IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

DENIA L.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, H.C.-L., AND H.-C.-L.,
Appellees.

No. 2 CA-JV 2019-0055
Filed November 20, 2019

Appeal from the Superior Court in Pima County
Nos. JD20160177 and S20160232
The Honorable Wayne E. Yehling, Judge

APPEAL DISMISSED

COUNSEL

Joel Feinman, Pima County Public Defender
By David J. Euchner, Assistant Public Defender, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

Pima County Office of Children's Counsel, Tucson
By Sybil Clarke
Counsel for Minors

OPINION

Judge Espinosa authored the opinion of the Court, in which Presiding Judge Eppich and Judge Eckerstrom concurred.

E S P I N O S A, Judge:

¶1 Appellant Denia L. appeals from the juvenile court's denial of her motion to grant relief from a severance order. Because the children who were the subject of the severance proceeding have been adopted, and it has been more than one year since the adoption order was entered, *see* A.R.S. § 8-123, we dismiss the appeal as moot.

Background and Procedural History

¶2 The Department of Child Safety (DCS) took Denia's twin girls, born in August 2015, into custody in March 2016 after one of them was hospitalized with subdural hematoma, an occipital skull fracture, and retinal hemorrhages. Denia claimed the child had fallen from a bed on which she left the twins, but a doctor testified the injuries were not consistent with such a fall.[1] In April, Denia entered a "no contest" plea to the allegations DCS made in a dependency petition. The juvenile court adjudicated the children dependent and ordered a case plan of reunification.

¶3 In November 2016, the twins filed a petition for severance, alleging termination was warranted on the grounds of neglect and abuse, based on the physical injuries sustained by the hospitalized child. Denia and DCS opposed the petition. After a hearing, the juvenile court found Denia had abused the twin who had been hospitalized and concluded that abuse provided a "nexus" to warrant severance as to the other twin as well.

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[1]The doctor also testified that a second doctor had noted, "This patient's family has not provided any history that can explain these symptoms, so abuse of head injury is my working diagnosis."

The court also determined that severance was in the children's best interests to avoid the risk of future abuse and because they were adoptable and in a potentially adoptive placement with their paternal grandmother.[2] It ordered Denia's parental rights terminated on February 28, 2017. This court affirmed the juvenile court's severance order on appeal. *Denia L. v. Dep't of Child Safety*, No. 2 CA-JV 2017-0047 (Ariz. App. Aug. 17, 2017) (mem. decision).[3]

¶4 Also in February 2017, Denia was charged with child abuse. In June 2017 she filed a motion to dismiss the charge "due to prosecutorial misconduct and/or errors during the grand jury hearing." The state conceded that remand was appropriate, acknowledging that the grand jury should have been informed of one doctor's opinion that the child's injuries "were consistent with [Denia's] account of the victim having fallen." Upon remand, the grand jury failed to indict Denia a second time. The trial court granted the state's subsequent motion to dismiss the prosecution without prejudice on April 26, 2018. Meanwhile, on November 4, 2017, the twins had been adopted by their paternal grandparents.

¶5 On October 17, 2018, Denia filed a "Motion to grant relief from order; motion to set aside adoption" in the consolidated dependency and severance proceeding. She argued the severance order and adoption should be set aside because (1) the juvenile court had severed her rights "based on allegations that initiated the dependency rather than the circumstances occurring at the time of the severance trial," (2) "minor's attorney was the only party supporting termination," (3) when the criminal case against Denia was remanded to the grand jury it failed to indict her a second time, and (4) the juvenile court had wrongly "emphasized" Denia's refusal to acknowledge abuse had occurred. She also argued in a supplemental brief that her counsel in the severance proceeding had been ineffective. She did not file the motion in the adoption proceeding. The juvenile court denied her motion in the severance proceeding, concluding it was untimely filed under Rule 46(E), Ariz. R. P. Juv. Ct.

¶6 In her opening brief in this court, Denia argued the juvenile court erred in denying her motion because she "is entitled to equitable

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[2]The twins' father's parental rights were also severed in August 2017, after he relinquished those rights. He did not contest the severance and is not involved in this appeal.

[3]This court's mandate issued on January 12, 2018.

tolling of the time" based on her counsel's purported ineffectiveness and her having filed her motion within six months of the dismissal of the criminal charges. In its answering brief, DCS relied in part on § 8-123, arguing that the statute bars equitable tolling. Upon determining Denia had not filed a motion to set aside the adoption in the adoption proceeding, this court sua sponte questioned whether the appeal was moot in view of § 8-123 and ordered supplemental briefing, which the parties provided. We have jurisdiction over Denia's appeal pursuant to A.R.S. § 12-2101(A)(2).

Discussion

¶7 Adoption proceedings and severance proceedings are separate matters. *See Roberto F. v. Dep't of Child Safety*, 237 Ariz. 440, ¶¶ 5, 13 (2015). Section 8-123 provides that, in an adoption proceeding, "[a]fter one year from the date the adoption decree is entered, any irregularity in the proceeding shall be deemed cured and the validity of the decree shall not thereafter be subject to attack on any such ground in any collateral or direct proceeding." And once a child is adopted, "the relationship of parent and child between the adopted child and the persons who were the child's parents before entry of the decree of adoption is completely severed." A.R.S. § 8-117(B). Under this rule, after the twins' adoption in November 2017, Denia's parental relationship with them was "completely severed." *Id.* Thus, because the adoption was completed and remains so, Denia having filed no challenge to that proceeding, any argument that the severance order should be set aside is moot.

¶8 To the extent Denia wishes to now contest the adoption order, any such challenge must fail. Denia suggests her motion to set aside the adoption was "timely because it was filed less than one year after the juvenile court entered the adoption order in November 2017." But, as noted above, although her motion in the severance proceeding was filed within a year of the adoption, she has not filed a motion in the adoption proceeding to date, and is therefore outside the one-year provision of § 8-123. We further reject her suggestion that in order to find her claims moot we would need to interpret § 8-123 "as a firm cut-off that requires not just the motion to be filed but for it also to be granted." Nothing in our decision suggests a motion to set aside an adoption must be granted within one year, rather, we have determined that Denia did not file such a motion in the proper proceeding within one year. And in view of the fact that an adoption will not be granted until at least the severance order has been entered, *see generally* A.R.S. § 8-106(B), a parent has the opportunity to file a motion in an adoption proceeding asking for a stay pending appeal in the severance

proceeding before the year expires. Indeed, in this case, both the appeal and the event on which Denia relies in seeking relief—the failure of the grand jury to indict her a second time—happened within the year provided by § 8-123.

¶9 Denia also argues, in her supplemental brief, that the adoption should be set aside because "Arizona courts construe A.R.S. § 8-123 narrowly" and have allowed "untimely motions" to set aside adoptions "when based on a substantial challenge and not a mere 'irregularity.'" But as Denia acknowledges, our courts have only addressed § 8-123 in one opinion, decided by this court. In *Goclanney v. Desrochers*, we concluded that a "lack of jurisdiction . . . was not an 'irregularity.'" 135 Ariz. 240, 242 (App. 1982). Denia does not challenge the court's jurisdiction in the adoption proceeding, but rather argues she has alleged more than "irregularities" in the severance, which, like a lack of jurisdiction, merit setting aside an adoption.

¶10 Because the legislature did not define "irregularity," we give that term its ordinary meaning. *See State v. Oaks*, 209 Ariz. 432, ¶ 10 (App. 2004). As a legal term, "[i]rregular" is defined as, "Not in accordance with law, method, or usage; not regular." *Irregular*, Black's Law Dictionary (11th ed. 2019). Likewise, in common language, "irregular" means "not being or acting in accord with laws, rules, or established custom." *Irregular*, Merriam-Webster, https://www.merriam-webster.com/dictionary/irregular (last visited Oct. 30, 2019). The language chosen by our legislature suggests that legal errors of all kinds are considered "irregularities." *See Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, ¶ 9 (App. 2008) (language of statute is best indicator of legislative intent). Thus, unless an error in an adoption proceeding results in a void judgment, as in *Goclanney*, 135 Ariz. at 242, we must consider the error cured after the passage of one year. *See State v. Bryant*, 219 Ariz. 514, ¶ 14 (App. 2008) ("Unlike a void order that can be vacated at any time, a voidable order must be modified on appeal or pursuant to Rule 24.3," Ariz. R. Crim. P.); *Epstein v. Bank of America*, 162 So. 3d 159, 161 (Fla. Dist. Ct. App. 2015) (if judgment void it can be attacked at any time, but if voidable it is subject to time limits of rule for relief from judgment).

¶11 An order is void when a court entering it "lacked jurisdiction: (1) over the subject matter, (2) over the person involved, or (3) to render the particular judgment or order entered." *State v. Cramer*, 192 Ariz. 150, ¶ 16 (App. 1998). "An order is voidable or erroneous, on the other hand, when the trial court has jurisdiction over the subject matter and parties but the

order 'was subject to reversal on timely direct appeal.'" *Bryant*, 219 Ariz. 514, ¶ 13 (quoting *Cockerham v. Zikratch*, 127 Ariz. 230, 234 (1980)). As detailed above, Denia's motion in the severance proceeding alleged the juvenile court had erred in severing her rights because it had improperly considered the circumstances at the time of removal rather than at the time of severance as well as her failure to acknowledge abuse of the child, and because only the minors had sought severance. She also cited the grand jury's failure to indict her a second time and her attorney's ineffectiveness as grounds for reversal. In her motion, she alleged that the second grand jury proceeding rendered the severance order void, but she has cited no authority, nor have we found any, to support that proposition. *See* Ariz. R. Civ. App. P. 13(a)(7)(A). Rather, as noted above, her claims of error, at most, render the severance order voidable, not void. *See Auman v. Auman*, 134 Ariz. 40, 42 (1982) ("Void judgments are those rendered by a court which lacked jurisdiction" while voidable, or "[e]rroneous judgments," are those "which have been issued by a court with jurisdiction but are subject to reversal on timely appeal.").

¶12 Denia nevertheless argues, citing our supreme court's decision in *Roberto F.*, 237 Ariz. 440, that she "may move to set aside the adoption order after a successful challenge to the termination order" despite more than a year having passed. She asserts that in that case, the challenge to the adoption order was filed beyond a year after its entry and therefore, the court implicitly accepted that "the overturning of a parental termination order" was a basis to overturn an adoption despite § 8-123. But we have reviewed the record in *Roberto F.*, and the challenge to the adoption was filed on May 10, 2013, within one year of the adoption order, which had been entered on May 23, 2012. She also cites a memorandum decision of this court, but that decision addressed jurisdictional defects relating to notice of the proceeding, which are not at issue here. *Marc S. v. Robyn P.*, No. 1 CA-JV 15-0357 (Ariz. App. July 26, 2016) (mem. decision).

¶13 Our reading of § 8-123 is consistent with our legislature's intent "to appropriately balance the interests of the child and the constitutional rights of parents." *Frank R. v. Mother Goose Adoptions*, 243 Ariz. 111, ¶ 24 (2017). A parent's constitutional parenting rights must be weighed "against the child's interest in having a stable and permanent home and not being removed from adoptive parents with whom the child has bonded." *Id.* As our supreme court has noted, quoting *Lehr v. Robertson*, 463 U.S. 248, 265 (1983), "the state's legitimate interests in expeditious permanency 'justify a trial judge's determination to require all interested parties to adhere precisely to the procedural requirements of the statute.'"

Frank R., 243 Ariz. 111, ¶ 26; *see also Acedo v. State Dep't of Pub. Welfare*, 20 Ariz. App. 467, 470-471 (1973) (finding strong public policy favoring finality of adoptions prevented biological mother from revoking her consent even though mother had not understood its legal significance). Likewise here, "expeditious permanency" and the children's interests in stability and permanency support our conclusion that § 8-123 bars challenges to an adoption order unless the order is void. *Frank R.*, 243 Ariz. 111, ¶ 26.

¶14 For these reasons, Denia's appeal from the juvenile court's denial of relief from the severance order is dismissed as moot.