

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

BRIDGETT D.,
Appellant,

v.

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

No. 2 CA-JV 2019-0093
Filed March 13, 2020

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NOT FOR PUBLICATION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. JD20180153
The Honorable Lisa Bibbens, Judge Pro Tempore

AFFIRMED

COUNSEL

Sarah Michèle Martin, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Doriane Neaverth, Assistant Attorney General, Phoenix
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

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

ECKERSTROM, Judge:

¶1 Bridgett D. appeals from the juvenile court's order terminating her parental rights to her daughter, A.D., born January 2018, on neglect and time-in-care grounds. *See* A.R.S. § 8-533(B)(2), (8). She argues the court "violated [her] fundamental rights" by "den[ying] her the opportunity to present her defense" after she failed to appear at a severance hearing. We affirm.

¶2 We view the evidence in the light most favorable to upholding the juvenile court's ruling. *See Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 12 (App. 2007). A.D. was born prematurely and suffers from several congenital ailments. She underwent multiple surgeries, remaining hospitalized for over two months after her birth. While A.D. was hospitalized, Bridgett visited only infrequently and did not learn medical treatments and techniques A.D. would require upon discharge. Bridgett acknowledged to the Department of Child Safety (DCS) that she had no stable residence or medical insurance. DCS took custody of A.D. upon her discharge from the hospital in March 2018, placed her in foster care, and filed a dependency petition. The court found A.D. dependent as to Bridgett in May 2018.

¶3 In October 2018, DCS moved to terminate Bridgett's parental rights on neglect and time-in-care grounds citing Bridgett's failure to comply with the case plan, including by failing to attend A.D.'s medical appointments and missing scheduled visits. Despite being advised of the day, time, and consequences of failing to appear, Bridgett was late for the first day of the severance hearing. The juvenile court advised her that she was required to appear for "all of the trial dates" and the court could proceed in her absence should she fail to do so. Bridgett did not timely appear for the next scheduled hearing date, and the court concluded she had waived her right to appear. However, after Bridgett arrived later during the hearing, the court advised her of the next hearing date and time and the consequences of failing to appear. Bridgett attended the next

hearing, at the end of which the court confirmed with her the subsequent hearing date and time and (again) the consequences of failing to appear.

¶4 Bridgett did not attend that hearing. Her counsel advised the juvenile court that she did not have good cause for Bridgett's failure to appear and had not had contact with her. The court found Bridgett had not demonstrated good cause for her failure to appear and had admitted the allegations in the termination motion. It then found DCS had established that termination was appropriate on neglect and time-in-care grounds and that termination was in A.D.'s best interests. Later that afternoon, Bridgett appeared at the severance hearing for A.D.'s father and moved to vacate the severance finding as to her. The court noted it was "not ruling on the good cause to set aside" its earlier ruling, advising it would "consider that through appropriate motion."

¶5 Bridgett appealed the termination order. She later filed a motion to set aside that order, arguing she had good cause for her failure to appear. This court stayed the appeal to allow the juvenile court to conduct an evidentiary hearing on that motion. After that hearing, the court denied Bridgett's motion to set aside. Bridgett did not timely file a new or amended notice of appeal, and the presiding judge of the juvenile court denied her request for a delayed appeal made under Rule 108, Ariz. R. P. Juv. Ct. We then reinstated Bridgett's appeal from the termination order.

¶6 Bridgett first argues the juvenile court erred by denying her motion to set aside. Bridgett did not appeal the order denying that motion, and we therefore lack jurisdiction to address it. *See M & M Auto Storage Pool, Inc. v. Chem. Waste Mgmt., Inc.*, 164 Ariz. 139, 141 (App. 1990) ("An order denying or granting a motion to set aside a judgment . . . is appealable as a 'special order made after final judgment.'" (quoting A.R.S. § 12-2101)); Ariz. R. P. Juv. Ct. 46(E) (motion to set aside judgment governed by Rule 60, Ariz. R. Civ. P.); *see also* A.R.S. § 12-2101(A)(2).

¶7 Bridgett also contends, as we understand her argument, that the juvenile court violated her due process rights by proceeding in her absence. She cites *Santosky v. Kramer*, asserting the three factors identified in that case govern the question whether the procedure comports with due process: the private interest affected, the risk of error, and the government's interest in the procedure. 455 U.S. 745, 754 (1982). She reasons her due process rights were violated in light of the fundamental nature of parental rights, the risk of error inherent in default proceedings, and the lack of any "countervailing governmental interest" because she appeared for a hearing in the father's severance proceeding that afternoon.

¶8 Our rules and statutes governing juvenile court procedure require parents be advised before any termination hearing of the time and date of the next hearing, that the failure to appear could result in the waiver of legal rights, and that the court could terminate their parental rights in their absence. See A.R.S. § 8-535(A), (E)(3); Ariz. R. P. Juv. Ct. 64(C), 65(D)(3). And, if a properly advised parent should fail to appear “without good cause,” a juvenile court “may terminate parental rights based upon the record and evidence presented.” Ariz. R. P. Juv. Ct. 66(D)(2); see also §§ 8-535(D), 8-537(C); Ariz. R. P. Juv. Ct. 65(C)(6)(c).

¶9 Bridgett does not generally challenge the constitutionality of the applicable statutes and rules, instead confining her argument to the facts of her case. But she cites no authority suggesting the factors listed in *Santosky* are relevant to whether an otherwise constitutional procedure was properly invoked in a specific case. See, e.g., *Trisha A. v. Dep’t of Child Safety*, 247 Ariz. 84, ¶¶ 24-30 (2019) (citing factors in reference to whether meritorious-defense requirement infringes a parent’s due process rights); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 29-41 (2005) (applying factors to determine appropriate evidentiary standard in parental rights termination proceedings). In short, Bridgett has cited no authority suggesting the procedure was unconstitutional as applied to her.¹ This claim is therefore waived on appeal. See *Bob H. v. Ariz. Dep’t of Econ. Sec.*, 225 Ariz. 279, ¶ 10 (App. 2010) (argument waived when appellant “cite[d] no legal authority” in support of claim).

¶10 Bridgett next argues the juvenile court’s waiver finding was inappropriate because she attended the afternoon hearing regarding termination of the father’s parental rights. She cites our supreme court’s statement in *Brenda D. v. Dep’t of Child Safety* that, “if a parent appears late for a hearing, but at a stage of the proceedings where an opportunity to contest and present evidence still exists, it would be an abuse of the juvenile court’s discretion to impose the full-waiver sanctions.” 243 Ariz. 437, ¶ 25 (2018). She contends her case was “tracking” the father’s case and she therefore only arrived late – requiring the court to allow her to participate. This argument ignores the record. Bridgett’s proceeding ended in the morning hearing, after the court found the state had demonstrated

¹And, in any event, Bridgett has cited no authority in support of her claims that a default proceeding is unacceptably error-prone or that the state had no interest in starting the proceeding on time because she could merely attend a different proceeding that afternoon.

termination was warranted and in A.D.'s best interests. As the court observed in *Brenda D.*, "If the parent does not appear before the termination adjudication hearing concludes, then the waiver of the parent's legal rights is effective throughout the hearing," and, "at its completion (that is, at the close of evidence, when the matter is submitted for the court's decision), the parent will be deemed to have admitted the factual allegations in the motion." *Id.* ¶ 24. That is precisely what occurred here.

¶11 Bridgett last contends the juvenile court's neglect and time-in-care findings were not supported by sufficient evidence. But her argument is based entirely on her claim the court improperly proceeded in her absence. Thus, we need not address her sufficiency argument further.

¶12 We affirm the juvenile court's order terminating Bridgett's parental rights to A.D.