

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

JAMES S.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, K.S., J.S., AND N.S.,
Appellees.

No. 2 CA-JV 2020-0121 and 2 CA-JV 2020-0146 (Consolidated)
Filed

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NOT FOR PUBLICATION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. S1100JD201800263
The Honorable DeLana J. Fuller, Judge Pro Tempore

AFFIRMED

COUNSEL

Samantha Dumond, Phoenix
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Amanda Adams, Assistant Attorney General, Mesa
Counsel for Appellee Department of Child Safety

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MEMORANDUM DECISION

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

ECKERSTROM, Judge:

¶1 James S. appeals from the juvenile court's denial of his Rule 60(b)(1), Ariz. R. Civ. P., motion to vacate and set aside the judgment terminating his parental rights to his children.¹ For the following reasons, we affirm.

Factual and Procedural Background

¶2 In November 2018, the Department of Child Safety (DCS) filed a dependency petition, alleging that K.S. (born June 2012), J.S. (born March 2014), and N.S. (born July 2018) were dependent as to James due to his abuse of one of the children, his domestic violence with the children's mother, and his inability to provide their basic needs.² After James failed to appear for the initial dependency hearing, the juvenile court adjudicated the children dependent. James had no contact with DCS for several months, tested positive for methamphetamine in May 2019, failed to participate in visitation and substance-abuse assessment, and was incarcerated in July 2019.

¶3 A few months later, the juvenile court changed the case plan from family reunification to severance and adoption. Thereafter, DCS filed a motion to terminate the parent-child relationship, alleging that, as to James, the children had been in an out-of-home placement for nine months or longer and that James was unable to discharge his parental responsibilities because of substance abuse. *See* A.R.S. § 8-533(B)(3), (8)(a). At the initial severance hearing, the court set a pretrial conference for

¹ The juvenile court also terminated the parental rights of the children's mother. She is not a party to this appeal.

² Although there was a police investigation into the abuse allegation, the record does not indicate whether charges were filed.

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January 14, 2020, which James acknowledged by signing a Form 3 notice of hearing.³ The notice advised:

You are required to attend all termination hearings. If you cannot attend a court hearing, you must prove to the Court that you had good cause for not attending. If you fail to attend the Initial Termination Hearing, Termination Pre-trial Conference, Status Conference, or Termination Adjudication Hearing without good cause, the Court may determine that you have waived your legal rights and admitted the grounds alleged in the motion/petition for termination. The hearings may go forward in your absence, and the Court may terminate your parental rights to your child based on the record and evidence presented.

¶4 When James failed to appear for the pretrial conference, the juvenile court “preserv[ed his] nonappearance” and scheduled an evidentiary hearing for January 22, 2020. James again failed to appear. James’s counsel explained to the court that he had spoken to James after the pretrial conference and he had failed to appear for that hearing because of “[c]onfusion, more than anything else.” His counsel further stated that he had provided James notice of the January 22 hearing, admitting he had mistakenly told him it was on “Tuesday, January 22, 2020,” but avowing he later sent James a copy of the court’s minute entry reflecting that the hearing was on “Wednesday, January 22, 2020.” Counsel also reported emailing James that morning to confirm his presence at the hearing, but James did not reply. The court found James had been properly served notice of the hearing and had failed to appear without good cause. The court therefore concluded he waived his right to a trial and was deemed to have admitted the allegations in the motion to terminate.

¶5 After finding that DCS had established grounds for termination and that termination was in the children’s best interests, the juvenile court entered a final judgment terminating James’s parental rights on April 9, 2020. This court subsequently dismissed James’s appeal from

³Form 3 is a standardized notice to parents in a termination action.

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that judgment. *James S. v. Dep't of Child Safety*, No. 2 CA-JV 2020-0045 (Ariz. App. June 23, 2020) (order).

¶6 On August 21, 2020, James filed a motion to vacate and set aside the judgment, citing Rule 60(b)(1).⁴ He argued that on January 6, 2020, he had asked the clerk of the court for his next court date and, “[f]or whatever reason . . . , the clerk provided him with an erroneous date,” not the January 14 pretrial conference. James further asserted his counsel had told him he could explain his absence at the next hearing but had misinformed him that the next hearing fell on a Tuesday, not a Wednesday. He therefore reasoned that his absence from the hearings amounted to “excusable neglect.”

¶7 The juvenile court denied James’s motion, explaining: “After significant deliberation, the Court still finds that the Court’s decision was justified by the evidence presented at trial and the Court’s decision was not contrary to the law. Additionally, [James’s] requested relief was denied by the Court of Appeals and the matter was dismissed by that Court on August 28, 2020.” This appeal followed.

Discussion

¶8 James argues the juvenile court erred by denying his Rule 60(b)(1) motion to vacate and set aside the judgment. Specifically, he contends “the court failed to consider applicable law regarding Rule 60 and excusable neglect.” We review the denial of relief under Rule 60(b)(1) for an abuse of discretion. *Trisha A. v. Dep’t of Child Safety*, 247 Ariz. 84, ¶ 27 (2019). In doing so, we view the facts in the light most favorable to upholding the court’s ruling. *Ezell v. Quon*, 224 Ariz. 532, ¶ 2 (App. 2010).

¶9 Rule 60(b)(1) provides that the juvenile court may “[o]n motion and just terms . . . relieve a party or its legal representative from a final judgment, order, or proceeding for . . . mistake, inadvertence, surprise, or excusable neglect.”⁵ See Ariz. R. P. Juv. Ct. 46(E) (applying Rule 60(b) to

⁴James attempted to file this motion on three prior occasions, but the clerk of the court rejected it each time because James had failed to comply with the procedural rules.

⁵Rule 60(b) was previously numbered Rule 60(c), but the two versions are substantively identical. Ariz. Sup. Ct. Order R-16-0010 (Sept. 2, 2016). We refer to Rule 60(b) throughout this decision.

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termination proceedings). “Excusable neglect exists if the neglect or inadvertence ‘is such as might be the act of a reasonably prudent person in the same circumstances.’” *Christy A. v. Ariz. Dep’t of Econ. Sec.*, 217 Ariz. 299, ¶ 16 (App. 2007) (quoting *Ulibarri v. Gerstenberger*, 178 Ariz. 151, 163 (App. 1993)). When a Rule 60(b)(1) motion is based on a parent’s nonappearance at a hearing, the parent “must provide ‘good cause’ for their nonappearance and prove a meritorious defense.” *Trisha A.*, 247 Ariz. 84, ¶ 22 (emphasis omitted). In termination proceedings, motions pursuant to Rule 60(b)(1) must be filed within three months of the final judgment. Ariz. R. P. Juv. Ct. 46(E).⁶

¶10 In this case, the juvenile court entered the final judgment on April 9, 2020. Any motion under Rule 60(b)(1) therefore needed to be filed by July 9, 2020. *See* Ariz. R. P. Juv. Ct. 46(E). James did not file his motion to vacate and set aside the judgment until August 22, 2020, more than a month late.⁷ James nevertheless contends that we cannot resolve this issue on timeliness grounds because the juvenile court “never addressed the timing of [his] Rule 60(b) motion.” But we are required to affirm the court’s ruling if it is legally correct for any reason. *See In re Maricopa Cnty. Juv. Action No. JS-8287*, 171 Ariz. 104, 110-11 (App. 1991). Because James’s motion to vacate and set aside the judgment was untimely, the court’s denial was proper. *See Andrew R. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 453, ¶ 25 (App. 2010) (because party failed to timely file Rule 60(b) motion, juvenile court erred in considering and granting it); *Martin v. Martin*, 182 Ariz. 11, 16 (App. 1994) (because Rule 60(b)(1) motion was untimely, trial court had no authority to grant relief).

¶11 Even assuming James’s motion to vacate and set aside the judgment was timely filed, however, James failed to establish good cause

⁶Rule 6(b)(2), Ariz. R. Civ. P., allows the court to “extend the time to act” under Rule 60(b) “for 10 days after the entry of the order extending the time” if (1) the moving party requests an extension pursuant to the timelines laid out in the rule, (2) the court finds the moving party was entitled to notice of the entry of judgment but did not receive it, and (3) the court finds no party would be prejudiced by an extension. However, James made no request for an extension here, and the juvenile court made no findings concerning notice or prejudice.

⁷ Although James attempted to file his motion sooner, he was unsuccessful in doing so, and Rule 46(E) requires that the motion “be filed” within three months of the final judgment.

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for his nonappearance at the hearings. See *Trisha A.*, 247 Ariz. 84, ¶ 22. First, even if the clerk of the court gave James an incorrect hearing date, James previously acknowledged on the Form 3 that the pretrial conference was scheduled for January 14. Cf. *Laveen Meadows Homeowners Ass'n v. Mejia*, 249 Ariz. 81, ¶ 8 (App. 2020) (no abuse of discretion in denial of Rule 60(b)(1) motion where record contradicted defendant's assertion that he did not understand court process). Second, even if his counsel had told James that the evidentiary hearing was on Tuesday, not Wednesday, his counsel gave him the correct date—January 22—and also gave him a copy of the minute entry showing the hearing was set for “Wednesday, January 22, 2020.” See *City of Phoenix v. Geyler*, 144 Ariz. 323, 332 (1985) (describing diligence as final arbiter whether neglect is excusable). Moreover, if James had mistakenly appeared at court on Tuesday, only to find no hearing scheduled, presumably, he would have inquired into the correct date and could have appeared the following day. Simply put, James's conduct was not that of a reasonably prudent person in similar circumstances. See *Christy A.*, 217 Ariz. 299, ¶ 16.

¶12 In addition, James failed to make any showing of a meritorious defense. See *Trisha A.*, 247 Ariz. 84, ¶ 22. Although he contends the juvenile court failed to properly consider the law regarding excusable neglect under Rule 60(b)(1), he points only to the “paucity of information in the [r]uling” as evidence of this purported failure. But we presume the court knew the law and applied it correctly. See *Fuentes v. Fuentes*, 209 Ariz. 51, ¶ 32 (App. 2004). The court therefore did not abuse its discretion by denying James's motion to vacate and set aside the judgment. See *Trisha A.*, 247 Ariz. 84, ¶ 27.

Disposition

¶13 For the foregoing reasons, we affirm the juvenile court's denial of James's motion to vacate and set aside the judgment.