IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

KERRY W.,
Appellant,

v.

E.J.,
Appellee.

No. 2 CA-JV 2021-0129
Filed February 10, 2022

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NOT FOR PUBLICATION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. S1100JD202100091
The Honorable Barbara A. Hazel, Judge

VACATED

COUNSEL

Rosemary Gordon Pánuco, Tucson
Counsel for Appellant

MEMORANDUM DECISION

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

B R E A R C L I F F E, Judge:

¶1 Kerry W. appeals from the juvenile court's order finding her son, E.J., born June 2019, dependent as to her. Because the appellees have not filed answering briefs, we conclude that they have acquiesced to the relief sought on appeal, and we vacate the court's order.

¶2 In April 2021, Camille Hernandez filed a dependency petition stating she was the guardian ad litem for E.J.[1] and alleging E.J. was dependent as to both his parents, who were "in a high conflict domestic relations dispute" in Pinal County Superior Court. She additionally alleged Kerry had failed to comply with drug-testing orders in the family law case, had not participated in services, and had not obtained ear tubes for E.J. as recommended by the Department of Child Safety (DCS). The juvenile court appointed counsel for E.J.

¶3 DCS opposed the dependency. However, after a two-day hearing, the juvenile court found E.J. dependent as to both parents, noting as to Kerry that she had left E.J. in his father's care despite his cocaine use and her allegations of neglect. The court also noted E.J. had been substance-exposed at birth and that Kerry had failed to comply with drug tests ordered in the family law proceeding. Further, the court observed that although a treatment facility had determined Kerry did not need substance-abuse treatment, it had not been informed E.J. had been born substance-exposed. Finally, the court concluded that neither parent was credible in testifying they had no current concerns about the other's

[1]Hernandez was appointed as E.J.'s best-interests attorney in the family law matter. Like a guardian ad litem in a juvenile proceeding, a best-interests attorney is appointed in a family law proceeding to represent a child's best interests in that proceeding. *See* Ariz. R. Fam. Law P. 10; Ariz. R. P. Juv. Ct. 40; *Castro v. Hochuli*, 236 Ariz. 587, ¶¶ 8, 10 (App. 2015); *Aksamit v. Krahn*, 224 Ariz. 68, ¶ 14 (App. 2010).

parenting in light of their allegations in the family law case. This appeal followed.

¶4 On appeal, Kerry asserts that none of the facts Hernandez alleged in the dependency petition warranted a dependency finding and E.J. did not meet the definition of a dependent child under A.R.S. § 8-201(15). Neither Hernandez nor E.J. has filed an answering brief.

¶5 We may consider the failure to file an answering brief as a "confession of error" or acquiescence to the relief sought on appeal. *See In re Marriage of Diezsi*, 201 Ariz. 524, ¶ 2 (App. 2002) (failure to file responsive brief may be "confession of error"). And, if the issue raised on appeal is "debatable," we may summarily reverse unless we believe "'that justice requires a decision on the merits.'" *In re Pinal Cnty. Juv. Action No. S-389*, 151 Ariz. 564, 565 (App. 1986) (quoting *In re Pima Cnty. Juv. Action No. J-65812-1*, 144 Ariz. 428, 429 (App. 1985)). We have declined to so summarily reverse when "the persons most interested in the proceedings" were unrepresented minors. *Hoffman v. Hoffman*, 4 Ariz. App. 83, 85 (1966). But that concern is not present here. Hernandez was tasked with protecting E.J.'s best interests and E.J. was separately represented by counsel. But neither attorney has chosen to respond to Kerry's arguments on appeal.

¶6 The evidence presented at the custody hearing shows DCS had no concerns about E.J.'s safety. At that time, Kerry was participating in services, and the parents had court-ordered physical custody of E.J. with Kerry having custody two days per week. In these circumstances, we conclude the issues raised on appeal are debatable, and given Hernandez and E.J.'s failure to contest the appeal, we need not address Kerry's arguments further.

¶7 We vacate the juvenile court's order finding E.J. dependent as to Kerry.