56-58, ¶¶ 14-31 (2017) (holding Rule 64(C) does not violate the separation of powers doctrine); *cf. Brenda D. v. Dep't of Child Safety*, 243 Ariz. 437, 444, ¶ 24 (2018) (waiver of a parent's legal rights under Rule 66(D)(2) for failure to appear at termination adjudication hearing). That was not error.

¶14 And when the rescheduled hearing arrived on March 11, Mother appeared with counsel to contest the allegations. Aside from expediting the process by 11 days, Mother fails to show how the superior court deprived her of a fully adjudicated hearing that comported with due process. She also had three weeks to prepare after the pretrial conference. The record indicates that Mother and her counsel fully participated in the March 11 hearing. The court emphasized that Mother should be represented "to the fullest extent" at the proceeding. And she was. Mother's guardian ad litem and attorney both actively assisted her while she remained in the courtroom and fully represented her even after she voluntarily absented herself from the courtroom. Mother's counsel raised objections, cross-examined DCS's witness and presented a closing argument. Mother had the opportunity to call witnesses on her behalf and offer exhibits. Mother also had the opportunity to testify, but waived that right by voluntarily leaving halfway through the hearing. Mother left the hearing of her own accord before testifying; that was her choice and there is no indication in the record that the court in any manner prohibited her testimony. Mother received due process. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.") (quotation omitted).

¶15 Mother also contends the court should not have waived her legal right to contest the termination allegations until the close of the evidence. But the record demonstrates the court encouraged Mother to contest the termination allegations. The court took no waiver shortcuts and instead heard and considered all the evidence and testimony presented before reaching an informed conclusion. Mother has not demonstrated the court restricted her defense in any way. Her counsel cross-examined DCS's witnesses, emphasizing the points she deemed critical to her defense, including that Mother participated in substance abuse treatment before relapsing in February 2017, that DCS briefly stopped visits between Mother and the children and that the children's placement was at risk of disruption due to their problematic behaviors. The court specifically considered the testimony elicited on Mother's cross-examination about the children's behaviors and their adoptability before it found them adoptable.

¶16 Nor does Mother argue or the record reflect that the court relied solely upon DCS's factual allegations while ignoring all other evidence presented at the hearing. *See Alice M. v. Dep't of Child Safety*, 237 Ariz. 70, 73, ¶ 12 (App. 2015) (error harmless because superior court's decision to terminate parental rights would not have changed). In sum, Mother fails to show how the court violated her due process rights or how any alleged error contributed to its final order.

C. Reasonable Evidence

¶17 Finally, the record includes ample evidence to support the court's required termination findings. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 376, ¶¶ 13-14 (App. 2010) (we affirm a termination order if reasonable evidence supports any one of the statutory grounds and a finding that termination is in the child's best interests). DCS offered evidence to prove the fifteen months' out-of-home placement ground, A.R.S. § 8-533(B)(8)(c), including that (1) it provided Mother with numerous services, including case management services, case plan staffings, child and family team meetings, individual counseling, parent-aide services, a psychological consultation, a psychological evaluation, a substance abuse assessment, substance abuse testing, substance abuse treatment, visitation, and transportation assistance; (2) the children were removed from Mother's care in 2012 for failure to protect them from sexual abuse; (3) the children were again removed in 2015 because Mother failed to meet their basic and mental-health needs; (4) Mother relapsed on methamphetamines in February 2017 during the recovery phase of her substance abuse treatment; (5) Mother was involved in a violent domestic relationship; (6) Mother failed to successfully complete parent-aide services; and (7) Mother "ha[d] recently stopped visiting the children."

¶18 The record also established that Mother had a five-year pattern of abusing drugs as of the severance hearing. She had refused further participation in substance abuse testing before the severance hearing. Based on Mother's history and two dependencies, the case manager concluded that Mother was unable to remedy the circumstances causing the children's out-of-home placement. And during the final three-year dependency, Mother was "given multiple services to try to help her along the way. However, she would get to a certain point, and then she would stop doing them, refuse to do them, feel that she no longer needed them." The case manager testified that Mother had demonstrated a "horrible cycle" and opined that she "would not be able to . . . ensure the safety of the children in her care."

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¶19 The court's best-interests finding is also supported by reasonable evidence. DCS alleged, and the court found, that termination of Mother's parental rights would "further the plan of adoption" and provide the children with "permanency and stability." It also found that the children's placement was meeting their needs and wished to adopt them and that the children are adoptable. The record supports these findings. *See Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, 3, ¶ 12 (2016) ("When a current placement meets the child's needs and the child's prospective adoption is otherwise legally possible and likely, a juvenile court may find that termination of parental rights, so as to permit adoption, is in the child's best interests.").

CONCLUSION

¶20 We affirm the superior court's order terminating Mother's parental rights to T.J. and T.J.



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