IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

RENEE F. AND JEFF F.,
Appellants,

v.

DEPARTMENT OF CHILD SAFETY AND C.C.,
Appellees.

No. 2 CA-JV 2015-0004
Filed April 21, 2015

Appeal from the Superior Court in Pima County
No. JD20140637
The Honorable Brenden J. Griffin, Judge

AFFIRMED

COUNSEL

David K. Kovalik PLLC, Tucson
By David K. Kovalik
Counsel for Appellants

Mark Brnovich, Arizona Attorney General
By Erika Z. Alfred, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

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

V Á S Q U E Z, Judge:

¶1 Appellants Renee F. and Jeff F. are the maternal grandparents (the grandparents) of C.C., born in January 2012. The grandparents appeal from the juvenile court's December 2014 order denying their amended motion to intervene in the dependency proceeding for C.C. "for the sole purpose of requesting that [C.C.] be placed in their care." We will not disturb the juvenile court's order denying a motion to intervene absent an abuse of discretion. *Allen v. Chon-Lopez*, 214 Ariz. 361, ¶ 9, 153 P.3d 382, 385 (App. 2007). We find no such abuse here.

¶2 In September 2014, the Department of Child Safety (DCS) filed a dependency petition alleging substance abuse, domestic violence between the parents and between the mother and the maternal grandparents, and neglect. The parents admitted the allegations in the petition, and the juvenile court adjudicated C.C. dependent as to both parents in October 2014. Later that month, the grandparents filed an amended motion to intervene in the dependency matter. C.C. has lived with the paternal grandmother since DCS removed him from the mother's care in September 2014.

¶3 The grandparents argued their motion should be granted because they had an interest in C.C.'s placement and potential adoption. They relied on *Bechtel v. Rose*, 150 Ariz. 68, 72-73, 722 P.2d 236, 240-41 (1986), in which our supreme court held that, if any condition for intervention exists, the juvenile court should then consider certain factors to determine whether a grandparent's petition to intervene in a grandchild's dependency proceeding should be granted. They raised their motion pursuant

to Rule 24(b)(2), Ariz. R. Civ. P., the permissive intervention rule,[1] which has been held to apply in juvenile cases. *See William Z. v. Ariz. Dep't of Econ. Sec.*, 192 Ariz. 385, ¶ 7, 965 P.2d 1224, 1226 (App. 1998); *see also* Ariz. R. P. Juv. Ct. 37(A) (incorporating Rule 24, Ariz. R. Civ. P.). In December 2014, the juvenile court held an oral argument, at which C.C.'s father, DCS, and C.C. opposed the motion. The court denied the motion, and this appeal followed.[2]

¶4 In *Bechtel*, 150 Ariz. at 72-73, 722 P.2d at 240-41, our supreme court articulated the test for determining whether grandparents should be permitted to intervene in dependency and parental termination proceedings. As we stated in *Allen*, "our supreme court determined [in *Bechtel*] that a child's grandparents 'should be allowed to intervene in the dependency process unless a specific showing is made that the best interest of the child would not be served thereby.'" 214 Ariz. 361, ¶ 10, 153 P.3d at 385, *quoting Bechtel*, 150 Ariz. at 73, 722 P.2d at 241. Thus, "[i]f the conditions of Rule 24(b) are met, . . . then the juvenile court must determine whether the party opposing intervention has made a sufficient showing that intervention is not in the child's best

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[1] Rule 24(b)(2), Ariz. R. Civ. P., contains the following relevant provisions:

> Upon timely application anyone may be permitted to intervene in an action:
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> . . . .
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> 2. When an applicant's claim or defense and the main action have a question of law or fact in common.
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> In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

[2] DCS is the only party that filed an answering brief on appeal.

interest." *Id.* ¶ 12. The court in *Bechtel* specified that, "[b]efore ruling on a motion to intervene, the juvenile court should consider and weigh the relevant factors identified [in the opinion], and only if they show that intervention would not be in the best interest of the child should intervention be denied."[3] 150 Ariz. at 74, 722 P.2d at 242.

¶5 At the hearing, the juvenile court determined the grandparents had a question of law or fact in common with the dependency and thus directed the parties to address whether intervention was in C.C.'s best interest. Acknowledging they had "no complaints" regarding C.C.'s current placement with the paternal grandmother, the grandparents nonetheless informed the court that if permitted to intervene, they intended to file a motion to have C.C. placed with them. The court then queried why it would conduct a placement hearing when C.C. is already placed

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[3]The *Bechtel* factors include:

> "[T]he nature and extent of the intervenors' interest, their standing to raise relevant legal issues, the legal position they seek to advance, and its probable relation to the merits of the case. The court may also consider whether changes have occurred in the litigation so that intervention that was once denied should be reexamined, whether the intervenors' interests are adequately represented by other parties, whether intervention will prolong or unduly delay the litigation, and whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented."

Bechtel, 150 Ariz. at 72, 722 P.2d at 240, *quoting Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977).

with the paternal grandmother about whom no complaints had been raised. Noting it had considered the *Bechtel* factors, the court found that the placement "is being addressed by other parties in the case at this time," referring to the fact that the mother's interests were aligned with those of the grandparents. Further noting that granting the motion would cause undue delay, the court found "the focus of everyone here should be on reunification of the child[] rather than trying to potentially disrupt a placement that . . . is . . . sufficient and satisfies preferences and seems to be taking care of [C.C.]" The court also noted that although it was "not putting a lot of weight" on prior reports from DCS,[4] "it does seem to be that maybe [there is] some distraction going on here in terms of not being focused on the two parents, getting them clean and sober, getting them engaged in services so that they can . . . get their child back."

¶6 On appeal, the grandparents argue the denial of their motion was an abuse of discretion because no evidence was presented to show that intervention was not in C.C.'s best interest, and they maintain that the only evidence presented was argument by counsel, which does not constitute evidence.[5] First, the

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[4]Those reports contain, inter alia, details regarding domestic violence between the mother and the maternal grandparents; assertions that the "[m]aternal grandmother usually covers up for [the] mother" on issues regarding the mother's substance abuse; and, a recommendation for "supervised visitation with the maternal grandparents due to the maternal grandmother's alcohol use/abuse and the maternal grandfather's history of physical abuse of the mother."

[5]To the extent the grandparents suggest the juvenile court improperly relied on a September 2014 report prepared for the court, as DCS correctly noted in its answering brief, the grandparents did not object below to the court's admission of either the related December 2014 report or to its general reference to the "prior reports," which presumably included the September and December 2014 reports. *See Trantor v. Fredrikson*, 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994) ("[A]bsent extraordinary

grandparents cite no authority to support their argument that an evidentiary hearing is required, and we are aware of none. And, second, we agree with DCS that they have waived this argument on appeal by not raising it below. *See Trantor v. Fredrikson*, 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994) ("[A]bsent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal.").

¶7 The record reflects that the juvenile court considered the *Bechtel* factors in making its determination. Not only did the court find that the grandparents' interests were aligned with those of the mother in this regard, but it also found that granting the motion would delay progress towards the case plan, to wit, family reunification, and would distract from helping the parents attain sobriety and address the other issues necessary to further family reunification. Notably, the grandparents acknowledged at the hearing they had "no complaints" regarding C.C.'s current placement with the paternal grandmother but nonetheless expressed their intention to file a motion for placement. Therefore, the court concluded, granting the motion was not in C.C.'s best interest, a finding the record fully supports. We will uphold a juvenile court's discretionary decision on appeal when there is evidence to support it. *See Leslie C. v. Maricopa Cnty. Juv. Ct.*, 193 Ariz. 134, 135, 971 P.2d 181, 182 (App. 1997).

¶8 Because the grandparents have not sustained their burden of establishing the juvenile court abused its discretion by denying their motion to intervene, we affirm the court's ruling.

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circumstances, errors not raised in the trial court cannot be raised on appeal.").