IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

DANNA E.,
Appellant,

v.

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

No. 2 CA-JV 2021-0067
Filed December 6, 2021

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NOT FOR PUBLICATION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. JD20180639
The Honorable Geoffrey L. Ferlan, Judge Pro Tempore

AFFIRMED

COUNSEL

Domingo DeGrazia, Tucson
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Autumn Spritzer, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

Pima County Office of Children's Counsel, Tucson
By Christopher Z. Lloyd
Counsel for Minor

MEMORANDUM DECISION

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

E S P I N O S A, Presiding Judge:

¶1 Danna E. appeals from the juvenile court's order terminating her parental rights to her daughter, M.A., born December 2017, on time-in-care-grounds. She argues the court erred by relying on exhibits not in evidence and that sufficient evidence did not support the court's findings. We affirm.

¶2 In December 2018, the Department of Child Safety (DCS) filed a petition alleging M.A. was dependent as to Danna and M.A.'s father due to her exposure to domestic violence between her parents. The juvenile court found M.A. dependent as to Danna in January 2019 and as to her father in February 2019. M.A. was removed from Danna's care in February 2019, after Danna violated a safety plan put in place by DCS. In September 2020, DCS moved to terminate her parental rights on neglect and time-in-care grounds. After a contested hearing, the juvenile court granted DCS's motion, terminating Danna's parental rights under A.R.S. § 8-533(B)(8)(c) because M.A. had been in court-ordered, out-of-home care for longer than fifteen months, and finding termination was in M.A.'s best interests.[1] The court additionally found M.A. was an Indian child and that the requirements of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, had been met. The court declined to address termination based on neglect under § 8-533(B)(2). This appeal followed.

¶3 On appeal, Danna first complains that the juvenile court cited in its ruling several reports not admitted into evidence, constituting what

[1]The juvenile court also terminated the parental rights of M.A.'s father, who is not a party to this appeal.

Danna describes as "fundamental error."[2] Specifically, the court cited a permanency hearing report and five addendum reports although they had been admitted only as to the father. We first note that, to the extent DCS argues the court was nonetheless entitled to review those reports because it had granted Danna's request to take judicial notice of "the file," we disagree. The court stated in its minute entry that it had taken judicial notice of the "legal file." Although that term does not appear in the rules governing the termination of parental rights, the rules for delinquency proceedings define the "legal file of the juvenile court" as containing "all pleadings, motions, minute entries, orders, or other documents as provided by rule or ordered by the court." Ariz. R. P. Juv. Ct. 19(A)(1). It is a public file, to be kept separate from the confidential "social file" for the juvenile, which contains "all social records, including . . . Department of Child Safety records." Ariz. R. P. Juv. Ct. 19(A)(1), (2). In light of this distinction, and the juvenile court's specific admission of the reports only as to the father, we cannot conclude the court intended to take judicial notice of those reports.

¶4 However, the juvenile court's consideration of reports not admitted into evidence is subject to harmless error review. *See State v. Stevens*, 158 Ariz. 595, 597 (1988) (reviewing jury's consideration of unadmitted photographs for harmless error). The error is harmless if we can determine, beyond a reasonable doubt, that it did not contribute to the court's decision. *See id.*; *Alice M. v. Dep't of Child Safety*, 237 Ariz. 70, ¶ 12 (App. 2015). And, generally, the error is harmless if the improper evidence is merely cumulative. *See State v. Williams*, 133 Ariz. 220, 226 (1982).

¶5 The portions of the juvenile court's decision where it cited the unadmitted reports generally describe Danna's inconsistent participation in services despite DCS's efforts. Regardless of the reports, however, the testimony presented by DCS amply describes not only the services DCS offered, but Danna's failure to consistently participate in them. We have found no material inconsistency between the court's findings and the evidence presented, nor has Danna directed us to any. And we note that Danna has not identified any basis for the court to have declined to admit the exhibits had they been properly offered. In these circumstances, we

[2]Because we find the error harmless, we need not address DCS's argument that Danna did not preserve this claim because she did not raise it below following the juvenile court's ruling.

agree with DCS that the court's consideration of these exhibits was harmless error.

¶6 Danna next argues the evidence supporting termination on time-in-care grounds was insufficient because "most of the documentary evidence the court relied on was not admitted into evidence." Insofar as Danna asserts testimony alone cannot support termination, she has cited no authority supporting this argument. Nor has she developed any argument that the testimony presented was insufficient to support the juvenile court's findings. Thus, we decline to address this argument further. *See Melissa W. v. Dep't of Child Safety*, 238 Ariz. 115, ¶ 9 (App. 2015) (argument waived when unsupported by citation to authority); *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, ¶ 88 (App. 2008) (inadequately developed arguments are waived).

¶7 And, because she did not raise it below, we also find waived Danna's argument that testimony by DCS employees about the content of their reports was inappropriate because they were not found to be experts under Rule 702, Ariz. R. Evid., and the reports were not admitted into evidence. *See Kimu P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 39, n.3 (App. 2008) (argument not raised below is waived). Last, we need not address Danna's argument that the juvenile court's best-interests determination was improper because she grounds that claim entirely in her failed argument that the court erred in finding DCS had proven termination was warranted based on § 8-533(B)(8)(c).

¶8 The juvenile court's order terminating Danna's parental rights to M.A. is affirmed.