

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



DIVISION ONE
FILED: 09/01/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

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

TREY P.,

Appellant,

v.

TERESA P.,

Appellee.

Court of Appeals
Division One
No. 1 CA-JV 11-0051

Maricopa County
Superior Court
No. JD20082

DEPARTMENT E

DECISION ORDER

This case was considered by the Court with Presiding Judge John C. Gemmill and Judges Patrick Irvine and Donn Kessler participating. S. Marie Gates is an attorney and the Guardian ad Litem ("GAL") for Trey P. ("the minor"). She appeals the superior court's dismissal of a dependency petition for the minor. Because the petition was dismissed without prejudice, we lack jurisdiction over this appeal.

Gates filed a dependency petition and "Motion for National Warrant in JV178833 with extradition cost to be paid by parents or order for parents to return child to Arizona (Maricopa County) immediately," using a form provided by the superior

court's self-service center. She listed multiple allegations and attached her GAL report as evidence. The superior court denied the petition and motion without prejudice because there was no "concise statement of the facts to support the conclusion that the child is dependent," as required by A.R.S. § 8-841."

Upon Gates's motion for clarification, the superior court explained that at a minimum it required, "enough information to ascertain where the child is, whether the Court has jurisdiction and time frames for the allegations that are being made." It further stated that Gates could resubmit the petition, and it would be "happy to review any document submitted." She did not do so, but timely appeals.

This Court has "an independent duty to determine whether it has jurisdiction over an appeal." *McMurray v. Dream Catcher USA, Inc.*, 220 Ariz. 71, 74, ¶ 4, 202 P.3d 536, 539 (App. 2009). If there is no jurisdiction, this Court will dismiss the appeal. *Davis v. Cessna Aircraft Corp.*, 168 Ariz. 301, 304, 812 P.2d 1119, 1122 (App. 1991). Arizona Revised Statutes ("A.R.S.") section 8-235 provides that an appeal may be filed "from a final order of the juvenile court to the court of appeals." A.R.S. § 8-235 (2007).¹ A final order in a juvenile dependency proceeding is one that "disposes of an issue such that it conclusively

¹ We cite to the current version of the applicable statute when no material revisions to this decision have since occurred.

defines the rights and/or duties of a party." *Yavapai County Juv. Action No. J-8545*, 140 Ariz. 10, 15, 680 P.2d 146, 151 (1984). Where, as here, the petition was dismissed without prejudice, the merits of the case have not been fully resolved, nor have the rights and duties of Gates or the minor been defined. *Id.* Accordingly, there is no final order from which to appeal. *McMurray*, 220 Ariz. at 74, ¶ 4, 202 P.3d at 539.

Even if this case were properly before us, we find no error. First, there is no support for Gates's contention that the dependency petition was dismissed simply because it was on a "self-represented litigant" form. The superior court noted that the petition was prepared using a form it believed was designed for non-attorneys. The court did not, however, base its decision on that ground, but on the lack of a "concise statement of facts."

Second, we cannot say that the superior court clearly erred in determining that Gates failed to provide a concise statement of facts. Pursuant to A.R.S. § 8-841 (B)(3), a dependency petition must contain "[a] concise statement of the facts to support the conclusion that the child is dependent." Gates listed vague allegations that the attached documents did not clearly support. For instance, Gates alleged: "Mother has substance abuse issues." The GAL report showed, however, that the mother "appears to be sincere in being involved with support

groups to maintain her sobriety." It was also unclear from the documents provided the timeframe for the allegations, where the minor was, or whether the probation department already had temporary custody of the minor.

IT IS ORDERED, dismissing this appeal for lack of jurisdiction.

/s/

PATRICK IRVINE, Judge