IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

RHIANNON D.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, M.M., P.M. AND Z.D.,
Appellees.

No. 2 CA-JV 2016-0001
Filed March 22, 2016

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NOT FOR PUBLICATION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. JD201400197
The Honorable Henry G. Gooday Jr., Judge

AFFIRMED

COUNSEL

The Stavris Law Firm, PLLC, Scottsdale
By Christopher Stavris
Counsel for Appellant

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

MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Judge Espinosa and Judge Staring concurred.

H O W A R D, Presiding Judge:

¶1 Rhiannon D., mother of Z.D., M.M. and P.M., appeals from the juvenile court's order terminating her parental rights on the grounds of chronic abuse of drugs, and/or alcohol, pursuant to A.R.S. § 8-533(B)(3), and length of time in court-ordered care, nine months as to all three children and six months as to M.M. and P.M., pursuant to § 8-533(B)(8)(a) and (B)(8)(b). Rhiannon contends the court erred in finding she had failed to establish good cause for failing to appear at the initial severance proceeding and had thereby waived her right to contest the allegations of the severance motion.

¶2 The Department of Child Safety (DCS) took the children into temporary protective custody in August 2014 and filed a dependency petition alleging that Rhiannon had neglected the children because of her substance abuse and that she was unable to care for them. The court adjudicated the children dependent at the preliminary protective hearing on August 18 after Rhiannon and the father of twins M.M. and P.M. submitted the matter to the court to decide on the record, and the father of Z.D. failed to appear. Although Rhiannon was provided reunification services, she was arrested for disorderly conduct that involved domestic violence in October 2014 and continued to test positive for drugs. Her visitation rights were suspended and in July 2015, based on her lack of progress, the case plan was changed to severance and adoption. DCS filed a motion to terminate her rights as well as the parental rights of the children's respective fathers.

¶3 Rhiannon did not appear at the September 2, 2015 initial severance hearing. Rhiannon's counsel informed the juvenile court he had received an email from her stating she would not be appearing because she did not have transportation and was going to try to reach a caseworker to see if transportation could be arranged.

DCS responded that Rhiannon had not contacted the caseworker and that she knew she was required to request transportation forty-eight hours in advance. DCS asserted Rhiannon had failed to appear without good cause and requested that the court "enter a default and preserve it at this time." *See* Ariz. R. P. Juv. Ct. 65(C)(6)(c). The court found Rhiannon "in default" and concluded she had waived her right to contest the matter.

¶4 DCS then suggested that it present its evidence as to all parents at the same time on November 4, the date previously set for the initial severance hearing on the motion as it related to Z.D.'s father, T.M. and John Doe, who had been served by publication. The juvenile court agreed, making clear Rhiannon's non-appearance had been preserved for that hearing.

¶5 Rhiannon did not appear at the November 4 hearing. At the beginning of the hearing, DCS asked the juvenile court to find Rhiannon had waived her rights by failing to appear at the previous hearing, and that she had thereby admitted the allegations of the severance motion. The court responded, "That will be the order of the Court." Rhiannon's counsel did not object. DCS then presented evidence, including exhibits and testimony by the caseworker. Ruling from the bench at the end of the hearing, the court found DCS had sustained its burden and granted the severance motion as to all parents.

¶6 As the juvenile court directed in its minute entry order from the November 4 hearing, DCS lodged a formal order, which included findings of fact and conclusions of law. The proposed order stated the court had conducted a hearing on November 4 and Rhiannon had not appeared. Rhiannon filed an objection to the finding of default and to the proposed findings of fact and conclusions of law, asserting she had been in the hallway of the courthouse during the November 4 hearing and had not heard her case called. She did not mention her failure to appear on September 2. In its response to the objection, DCS asserted that, according to the bailiff, Rhiannon had not been present when the case was called on November 4. The court signed the proposed order on December 28, and this timely appeal followed.

¶7 In the heading portion of her argument in her opening brief, Rhiannon contends the issue in this case is, "Did the [juvenile court] err in terminating [her] parental rights to her children because [she] was not present in the courtroom at the Initial Severance hearing but rather in the hallway of the courthouse when said hearing commenced." Her actual argument is a restatement of the objection to the default and to the proposed order. Again she does not mention her failure to attend the initial severance hearing on September 2 and insists she appeared for the November 4 hearing, but was sitting in the hallway and did not hear anyone "call" her case.

¶8 In its November 4 minute entry order, the juvenile court found Rhiannon had "failed to appear this date without good cause" and had thereby admitted the allegations of the motion and had waived her legal rights. The extended record, however, including the transcripts of the two hearings, makes clear the default and waiver occurred on September 2, which was the date of the initial severance hearing. The court's finding that Rhiannon's absence was without good cause, which was made during the November hearing upon DCS's request, related to her failure to attend the September 2 hearing. Rule 65(C)(6)(c), Ariz. R. P. Juv. Ct., provides that the juvenile court may proceed with a termination hearing in a parent's absence if the parent

> fails to appear at the initial termination hearing without good cause shown and the court finds the parent . . . had notice of the hearing, was properly served . . . and had been previously admonished regarding the consequences of failure to appear, including a warning that the hearing could go forward in the absence of the parent . . . and that failure to appear may constitute a waiver of rights and an admission to the allegations contained in the termination motion or petition.

See also A.R.S. § 8-535(D). Rhiannon does not challenge the default that resulted when she failed to appear on September 2, nor did she

do so below.[1] Additionally, although she filed an objection to the default and proposed order, she did not file a motion to set aside the default. *See* Ariz. R. P. Juv. Ct. 46(E). She has therefore waived the issue.

¶9 In any event, nothing in the record establishes the juvenile court abused its discretion in finding Rhiannon failed to appear at the initial severance hearing without good cause. *See Adrian E. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 96, ¶ 15, 158 P.3d 225, 230 (App. 2007) (juvenile court had discretion to determine whether good cause exists for parent's failure to appear). As DCS points out in its answering brief, the record shows Rhiannon received the requisite notices of the initial hearing and the warning regarding the consequences of failing to attend, and she does not contend otherwise. She has never refuted DCS's statement at the September 2 hearing that she had not contacted DCS about arranging transportation and that she knew she was required to arrange transportation at least forty-eight hours before the hearing. Her counsel's avowal to the court that he received an email from Rhiannon, in which she stated she had no transportation and would try to reach the caseworker, did not establish she had contacted DCS.

¶10 Based on the record before us, we cannot say the juvenile court abused its discretion by terminating Rhiannon's parental rights to her three children. We therefore affirm the court's order.

[1]Although the juvenile court stated it was finding Rhiannon in default "over the objection of" counsel, other than explaining Rhiannon claimed she lacked transportation, counsel did not expressly object.