IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

SHARON L. AND CORNELL L.,
Appellants,

v.

DEPARTMENT OF CHILD SAFETY, J.L., AND D.L.,
Appellees.

No. 2 CA-JV 2015-0010
Filed July 30, 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NOT FOR PUBLICATION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 Pima County
No. JD179272
The Honorable Jennifer P. Langford, Judge Pro Tempore

AFFIRMED

COUNSEL

West, Elsberry, Longenbaugh & Zickerman, PLLC, Tucson
By Anne Elsberry
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 Howard authored the decision of the Court, in which Presiding Judge Vásquez and Judge Brammer[1] concurred.

H O W A R D, Judge:

¶1 Sharon L. and Cornell L., paternal grandparents of six-year-old J.L. and his four-year-old sister D.L., appeal from the juvenile court's December 2014 denial of their motion to have the two children placed with them in Mississippi. For the following reasons, we affirm the court's placement order.

Facts and Procedural Background

¶2 On May 31, 2012, the Department of Child Safety (DCS)[2] took temporary custody of J.L., D.L., and five of their half-siblings and, in early June, filed a dependency petition alleging their mother, Arveance F., had abused illegal drugs, neglected the children, and failed to comply with a DCS safety plan and voluntary services. Rafael L., J.L. and D.L.'s father, lived in South Carolina and had not had physical contact with the children for nine months. DCS placed all seven children in a kinship placement with a family friend, and neither parent contested temporary custody.

¶3 The juvenile court adjudicated J.L. and D.L. dependent after Rafael admitted, and Arveance did not contest, the allegations in an amended dependency petition. After a home visit, DCS

[1]The Hon. J. William Brammer, Jr., a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and the supreme court.

[2]The Department of Child Safety (DCS) is substituted for the Arizona Department of Economic Security in this decision. *See* 2014 Ariz. Sess. Laws, 2nd Spec. Sess., ch. 1, § 20.

became concerned about the kinship placement's ability to care for the seven children, and it removed them in July 2012; J.L. and D.L. then were placed in separate placements.

¶4 In the fall of 2012, DCS initiated procedures under the Interstate Compact on the Placement of Children (ICPC) to evaluate J.L. and D.L.'s placement with Sharon and Cornell, who then were living in Georgia. Sometime after April 2013, the Georgia ICPC placement was denied because Cornell, who serves in the military, was transferred to Mississippi, and the couple had relocated there. After a second ICPC process was completed in Mississippi, Sharon and Cornell were approved as a placement for J.L. and D.L. in June 2014.

¶5 That same month, the juvenile court approved a change in case plan for J.L. and D.L. to severance and adoption. DCS filed a motion to terminate Rafael's parental rights, and a contested hearing was held in September and October 2014.[3] In October 2014, Sharon and Cornell moved to intervene, in order "to ensure that [they would be] properly considered as a placement for the children," and the court granted their request. The court terminated Rafael's parental rights on October 31, 2014.

¶6 After a placement review hearing in December 2014, the juvenile court determined it was in the children's "best interests to remain in their current placements." This appeal followed.

Discussion

¶7 On appeal, Sharon and Cornell argue the juvenile court "erred" in failing to enter findings required by A.R.S. § 8-829(A)(4); failing to order a social study, pursuant to A.R.S. § 8-536, before entering a post-termination placement decision; and placing the children "with a non-family foster/adopt placement rather than with the children's paternal grandparents." We have recognized a juvenile court's "substantial discretion" in placing dependent children in accordance with their best interests, *Antonio P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 402, ¶ 8, 187 P.3d 1115, 1117 (App. 2008),

[3]Arveance's parental rights had been terminated in June 2013.

and "[w]e review a juvenile court's ruling on a discretionary matter for a clear abuse of the court's discretion," *Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, ¶ 13, 119 P.3d 1034, 1037 (App. 2005). We review de novo legal issues, including matters of statutory interpretation. *Id.* ¶ 8.

¶8 Pursuant to § 8-829(A)(4), if a child "is not placed with a grandparent or another member of the child's extended family . . . within sixty days after the child is removed from the child's home," a juvenile court must enter a finding regarding "why such placement is not in the best interests of the child." As DCS points out, at the preliminary protective hearing in June 2012, the court expressly found that J.L. and D.L. had been placed in "kinship" care and that DCS was "attempting to identify and assess placement with the children's grandparents." No appeal was taken from this order or any subsequent placement order entered before December 2014, and we therefore agree with DCS that we lack jurisdiction to consider any challenge to findings related to the "sixty days after" the children's removal. *See Antonio P.*, 218 Ariz. 402, ¶ 7, 187 P.3d at 1117 (concluding "order awarding custody of a dependent child as well as a subsequent order ratifying or changing a child's placement is final and appealable"); *see also* Ariz. R. P. Juv. Ct. 104(A) ("notice of appeal shall be filed . . . no later than 15 days after the final order is filed").✓

¶9 Similarly, Sharon and Cornell failed to argue below that, pursuant to § 8-536, because proposed plans for the children at severance "d[id] not include placing the child[ren] with a grandparent or another member of the child's extended family," the juvenile court was required to order—or expressly waive—the completion a social study containing "sufficient information for the court to determine whether such placement is in the child's best interests." We generally do not consider issues raised for the first time on appeal. *Englert v. Carondelet Health Network*, 199 Ariz. 21, ¶ 13, 13 P.3d 763, 768 (App. 2000).

¶10 Moreover, by its express terms, § 8-536 applies only when termination is sought by a petition, not when DCS at the direction of the juvenile court files a motion for termination in the context of an ongoing dependency proceeding. *See* § 8-536(A);

see also A.R.S. § 8-532(C) (Section 8-536 among statutes inapplicable to termination proceedings conducted pursuant to chapter 4, article 11 of title 8); *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, ¶ 9, 200 P.3d 1003, 1006 (App. 2008) (termination proceedings pursuant to chapter 4, article 11 of title 8[4] are those "begun once a court has ordered [CPS], the child's attorney, or the guardian ad litem, to file a motion for termination of parental rights"). Accordingly, we find no basis for relief pursuant to § 8-536, an issue that has been waived in the juvenile court.

¶11 Finally, although A.R.S. § 8-514(B) requires a dependent child to be placed "in the least restrictive type of placement available, consistent with the needs of the child" and suggests "preference[s]" for placement with relatives, we have explained the statute "does not mandate" strict adherence, but "requires only that the court include placement preference in its analysis of what is in the child's best interest." *Antonio P.*, 218 Ariz. 402, ¶ 12, 187 P.3d at 1118. Here, although evidence was presented that Sharon and Cornell had developed relationships with all of Arveance's children over a number of years, Sharon testified that she last saw the children in November 2011, when J.L. was two years old and D.L. was a five-month-old infant. J.L. is currently placed with a family that already has adopted his half-siblings; D.L. is in a separate adoptive placement, but sufficiently nearby that the siblings see each other at least once a month. Counsel for the children expressed "no[] doubt" that Sharon and Cornell would "make a fine home for these children," but he told the court that J.L. wished to continue living with his half-siblings and that D.L. considered her foster parents to be her "family."

¶12 In ruling, the juvenile court found all of the potential placements were "good" ones, but it found these very young

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[4]Former § 8-532(C), in effect at the time *Bobby G.* was decided, stated that § 8-536, among other statutes, did not apply to chapter 10, article 4 of title 8. 2014 Ariz. Sess. Laws, 2nd Spec. Sess., ch. 1, § 46. Chapter 10, article 4 of title 8 has since been "transferred and renumbered for placement in title 8, chapter 4, . . . as article 11." *Id.* § 80.

children lacked a relationship with their grandparents sufficient to "overcome the bond they have with their current placements" and their half-siblings. The court encouraged the present placements to consider fostering the children's contacts with Sharon and Cornell in the future.

¶13 An abuse of discretion occurs when a decision is "'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 19, 107 P.3d 923, 929 (App. 2005), *quoting Quigley v. City Court of City of Tucson*, 132 Ariz. 35, 37, 643 P.2d 738, 740 (App. 1982). We find no abuse of discretion here. To a large extent, Sharon and Cornell ask this court to reweigh the evidence, or to resolve conflicts in the evidence differently, which we will not do. *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004).

Disposition

¶14 For the foregoing reasons, we affirm the juvenile court's December 2014 placement order pertaining to J.L. and D.L.