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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ZACHERY G., *Appellant*,

v.

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

No. 1 CA-JV 19-0119
FILED 9-26-2019

Appeal from the Superior Court in Mohave County
No. L8015JD201807022
The Honorable Steven C. Moss, Judge

AFFIRMED

COUNSEL

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

Arizona Attorney General's Office, Mesa
By Lauren J. Lowe
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Chief Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Michael J. Brown and Judge Kent E. Cattani joined.

S W A N N, Chief Judge:

¶1 Zachery G. (“Father”) is the biological father of T.S. He appeals the juvenile court’s decision terminating his parental rights to T.S. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 T.S. was born substance-exposed to Leah O. (“Mother”) in March 2018.¹ The Department of Child Safety (“DCS”) interviewed Mother soon after T.S.’s birth and learned that Mother’s husband, Paul O., was not T.S.’s biological father because he had been incarcerated at the time she was conceived. Mother reported that “Zach” was the biological father but she refused to provide his last name. DCS took T.S. into custody and initiated a dependency action.

¶3 DCS was able to locate and inform Father of the dependency action before the April 2018 preliminary protective hearing. Father attended the prehearing conference and signed an acceptance and waiver of timely service of process acknowledging that he received a copy of the dependency petition, temporary orders, and notice of hearing. Father did not, however, appear at the hearing later that day. The court did not appoint counsel for Father at the hearing, but did appoint counsel for both Mother (who did not appear) and Paul O. (who did appear).

¶4 DCS thereafter repeatedly reached out to Father to initiate services, including a paternity test. But though Father would agree to meet with DCS to discuss services, he failed to attend any of the appointments.

¶5 Father appeared in court in September 2018, at what was scheduled to be the permanency hearing. The court found Father to be

¹ Mother’s parental rights were terminated but she is not a party to this appeal.

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indigent, appointed him counsel, and, at DCS's request, continued the permanency hearing for one month.

¶6 During that month, Father failed to participate in services and was arrested on theft and drug charges. At the October permanency hearing, the court, over Father's objection, changed the case plan from reunification to severance and adoption. Father remained incarcerated until December 10, 2018. He did not contact DCS upon his release. But his mother contacted DCS and requested that DCS contact him, which it did. Father finally met with DCS for the first time on December 26, 2018, and was directed to participate in several services, including services for substance abuse. His participation in the services was limited – he called in for drug tests twice in January 2019 but never submitted to a test, and he did not engage with a substance abuse provider until February 2019.

¶7 The court held a termination hearing in late February 2019. At the hearing, Father argued that his due process rights had been violated because he was not appointed an attorney at the start of the dependency proceedings. The court rejected that argument, holding that Father had been appropriately served and informed that he would be provided an attorney if he participated in the case. The court terminated Father's parental rights based on abandonment and time in care.

¶8 Father appeals, reprising his due-process argument.

DISCUSSION

¶9 A parent's right to custody and control of his own child, while fundamental, is not absolute. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 248, ¶¶ 11-12 (2000). "The government may not interfere with that fundamental right unless a court finds that: (1) the parent is unable to parent the child for any reason defined by statute; and (2) the parent has been afforded due process." *Carolina H. v Ariz. Dep't of Econ. Sec.*, 232 Ariz. 569, 571, ¶ 6 (App. 2013). "In termination proceedings, '[d]ue process requires notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections.'" *Monica C. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 89, 92, ¶ 16 (App. 2005) (citation omitted). Additionally, under A.R.S. § 8-221(B), "[i]f a . . . parent or guardian is found to be indigent and entitled to counsel, the juvenile court shall appoint an attorney to represent the person."

¶10 Here, Father was apprised of the dependency action when he received the dependency petition, temporary orders, and notice of hearing

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at the preconference hearing in April 2018. Those documents advised Father of the necessity for him to appear at hearings and participate in services.² Father failed to participate in any services and did not appear at any hearing until September 2018.

¶11 Father cites *Matter of Juvenile Action No. J-64016*, 127 Ariz. 296, 298 (App. 1980), for the proposition that lack of appointed counsel automatically results in a due process violation. However, that case is easily distinguished. In *J-64016*, the mother appeared at the dependency hearing, the court found that she was indigent and entitled to counsel, and then proceeded to hear evidence and make a finding without the mother’s counsel present. *Id.* at 297–98. Here, by contrast, Father failed to appear at numerous hearings, leaving the court unable to make findings as to his indigency or entitlement to counsel. Upon Father’s appearance at the September hearing, the court finally was able to determine his entitlement to counsel. He was then promptly provided an attorney, and thereafter was represented by counsel at all hearings, including the termination hearing. He had the opportunity to testify, conduct cross-examination, and present argument. On this record, we cannot say that Father’s due process rights were violated.

CONCLUSION

¶12 We affirm the juvenile court’s order terminating Father’s parental rights.



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

² The notice of hearing was not a model of clarity with respect to whether Father had appointed counsel – though it did not identify specific counsel for Father (as it did for Mother and Paul O.), it did state that “[t]he Juvenile Court has appointed a lawyer to represent you” and “[y]our lawyer will start representing you when the Dependency Petition concerning your child is filed.” But the notice did clearly state that any continued court-appointed representation was dependent on Father appearing at the hearing and completing a financial statement.