

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

ALICIA G.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND I.R.,
Appellees.

No. 2 CA-JV 2021-0135
Filed February 8, 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NOT FOR PUBLICATION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. S1100JD202000298
The Honorable Daniel A. Washburn, Judge

AFFIRMED

COUNSEL

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

Mark Brnovich, Arizona Attorney General
By Dawn R. Williams, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

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

BREARCLIFFE, Judge:

¶1 Alicia G. appeals from the juvenile court's September 2021 order, terminating her parental rights to I.R., born in October 2020, on the grounds of abandonment, chronic substance abuse, and length of time in court-ordered care, pursuant to A.R.S. § 8-533(B)(1), (B)(3), and (B)(8)(a) and (b). The court entered the order following a termination hearing that Alicia G. did not attend. She contends she had good cause for failing to appear, requesting that this court "reverse and remand for an evidentiary hearing to determine if a factual basis for [her] claims exists." We affirm.

¶2 Alicia used methamphetamine throughout her pregnancy, including on the morning she gave birth to I.R., who tested positive for amphetamine exposure shortly after being born. The Department of Child Safety (DCS) immediately took custody of I.R., placed him with an extended family member, and filed a dependency petition. Alicia concedes that, as the juvenile court acknowledged at the commencement of the termination hearing, she failed to appear at numerous hearings throughout the dependency proceeding. She also failed to participate in reunification services DCS offered and did not maintain contact with her case manager, whose attempts to contact her were unsuccessful.

¶3 The juvenile court changed the initial case plan of reunification to severance and adoption after the permanency hearing in July 2021. As directed, DCS filed a motion for termination of parent-child rights as to both of I.R.'s parents. Alicia did not appear at the initial severance hearing on August 10, and after counsel explained she was incarcerated, the court found good cause for her nonappearance and continued the hearing to August 24, and then to August 31. Alicia did not appear at the hearing on August 31. Her counsel informed the court Alicia was no longer incarcerated but that he had no means of contacting her, and he did not know if she was aware of the hearing. Noting that Alicia repeatedly had been informed of the possible consequences of failing to appear at hearings, and had been served with notice of the hearing, the court found there did not appear to be good cause for her failure to attend,

deemed the allegations of the motion admitted, and proceeded with the hearing. *See* Ariz. R. P. Juv. Ct. 66(D)(2) (if parent fails to appear at termination adjudication hearing without good cause, and court finds parent had notice of hearing and was properly served and admonished regarding consequences of absence, court may terminate parent's rights based on record and evidence presented). Following the presentation of evidence, the court found DCS had sustained its burden and terminated Alicia's parental rights to I.R.

¶4 Alicia asserts for the first time on appeal, in a single paragraph, that she "has alleged that prior to and after the birth of her child she was held captive by her significant other and physically prevented from participating in the dependency." She also claims she was "physically prevented from appearing at the severance hearing," and that "if true," her allegations constitute good cause for failing to appear and maintain contact with DCS throughout the dependency. She cites no support in the record, because there is none. Rather, she asks this court to reverse the juvenile court's order and remand this matter for an evidentiary hearing based on these allegations.

¶5 DCS argues Alicia may not seek relief on this basis, having failed to bring it to the juvenile court's attention first. We agree. Alicia had ample opportunity to inform counsel and the court that she was being prevented from participating in the dependency proceeding. And she provides no explanation for why she failed to maintain contact with her attorney after she was no longer incarcerated and why she did not tell counsel at any point in time, so that counsel could have informed the court there was a reason she did not appear. Indeed, as the juvenile court noted, Alicia had been before the court in January; it is apparent she made no mention of being prevented from participating in the dependency. Moreover, Alicia did not file a motion to set aside the court's order pursuant to Rule 46(E), Ariz. R. P. Juv. Ct., which would have given the court the opportunity to address the issue after the hearing and after it entered the order. *Cf. Shawanee S. v. Ariz. Dep't of Econ. Sec.*, 234 Ariz. 174, ¶ 18 (App. 2014) (appellant waived claim first raised on appeal that DCS did not provide appropriate reunification services, thus depriving juvenile court of opportunity to address issue and ensure DCS's compliance with obligations). The court then could have determined whether the allegations created a factual issue warranting an evidentiary hearing. The court would have had the opportunity to enter factual findings related to the voluntariness of Alicia's absence and determine whether there was good cause for her absence. *See Trisha A. v. Dep't of Child Safety*, 247 Ariz. 84 (2019).

¶6 It is for the juvenile court to determine, in the exercise of its discretion, whether good cause exists for a party's failure to appear at a termination or other hearing in a juvenile court proceeding. *Adrian E. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 96, ¶ 15 (App. 2007). We review the court's finding on that issue for an abuse of discretion, reversing if the court's exercise of its discretion was "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 19 (App. 2005) (quoting *Quigley v. Tucson City Court*, 132 Ariz. 35, 37 (1982)). Alicia does not argue the court abused its discretion and, based on the record that was before the court when it entered its order, we have no basis for reversing the order.

¶7 The September 2021 order terminating Alicia G.'s parental rights to I.R. is affirmed.