

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE S.D.

No. 2 CA-JV 2014-0146
Filed March 23, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pinal County
No. S1100JV201400133
The Honorable Gilberto V. Figueroa, Judge

AFFIRMED

COUNSEL

M. Lando Voyles, Pinal County Attorney
By Renee J. Waters, Deputy County Attorney, Florence
Counsel for State

Law Firm of Richard Luff, LLC, Tucson
By Richard Luff
Counsel for Minor

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MEMORANDUM DECISION

Judge Howard authored the decision of the Court, in which Presiding Judge Kelly and Judge Vásquez concurred.

H O W A R D, Judge:

¶1 S.D. appeals from the juvenile court's orders adjudicating her delinquent for interfering with judicial proceedings and placing her on a six-month term of probation. She contends the court abused its discretion in proceeding with her adjudication hearing in her absence. Finding no error, we affirm.

¶2 In April 2014, the state filed a delinquency petition alleging S.D. was delinquent based on her having interfered with judicial proceedings, by violating the terms of a protective order barring her from contact with the victim. The adjudication hearing on the petition was scheduled for August 2014, but on S.D.'s motion it was continued to September 4, 2014. On that date, S.D. failed to appear at the time set for the hearing. After waiting ten minutes, S.D.'s counsel requested time to call her. Counsel reported to the juvenile court that S.D.'s mother had informed her that the family had recently moved and they had "forgotten about the court today." The court expressed concern about S.D.'s failure to follow the court's orders and noted that the proceedings already had been delayed and that witnesses were present in the courtroom. The court therefore denied S.D.'s request for a continuance and proceeded with the adjudication in her absence.

¶3 A defendant has a right under the United States and Arizona Constitutions "to appear and defend in person in all criminal proceedings."¹ *State v. Cook*, 115 Ariz. 146, 148, 564 P.2d 97,

¹Rule 9.1, Ariz. R. Crim. P., addresses an adult defendant's waiver of the right to be present, while Rule 12(C), Ariz. R. P. Juv. Ct., addresses such a waiver by a juvenile. Because the standard set

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99 (1977), *overruled in part on other grounds by State v. Fettis*, 136 Ariz. 58, 664 P.2d 208 (1983); *see also* U.S. Const. amends. VI, XIV; Ariz. Const. art. 2, § 24. However, the right to be present is not absolute and can be waived by the defendant's voluntary absence from the proceedings. *State v. Davis*, 108 Ariz. 335, 336, 498 P.2d 202, 203 (1972).

¶4 “The court may infer that [a] juvenile's absence is voluntary if the juvenile had notice of the date, time and place of hearing, the right to be present at the hearing and had received a warning that the hearing would go forward in the juvenile's absence if the juvenile failed to appear.” Ariz. R. P. Juv. Ct. 12(C). After receiving notice of the trial date and time, a defendant has “the burden of persuading the trial judge that his absence was not voluntary.” *State v. Goldsmith*, 112 Ariz. 399, 401, 542 P.2d 1098, 1100 (1975).

¶5 Whether S.D. was voluntarily absent from her adjudication is a question of fact, and so we review the juvenile court's decision for an abuse of discretion. *See State v. Bishop*, 139 Ariz. 567, 569, 679 P.2d 1054, 1056 (1984). Rule 12(C) creates a presumption that a juvenile's absence is voluntary when he or she has been advised of the time of the hearing and has been warned that the proceeding will continue in absentia.² This presumption is rebuttable if “subsequently discovered facts show that a defendant's absence was not voluntary.” *State v. Sainz*, 186 Ariz. 470, 473, 924 P.2d 474, 477 (App. 1996).

forth for waiver in the two rules is nearly identical, we apply the case law in the adult context to this case.

²The record shows S.D. was ordered to appear at all court proceedings as a condition of her release. And the juvenile court's minute entry from her initial appearance states that the court advised her of her “rights as provided by the Rules of Juvenile Procedure.” S.D. has not provided us with the transcript of that proceeding, so we presume that, consistent with the court's minute entry, it supports the court's ruling. *See State v. Huffman*, 169 Ariz. 465, 467, 820 P.2d 329, 331 (App. 1991).

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¶6 In this case, S.D.'s stated reason for failing to appear was simply that she and her mother had forgotten about the adjudication hearing. We cannot say that a defendant's failing to appear simply because he or she forgot constitutes an involuntary absence or is otherwise insufficient to waive the right to be present. S.D. cites no authority, nor could we find any, to support such a conclusion. No outside force or consideration impelled or coerced S.D. to not appear, therefore we cannot say her absence was not voluntary. See Black's Law Dictionary 1806 (10th ed. 2014) (defining "voluntary" as something "[u]nconstrained by interference; not impelled by outside influence," e.g. a "voluntary statement," or "[d]one by design or intention," e.g. a "voluntary act").

¶7 Likewise, information provided to the court after the adjudication, on which S.D. relies, is insufficient to establish that S.D.'s absence was not voluntary. As outlined above, S.D.'s mother initially reported that she and S.D. had "forgotten" the adjudication. At the disposition, S.D.'s mother stated she "didn't get a letter in the mail" about the adjudication because S.D.'s family was "in the process of moving." She did not, however, state that she and S.D. were otherwise unaware of the date of the adjudication or contradict her earlier statement to S.D.'s attorney that the family had forgotten the adjudication.

¶8 S.D. also contends the court erred because it did not expressly state that it was finding her absence voluntary. But a court is not required to expressly "find that [a defendant's] absence was voluntary" before proceeding. *State v. Suniga*, 145 Ariz. 389, 392, 701 P.2d 1197, 1200 (App. 1985).

¶9 Therefore, we cannot say the juvenile court abused its discretion in proceeding with the adjudication in S.D.'s absence and we affirm the court's adjudication and disposition.