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AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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ROSA F., *Appellant*,

*v.*

DEPARTMENT OF CHILD SAFETY, A.E., I.F.,  
CHRISTOPHER B., KASSIDY B., *Appellees*.

No. 1 CA-JV 19-0392  
FILED 9-29-2020

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Appeal from the Superior Court in Maricopa County  
No. JD527466  
The Honorable Karen L. O'Connor, Judge (retired)  
The Honorable Timothy J. Ryan, Judge  
The Honorable Sally S. Duncan, Judge

**AFFIRMED**

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COUNSEL

Ortega & Ortega, PLLC, Phoenix  
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*Counsel for Appellant*

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

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By Thomas A. Vierling  
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Law Office of Christina Lopez, PLLC, Phoenix  
By Christina M. Lopez  
*Counsel for Appellee Foster Placement*

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**MEMORANDUM DECISION**

Judge Paul J. McMurdie delivered the Court's decision, in which Presiding Judge James B. Morse Jr. and Judge Maria Elena Cruz joined.

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**M c M U R D I E**, Judge:

¶1 Rosa F. ("Grandmother") appeals the juvenile court's dismissal of her adoption petition for her two grandchildren, Andrea and Ivana. For the following reasons, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 In 2014, the Department of Child Safety ("DCS") placed Andrea and Ivana with their maternal aunt ("Aunt") due to their mother's substance abuse and incarceration. Before and after the removal, the children's maternal grandmother ("Grandmother") and the children's grandfather ("Grandfather") (collectively, "Grandparents") were highly involved in raising Ivana, and to a lesser extent, Andrea. In May 2016, the juvenile court terminated the mother's parental rights, and Aunt prepared to adopt the children. Around this time, without approval from the juvenile court, Grandmother accompanied the children on a trip to Mexico. In October 2016, DCS learned that Aunt had allowed the mother repeated, unsupervised contact with the children. Therefore, DCS removed the children from Aunt and placed them with Christopher B. and Cassidy B. (collectively, "Foster Parents").

¶3 Andrea told her foster mother that she lived with her mother while in Aunt's custody, and Ivana lived with Grandmother. Andrea also

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said that they were told to lie to DCS about their living situation. Foster Parents discovered that both girls had bronchitis, untreated asthma, untreated eczema, and outstanding vaccinations. Additionally, Ivana had fourteen cavities from dental neglect. Finally, Andrea was diagnosed with attention-deficit/hyperactivity and post-traumatic stress disorders. Foster Parents filed for adoption in December 2016.

¶4 When DCS initially took the children into custody, Grandmother told DCS she wanted to be placement. Although DCS denied her request, it did not send her a formal denial letter or otherwise communicate her denial. Grandmother retained counsel but did not move to intervene in the dependency. In November 2016, Grandmother filed an adoption petition. Although Grandmother filed the adoption petition alone, she later testified that she intended to amend it to include Grandfather. None of the involved parties informed the juvenile court about Grandmother's adoption petition. Two of the attorneys involved in the matter, acting under a conflict of interest, secured an expedited hearing on Foster Parents' adoption petition.

¶5 Without knowing about Grandmother's petition, the juvenile court granted Foster Parents' adoption petition one day after it was filed and dismissed the dependency. Eventually, Grandmother moved to set aside Foster Parents' adoption and intervene in the proceedings. The juvenile court allowed Grandmother to intervene.

¶6 In October 2017, the juvenile court determined that the attorneys involved in the Foster Parents' adoption acted unethically by securing an expedited adoption. The juvenile court referred the attorneys to the Arizona State Bar, where they were eventually disciplined. But the court expressly found that neither the DCS representatives nor Foster Parents worked in conjunction with the attorneys to perpetrate the fraud on the court. Without setting aside Foster Parents' adoption, the court reinstated the dependency and ordered DCS to initiate a home study, a bonding assessment, and supervised therapeutic visits between Grandmother and the children (the "October 2017 order").

¶7 The order required DCS to provide Grandparents a visit on Halloween. The ruling stated that "DCS shall provide a timestamped, accurate photograph showing [the children and their sister] in their Halloween costumes celebrating Halloween together. It would please the Court to see Maternal Grandmother in the photograph." Because the order was issued only a few days before Halloween, DCS could not make the visit therapeutic. Andrea cried and refused to participate at all, and Ivana

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initially participated, but then cried and asked to leave. DCS ended the visit after only 26 minutes because of the distress it caused the children.

¶8 DCS sought a special-action review from the October 2017 order but complied with its directive to initiate the visits for Grandparents. In November 2017, this court vacated portions of the October 2017 order, including reinstating the dependency, giving DCS temporary legal custody of the children, and requiring visits. *See DCS v. Ryan*, 1 CA-SA 17-0276, 2017 WL 5618531, at \*2, ¶ 10 (Ariz. App. Nov. 22, 2017) (mem. decision). Nonetheless, DCS obtained individual counseling for the children.

¶9 DCS also included Grandparents in regular meetings. At the first meeting, Grandparents stated they did not understand why the children did not want to visit with them. DCS suggested Grandparents engage in therapy to understand the children's needs better, but Grandparents attended only three counseling sessions.

¶10 From October through December 2017, DCS provided Grandparents with therapeutic visits through Southwest Human Development. Although Southwest Human Development approved Grandparents' home study, therapists noted serious concerns about visits. Andrea was very reluctant to participate, and both children showed signs of emotional distress after visits. Ultimately, Suzanne Schunk, a Southwest Human Development therapist, provided a special assessment that recognized the children's anxiety and negative behaviors and recommended suspending visits until the court could appoint a therapeutic interventionist. She also found that the children were securely attached to Foster Parents but had no attachment with Grandparents. Schunk recommended that the Foster Parents adopt the children and that further contact with their biological family cease completely.

¶11 In November 2017, Dr. Al Silberman completed a bonding and best-interest assessment. Dr. Silberman recommended the children remain with Foster Parents and suggested that the children's therapist determine when to resume visits with Grandmother. In December, the juvenile court accepted the parties' stipulation to set aside the Foster Parents' adoption, but suspended visits "until more information is received from the children's therapist."

¶12 In March 2018, the juvenile court granted Grandmother's request to appoint a therapeutic interventionist. After some delay in finding an available interventionist, the court appointed Penny Rivera. Grandparents then began therapeutic visits with the children in October

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2018. Rivera and Dr. Karen Buwalda, the children's therapist, exchanged information and worked together to encourage the children to visit Grandparents.

¶13 Despite the therapists' encouragement, Andrea struggled. When visits began, she cried and stated she did not want to visit Grandparents. Over time, Andrea's fear became more pronounced, and her behaviors intensified. After a visit in early November, Rivera expressed concern over Andrea's high anxiety and the lack of a bond between her and Grandparents. A few weeks later, Andrea refused to attend more visits and was nonresponsive towards any efforts aimed at encouraging her to go.

¶14 Concerned about Andrea's high anxiety, Rivera and Dr. Buwalda recommended, and the parties agreed, that Andrea would not attend visits until further recommendation. In mid-December, Rivera tried to meet with Andrea, without Grandparents, to discuss Andrea's fears and reassure her that she was safe during visits. However, Andrea cried, clung to her foster mother, and refused to come into the office. Concerned about the high level of anxiety Andrea demonstrated over just the thought of visiting with Grandparents, Rivera expressed concern about resuming visits.

¶15 In February 2019, Kathryn Menendez completed another bonding and best-interest assessment. Menendez found that Andrea demonstrated "excessive fear and terror" regarding visits with Grandparents. She opined that while Grandparents might be successful in re-establishing a relationship with Ivana, they likely could not do so with Andrea because she cannot emotionally adjust to transitioning to Grandparents' care. Menendez concluded that the children felt safe and secure with the Foster Parents and that Andrea did not show a bond with Grandparents. Menendez recommended they remain with Foster Parents. Later, in April 2019, the parties agreed to continue the suspension of Andrea's visits until Dr. Buwalda recommended otherwise. That same month, Grandmother moved for an evidentiary hearing and sanctions against Foster Parents and DCS for failing to adhere to the October 2017 order for visitation.

¶16 Although Ivana showed anxiety at times, she generally did well with Grandparents during visits. However, Ivana cried after a visit in December, in which she began drawing her foster family. Grandparents interrupted her and guessed that she was drawing her biological family. After the session, Grandparents told Rivera the placement family was not Ivana's family. They were concerned and frustrated that Ivana was unable

to acknowledge her biological family as her family. As time went on, Ivana displayed more anxiety that Grandparents would “take her away” or “trick” her, and she refused to attend a visit in early May. Rivera noted Ivana’s conflicting feelings about the process and eventually concluded that the children should know about Grandparents’ wishes to adopt them.

¶17 After a few sessions with just foster mother and the children, Rivera revealed Grandparents’ hope that someday the children would live with them. Ivana yelled, “NO! I don’t want to do that. I don’t want to live with them,” to which Andrea agreed, but “just zoned out and . . . [held] in all of her emotions.” Ivana later stated that she feared “[G]randparents are going to take her,” and Andrea “melted down.” Ivana told Rivera she no longer wanted to come and play with Grandparents because she was afraid that she would need to leave her family. Afterward, Ivana and Andrea refused to attend any further visits with Grandparents or to meet with Rivera alone. Furthermore, when Dr. Buwalda tried to meet with the children, “[t]hey were . . . terrified,” “cried,” and “wouldn’t leave [foster mother’s] side.” Nor could foster mother calm them.

¶18 The juvenile court held a hearing on the competing adoption petitions over six days in July and August 2019. At the trial, in addition to the above-described evidence, the court heard from Grandmother’s witness, psychologist Dr. Daniel Gaughn. Dr. Gaughn recommended, based on his review of the records, that the children be removed from their current placement and adopted by their biological family. In November, the court issued a ruling finding that the adoption by Foster Parents was in the children’s best interest. The court dismissed Grandmother’s adoption petition and denied her motion for sanctions. Grandmother appealed, and we have jurisdiction under the Arizona Constitution Article 6, Section 9, and Arizona Revised Statutes (“A.R.S.”) sections 8-235(A), 12-120.21(A)(1), and -2101(A)(1).

## DISCUSSION

### **A. Reasonable Evidence Supports the Juvenile Court’s Order Dismissing Grandmother’s Adoption Petition and Allowing Foster Parents to Adopt the Children.**

¶19 Grandmother argues the juvenile court abused its discretion by dismissing her adoption petition and allowing Foster Parents’ petition to proceed. She asserts that the current ruling was erroneous because DCS and Foster Parents intentionally acted together in an “orchestrated plot” to keep her from becoming placement and adopting the children. Her

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arguments focus on alleged wrongdoings by DCS and Foster Parents during the 2016 adoption, which she argues “allow[ed] [Foster Parents] to secure placement for such a long period of time and then use[] that very placement time as support for their preference to adopt the [c]hildren over Grandmother.”

¶20 The primary consideration in any dependency and adoption proceeding is the best interests of the child. A.R.S. § 8-116; *Michael M. v. ADES*, 217 Ariz. 230, 234, ¶ 17 (App. 2007). This court will affirm rulings in adoption proceedings unless the juvenile court abuses its discretion. *David C. v. Alexis S.*, 240 Ariz. 53, 55, ¶ 8 (2016). The juvenile court is “in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings.” *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546 (App. 1987).

¶21 Consideration of Grandmother’s adoption petition was delayed in 2016 by three things: DCS’s failure to communicate that it had denied Grandmother as placement, the attorneys’ unethical actions of expediting Foster Parents’ 2016 adoption without notice to Grandmother, and the failure of those involved to tell the court that Grandmother had filed a competing adoption petition. The delay should not have happened. However, the juvenile court considered Grandmother’s allegation of fraud and harmful acts by DCS and Foster Parents. The court specifically found that DCS and Foster Parents did not work “in conjunction with the attorneys to perpetrate a fraud on the Court.”

¶22 Grandmother’s argument assumes that she would have been the children’s placement from the time of removal, but that is not certain as DCS denied her request. And although she asserts that DCS ignored the law when it denied her request, she acknowledges that placement with family is “a preference, not a mandate.” *Jewel C. v. DCS*, 244 Ariz. 347, 350, ¶ 5 (App. 2018) (quoting *Antonio P. v. ADES*, 218 Ariz. 402, 405, ¶ 12 (App. 2008)); see A.R.S. § 8-514(B).

¶23 Grandmother appears to be arguing that because Foster Parents’ attorneys committed an ethical breach to Foster Parents’ benefit, we should disregard the best-interest finding made by the juvenile court. Grandmother implies that we should deny Foster Parents’ adoption petition as an appropriate sanction for such action. We reject the invitation.

¶24 The juvenile court never made a finding that DCS or Foster Parents committed “overt and intentional bad acts.” And to the extent that the court made such findings regarding Foster Parents’ adoption attorneys,

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those findings cannot be imputed to DCS. Further, the record does not show that Foster Parents knew or should have known that their counsel was committing ethical breaches.

¶25 More importantly, it would have been error to deny Foster Parents' adoption petition as a sanction. *See Hays v. Gama*, 205 Ariz. 99, 103-04, ¶¶ 22-23 (2003) (court erred by imposing sanction precluding from consideration evidence that would adversely impact the court's ability to consider the child's best interests); *James A. v. DCS*, 244 Ariz. 319, 322, ¶ 13 (App. 2018) (court erred by precluding untimely disclosed bonding assessment that could have a significant effect on best-interest determination); *ADES v. Lee*, 228 Ariz. 150, 155, ¶ 23 (App. 2011) (court erred by returning the child to parents as a sanction for statutory violation by ADES without considering the child's best interests). The juvenile court considered the inappropriate conduct by former counsel and attempted to remediate the harm. In the end, the court had to determine the children's best interests.

¶26 Each of the children demonstrated high anxiety and negative behaviors from visits with Grandparents. Andrea would often cry and refuse to enter the visitation room. At times, she showed extreme anxiety, including shaking, shutting down, and zoning out. She rejected gifts given by Grandparents and experienced nightmares. Several times, Andrea expressed fear that Grandmother would "take [her]." Although the therapists and foster mother reassured Andrea that she was safe at visits, her anxiety continued. The DCS training officer assigned to transport the children to visits testified about one such occasion in which Andrea:

stopped in the middle of the hallway as soon as she saw me and immediately began crying. . . . I got down to her level and she wouldn't answer any of my questions. She was holding her hands up to her mouth and whimpering and shaking. She was completely disassociated from me . . . .

\* \* \*

I have never seen a child react in that fashion. I've seen defiance, I've seen manipulation, and that didn't seem like anything that she was exhibiting. It was extreme fear and sourcing from some sort of trauma she may have experienced in the past.

¶27 Ivana also showed anxiety over visits. After some visits, Ivana exhibited irritable and aggressive behavior, including punching, pinching,



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slapping others, biting herself, and experienced night terrors. She also self-harmed, unbuckled herself from her car-seat, and wet herself despite being fully potty trained. After learning about Grandparents' intentions to adopt the children, Ivana expressed fear, and despite assurances that she was safe, she eventually refused to continue.

¶28 Grandparents assert that DCS and Foster Parents caused the children's missed visits. However, the record shows that the parties and professionals involved met several times to brainstorm ideas that would make the children feel safe and want to visit Grandparents. Foster Mother also testified that she regularly consulted with Dr. Buwalda and Rivera to support the children throughout the visitation process. She also participated in meetings, kept a visitation calendar, and packed snacks for the children's visits.

¶29 Grandparents fault DCS for giving the children a choice to attend visits, but the record shows that DCS personnel took active steps to secure their attendance. The DCS training officer assigned to transport the children to visits testified that she did not give the children a choice. Instead, she used language, such as telling the children they "were going now." Another DCS officer testified she would spend 20 to 30 minutes persuading the children to attend a visit after they had refused. When the children refused a visit, DCS personnel immediately contacted Dr. Buwalda or Rivera, and when available, they would encourage the children to attend. However, Dr. Buwalda and Rivera agreed that forcing the children to go on visits would not be appropriate.

¶30 Finally, Schunk, Dr. Buwalda, and Rivera found no evidence of coaching by Foster Parents. Schunk elaborated that it was "highly improbable" that coaching could explain the children's severe reactions. Dr. Buwalda later echoed this idea, testifying that the girls' responses were "very extreme" and would not be caused by even unconscious body language by Foster Parents. The juvenile court was free to credit such evidence as more reliable than Dr. Gaughn's contrary opinion.

¶31 The children had a strong bond with Foster Parents, who were meeting their needs. Moreover, the children had been in the foster system for over five years. To that end, Dr. Buwalda testified that the children were "having a really difficult time because they need . . . to be kids and they need to have permanency. And they need to just be themselves . . . . I'm getting nervous as a professional how long this has been taking, and it scares me." Reasonable evidence supports the juvenile court's finding that dismissing Grandmother's adoption petition and

allowing Foster Parents to proceed with the adoption was in the children's best interest.

**B. This Court Lacks Jurisdiction to Review the Denial of Grandmother's Motion for Sanctions. Alternatively, Reasonable Evidence Supports the Juvenile Court's Finding that DCS and Foster Parents Did Not Interfere with Therapeutic Visits.**

¶32 Grandmother also argues that DCS violated a court order by failing to ensure therapeutic intervention services "were properly . . . administered and free from interference by [Foster Parents]." She asserts that DCS and Foster Parents intended to frustrate and defy that order indirectly through "gaps in service, lack of scheduling, refusal to communicate with the [therapeutic interventionist], failure to take the [c]hildren to visits at crucial times in the case, allowing the children to choose if they would attend the [visits] (rather than mandating such), and refusing to transport them."

¶33 Essentially, Grandmother seeks to appeal the juvenile court's denial of her motion for sanctions against DCS and Foster Parents. However, that order is not a final order, and this court, therefore, lacks jurisdiction to review it. A.R.S. § 8-235(A); *Brionna J. v. DCS*, 247 Ariz. 346, 349, ¶ 7 (App. 2019) (Court of Appeals' jurisdiction in juvenile proceedings is limited by statute to final orders); *Peace v. Peace*, 234 Ariz. 546, 547, ¶ 4 (App. 2014); *Hurd v. Hurd*, 223 Ariz. 48, 50, ¶ 9, n.2 (App. 2009). Additionally, although Grandmother argues that she is appealing the court's March 12, 2018 order, her motion focused only on the October 2017 order – which this court vacated. Regardless, the juvenile court found that DCS and Foster Parents did not violate the visitation order or interfere with therapeutic visits. As discussed above, reasonable evidence supports the court's findings.

**CONCLUSION**

¶34 We affirm the juvenile court's adoption order.

