IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

JEWEL C.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND K.D.,
Appellees.

No. 2 CA-JV 2018-0249
Filed April 15, 2019

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NOT FOR PUBLICATION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. JD20150269
The Honorable Deborah Pratte, Judge Pro Tempore

AFFIRMED

COUNSEL

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

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

Pima County Office of Children's Counsel, Tucson
By Sybil Clarke
Counsel for Minor

MEMORANDUM DECISION

Presiding Judge Eppich authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

E P P I C H, Presiding Judge:

¶1 Appellant Jewel C. is the maternal great-grandmother of K.D., born in November 2008.[1] Jewel appeals from the juvenile court's December 2018 order denying her motion to intervene in the dependency proceeding for the purpose of requesting that K.D. be placed in her care. We will not disturb the juvenile court's order denying a motion to intervene absent an abuse of discretion. *See Allen v. Chon-Lopez*, 214 Ariz. 361, ¶ 9 (App. 2007). We find no such abuse here.

¶2 K.D. and his half-siblings were adjudicated dependent as to their mother in May 2015, and K.D. was placed with Jewel. K.D., through counsel, filed a motion for change of placement in June 2016, requesting he be placed in a licensed sibling foster placement with the psychological grandmother of one of his siblings. Jewel then filed a motion for permissive intervention in the dependency proceeding; the juvenile court granted her motion for the limited purpose of placement pursuant to Rule 24(b)(1)(B), Ariz. R. Civ. P.[2] In April 2017, following a hearing that spanned several

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[1]K.D.'s two half-siblings, who apparently have been adopted, are not parties to this appeal. Although we referred to K.D. as K.-D. in our previous opinion in this matter, because he is the only child involved in the matter now before us, we refer to him as K.D. for ease of reference. *See Jewel C. v. Dep't of Child Safety*, 244 Ariz. 347 (App. 2018).

[2]Rule 24(b)(1)(B), Ariz. R. Civ. P., is the permissive intervention rule, which has been held to apply in juvenile cases. *See William Z. v. Ariz. Dep't of Econ. Sec.*, 192 Ariz. 385, ¶ 7 (App. 1998); *see also* Ariz. R. P. Juv. Ct. 37(A) (incorporating Rule 24, Ariz. R. Civ. P.). Relevant here, the intervention rule provides that, "[o]n timely motion, the court may permit anyone to

months, the court granted K.D.'s motion for change of placement, and in November 2017, it granted the Department of Child Safety's (DCS) motion to terminate the mother's rights to the children. We subsequently dismissed Jewel's appeal from the court's granting of K.D.'s motion for change of placement.[3] *Jewel C. v. Dep't of Child Safety*, 244 Ariz. 347 (App. 2018).

¶3 Jewel filed a third motion to intervene in October 2018, in which she renewed and incorporated by reference the statement of facts and legal arguments from her 2016 motion to intervene. Jewel argued: "Intervention will not delay the proceedings. It will accelerate the most appropriate permanent plan for [K.D.]. None of the parties will be prejudiced by the intervention. Evidence is readily available as to the most appropriate placement and permanency for the minor child." The juvenile court held an oral argument, at which DCS, K.D., and the guardian ad litem opposed Jewel's motion.

¶4 At the hearing, DCS argued that allowing Jewel to intervene would "unduly delay the process," noting that the parties had just completed several months of placement hearings. DCS informed the court it was willing to reassess Jewel as a placement for K.D. and to explore having her participate in previously requested therapeutic services. Notably, DCS stated it had not seen any "demonstration" that Jewel had changed in the time since she had been a placement for the children. K.D.'s attorney, who also opposed Jewel's motion, argued that permitting her to intervene would not be in K.D.'s best interests, and maintained that K.D. had not disrupted his current placement, as Jewel had asserted, but was instead doing well there, and that K.D.'s primary "goal . . . is contact with his siblings." K.D.'s guardian ad litem also opposed intervention, arguing the issue of placement with Jewel had already been litigated and that any further action should await DCS's reevaluation of Jewel as a placement.

¶5 Jewel argued her motion to intervene should be granted because she wants to adopt K.D., which she maintained would be in his best interests. Notably, despite having incorporated the facts and legal arguments from her 2016 motion to intervene into her current one, Jewel

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intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Ariz. R. Civ. P. 24(b)(1)(B).

[3]While Jewel's appeal was pending, she filed a second motion to intervene, which the juvenile court denied for lack of jurisdiction.

nonetheless argued "the facts are not the same" as they were at that time. Further arguing that changed circumstances should only be considered at a placement hearing, Jewel reminded the juvenile court the issue before it was her motion to intervene, rather than placement, and asserted, "You can't deny intervention because you think you might ultimately deny placement." Jewel also challenged DCS's argument that intervention would unduly delay the process, asserting that no "process" had been identified and maintaining that the goal was to find K.D. a "permanent, loving home."

¶6 The juvenile court denied Jewel's motion to intervene in a written ruling, and this appeal followed.[4] In its ruling, the court referred to the "long and contentious [placement] hearings [that] took place over many months," noted it had made "19 findings of fact" at the conclusion of those proceedings and that there was no basis to change its prior findings and rulings, and pointed out that the children had been removed from Jewel's care due to DCS's concerns with their health and safety while in her care. The court concluded Jewel had not sustained her burden under Rule 24(b), nor had she shown that intervention would be in K.D.'s best interests. More specifically, noting that the case plan is adoption and that Jewel does not have a right to be a placement for K.D. or to adopt him, the court determined she did not have a shared claim or defense with K.D. or DCS, the main parties to the action, and that she "does not have a legal interest in this matter, nor a legal position to advance." *See* Ariz. R. Civ. P. 24(b)(1)(B). The court also found that granting Jewel intervenor status would unduly delay the case plan of adoption and would not "significantly contribute to the full development of the underlying factual issues" in the dependency. Finally, the court commented that permissive intervention may be appropriate when a child does not have a living parent.

¶7 On appeal, Jewel argues the juvenile court abused its discretion by denying her motion, asserting that *no* evidence was presented by either party to support a finding that intervention was not in K.D.'s best interests or that granting her motion would result in undue delay. She points out that the dependency involves the same issues she wishes to "influence," to wit, permanency and adoption, and thus asserts the court abused its discretion by finding she did not share a common question of law or fact with the main action. Jewel further criticizes the absence of adequate consideration by the parties and the court of the factors set forth in *Bechtel v. Rose*, 150 Ariz. 68, 70, 72-74 (1986), a special action in which our

[4]K.D. joined in DCS's answering brief on appeal.

supreme court considered the juvenile court's application of Rule 24(b) to deny a grandmother's petition to intervene in the dependency proceeding of her parentless grandchild.[5] Jewel also argues the court improperly commented that permissive intervention may be appropriate if the child does not have a living parent.

¶8 Insofar as Jewel argues that "[n]one of the parties presented any evidence to support their opposition to intervention," she disregards the extensive oral argument, which included numerous avowals by counsel. Jewel cites no authority for the proposition that avowals and argument of counsel opposing a motion to intervene may not be the basis for a juvenile court's ruling on such a motion. We note, too, that Jewel did not present formal evidence and relied on her attorney's arguments and avowals as well. Nor does it appear she made this argument below, thereby waiving it. *See Adrian E. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 96, ¶ 24 (App. 2007). Moreover, the juvenile court had before it the record in the dependency and severance matters, as well as the rulings in these proceedings.

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[5]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 (quoting *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977)).

¶9 Jewel argues the juvenile court erred by failing to find that her desire to have K.D. placed with her constitutes a common question of law or fact with the main action. However, the court determined it saw no reason to change its previous findings related to placement with Jewel. Moreover, as we previously noted, Jewel expressly relied on the facts and legal arguments set forth in her 2016 motion to intervene to support her current motion, thus implicitly acknowledging there have been no significant changes since that time. And, although Jewel alleged in her 2018 petition that K.D. had "disrupted from his placement and [was] not placed in an adoptive home," allegations not contained in her 2016 petition, K.D.'s attorney refuted the disruption avowal at the hearing.

¶10 The juvenile court also concluded that additional delay resulting from intervention was not in K.D.'s best interests, a finding the record fully supports. *Cf. Bechtel*, 150 Ariz. at 72-73 (grandparents generally allowed to intervene in dependency process absent specific showing intervention not in child's best interest). Accordingly, based on the extensive record and lengthy history in this case, including evidence that DCS is willing to reassess Jewel as a placement and that K.D. is thriving in his current placement, the court reasonably determined that Jewel did "not have a legal interest in this matter, nor a legal position to advance." *See Leslie C. v. Maricopa Cty. Juv. Ct.*, 193 Ariz. 134, 135 (App. 1997) (appellate court upholds juvenile court's discretionary decision on appeal when evidence supports it).

¶11 Moreover, as DCS and K.D. argue in their answering brief, even if the common factor requirement had been satisfied, requiring the juvenile court to then consider the *Bechtel* factors, the court nonetheless appears to have considered several of those factors before it ruled, as summarized above. *See Roberto F. v. Ariz. Dep't of Econ. Sec.*, 232 Ariz. 45, ¶ 34 (App. 2013) (appellate court reviews record to determine if reasonable evidence to support trial court's implicit determination that *Bechtel* factors weighed in favor of intervention). Nor will we substitute our judgment for that of the trial court. *See id.* ¶ 17.

¶12 Additionally, to the extent Jewel actually challenges the juvenile court's brief reference to the granting of permissive intervention for a parentless child, it appears the court may have mentioned this factor because *Bechtel* involved a parentless child. Not only has Jewel failed to develop an argument in this regard, we find no error by the court's single reference to this factor in any event.

¶13 Because Jewel has not sustained her burden of establishing the juvenile court abused its discretion by denying her motion to intervene, we affirm the court's ruling.