

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

JOSUE R.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND E.R.-W.,
Appellees.

No. 2 CA-JV 2016-0243
Filed April 19, 2017

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NOT FOR PUBLICATION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. JD20150631
The Honorable Javier Chon-Lopez, Judge

AFFIRMED

COUNSEL

Sarah Michèle Martin, Tucson
Counsel for Appellant

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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 Chief Judge Eckerstrom and Judge Vásquez concurred.

H O W A R D, Presiding Judge:

¶1 Josue R. appeals from the juvenile court's denial of his motion, made pursuant to A.R.S. § 8-861 and Rule 59, Ariz. R. P. Juv. Ct., for return of a child, E.R.-W., born in February 2012. He contends the court improperly shifted the burden of proof and had insufficient evidence to support its ruling, and he asserts impropriety on the part of the Department of Child Safety (DCS). Because we conclude § 8-861 and Rule 59 did not allow Josue, who had not yet established paternity, to file the motion, we affirm.

¶2 In September 2015, David W., the maternal grandfather of E., filed a private dependency petition, alleging E.'s mother was unable to provide adequate care or shelter for her and that Josue had little or no contact with her. The juvenile court issued temporary orders placing E. in David's custody. Thereafter DCS also filed a dependency petition alleging Josue had not established paternity; had no custody or child-support order in place; and was incarcerated, subject to work release, for a domestic violence offense. The court adjudicated E. dependent in December 2015.

¶3 At a dependency review hearing in January 2016, the juvenile court noted that Josue was in compliance with his case plan. At a subsequent dependency disposition hearing, Josue was ordered to participate in domestic violence classes, healthy relationship classes, and individual therapy. E.'s placement with her maternal grandparents was continued, with DCS maintaining legal custody.

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Again in April 2016 the court noted Josue was compliant, “subject to providing documentation from [his provider].”

¶4 Josue filed a “Motion for Placement,” citing Rule 59, which the juvenile court addressed at a placement review hearing in June. It was noted that Josue had not yet completed all services and was still on probation. But the court ordered a parent-child assessment and ordered supervised visitation to be set up. After further placement review hearings, the court ultimately denied Josue’s motion. The court concluded that “returning [E.] to [Josue] at this time creates a substantial risk of harm to her emotional and mental health and safety,” based on her “abnormal emotional and mental needs” arising from having witnessed domestic violence and on Josue’s not yet having obtained services “tailored to parent and nurture” E.

¶5 At no point, however, had Josue legally established paternity of E. Section 8-861 and Rule 59 each allow “a parent or guardian,” or under Rule 59 an “Indian custodian,” to seek return of a child to their care. At the time the motion was made and ruled upon, Josue was, as a legal matter, neither E.’s parent nor guardian. Rather, the juvenile court issued a paternity order on March 29, 2017, after this court ordered Josue to inform it of his paternity status. The statute therefore, at the time of the motion, did not allow him to bring the motion. *See Alexander M. v. Abrams*, 235 Ariz. 104, ¶¶ 8-11, 328 P.3d 1045, 1047 (2014) (Rule 59 and § 8-861 did not apply because ADES was children’s custodian, not guardian); *see also* Ariz. Const. art. VI, § 15 (“authority of the courts of this state in all proceedings and matters affecting juveniles shall be as provided by the legislature or the people by initiative or referendum”). Thus, we cannot say the juvenile court abused its discretion in denying the motion. *Navajo Nation v. Ariz. Dep’t of Econ. Sec.*, 230 Ariz. 339, ¶ 14, 284 P.3d 29, 34 (App. 2012) (“We will affirm the juvenile court for any correct reason supported by the record.”).

¶6 For this reason, we affirm the juvenile court’s order denying Josue’s motion for return of the child.