IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

TYLER B.,
Appellant,

v.

KATIE M. AND K.M.,
Appellees.

No. 2 CA-JV 2019-0051
Filed August 27, 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NOT FOR PUBLICATION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 Graham County
No. SV201800031
The Honorable Travis W. Ragland, Judge Pro Tempore

AFFIRMED

COUNSEL

E.M. Hale Law, Lakeside
By Elizabeth M. Hale
Counsel for Appellant

Flores & Clark PC, Globe
By Daisy Flores
Counsel for Appellee Katie M.

The Law Office of Rebecca R. Johnson, Safford
By Rebecca R. Johnson
Counsel for Appellee Minor

MEMORANDUM DECISION

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

E S P I N O S A, Judge:

¶1 In this private severance proceeding, Tyler B. appeals from the juvenile court's order terminating his parental rights to his daughter, K.M., born in 2009. As his sole argument on appeal, Tyler argues he is entitled to a new termination hearing because a transcript of the hearing held in March 2019 is unavailable due to an equipment malfunction during the proceeding. For the following reasons, we affirm the court's order.

¶2 Katie M., K.M.'s mother, filed a petition to terminate Tyler's parental rights on grounds of abandonment, incapacity due to a history of chronic drug abuse, and a felony conviction that demonstrated parental unfitness. *See* A.R.S. § 8-533(B)(1), (3), (4). Tyler was present and, along with others, testified at the termination hearing held in March 2019. In an under-advisement ruling that followed, the court entered specific findings and concluded Katie had met her burden of proving the first two grounds for termination by clear and convincing evidence. The court also found, by a preponderance of evidence, that termination of Tyler's rights was in K.M.'s best interests. Tyler timely appealed.

¶3 In response to our order for a transcript of the termination hearing, the Graham County Superior Court advised it was unable to comply because the hearing had not been recorded, due to an "unfor[e]seen equipment malfunction." In light of this circumstance, Tyler sought and was granted an extension of time to file his opening brief. On appeal, he does not challenge the juvenile court's findings of fact or its conclusions of law. Instead, he relies only on *State v. Madrid*, 20 Ariz. App. 51, 53 (1973), to argue the juvenile court's "failure to preserve the record on appeal entitles [him] to a new trial." We cannot agree.

¶4 Ordinarily, an appellant is responsible for ensuring the record on appeal contains the necessary documents for the reviewing court, and "[w]hen matters are not included in the record on appeal, the missing portion of the record is presumed to support the decision of the trial court." *State v. Mendoza*, 181 Ariz. 472, 474 (App. 1995). When a transcript is unavailable, our procedural rules provide a means for an appellant to "prepare and file a narrative statement of the evidence or proceedings from the best available source, including the appellant's recollection," subject to review and approval by the juvenile court. Ariz. R. Civ. App. P. 11(d), (e); *see also* Ariz. R. P. Juv. Ct. 103(G) (incorporating same).

¶5 In *Madrid*, we stated such a reconstructive procedure was not "mandatory" when a hearing transcript is unavailable "through no fault of the defendant"—but nonetheless necessary to resolve his claims—and we remanded that case for a new probation revocation hearing. 20 Ariz. App. at 53 (citing *State v. Masters*, 108 Ariz. 189 (1972)). Tyler relies on *Madrid* to assert, "When the transcript is unavailable, through no fault of the petitioner, and the record cannot be reproduced, the court reverses and remands for a new hearing."[1]

¶6 But in *Madrid*, "[t]he errors complained of . . . challenge[d] the manner in which the hearing was conducted, the adequacy of the evidence and the reasons for the revocation," and a transcript was required to address those allegations. *Id.* For example, we noted that, in *Masters*, our supreme court had "reversed a robbery conviction when it appeared a conflict of interest might have prevented a fair trial and there was no reporter's transcript for review." *Id.* at 51. But the *Masters* court did not conclude a defendant "is entitled to a new trial" "in every case involving a lost or unavailable reporter's transcript." 108 Ariz. at 192. Instead, that court explained,

> Absent a showing of reversible error, or at least a credible and unmet allegation of reversible error, we are inclined to hold that the remaining record will suffice to support an affirmation of a verdict and judgment by the trial court. Where, however, through no fault of the

[1]In its letter to this court, the Graham County Superior Court stated it was unable to provide the transcript and "unable to re-create the event." There is no indication that Tyler pursued the remedy afforded by Rule 11, Ariz. R. Civ. App. P.

> defendant the reporter's transcript is unavailable and the defendant has shown prima facie fundamental error, we feel that a new trial should be granted.

Id. (new trial ordered when defendant had made, "upon the record available, a prima facie case of conflict of interest").

¶7 Unlike the defendants in *Masters* and *Madrid*, Tyler makes no "credible and unmet allegation of reversible error" with respect to the severance hearing. *Id.* Instead, he argues a transcript is required "for him to properly provide an argument on appeal." This is an insufficient basis for reversal. Absent some showing to the contrary, as noted above, we will presume the missing portions of the record support the juvenile court's rulings on any issues raised. *See State v. Zuck*, 134 Ariz. 509, 513 (1982); *State v. Scott*, 187 Ariz. 474, 476 (App. 1996) ("Even if a trial record is incomplete, we must assume that it supports the judgment unless there is '*at least* a credible and unmet allegation of reversible error.'" (emphasis added in *Scott*) (quoting *Masters*, 108 Ariz. at 192)). No specific claim of trial error having been raised on appeal, Tyler has failed to make the requisite showing to warrant a new severance hearing.

¶8 For the foregoing reasons, the juvenile court's termination order is affirmed.