

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

RICHARD R., GELIANA R., AND MARCELLA R.,
Appellants,

v.

DEPARTMENT OF CHILD SAFETY,
Appellee.

No. 2 CA-JV 2021-0141
Filed April 12, 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NOT FOR PUBLICATION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. S1100JD201700116
The Honorable Daniel A. Washburn, Judge

AFFIRMED

COUNSEL

Richard R., Gelliana R., and Marcella R., Chandler
In Propria Personae

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

MEMORANDUM DECISION

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

E P P I C H, Presiding Judge:

¶1 Marcella R., an adult previously the subject of a dependency proceeding, and her parents Richard R. and Gelliana R., appeal from the juvenile court's order denying their motion to set aside orders in the dependency proceeding, which had been dismissed in October 2018, requesting that the juvenile court remove all records from its database relating to this case and seeking a remand to Maricopa County Superior Court for a "trial" in an "open case" against the Department of Child Safety (DCS) for damages resulting from its alleged fraud, negligence and violation of appellants' constitutional rights. We affirm.

¶2 In April 2017, DCS took custody of then sixteen-year-old Marcella and filed a dependency petition based on reports that Richard and Gelliana had been interfering with her treatment for mental-health issues and that Richard had threatened to remove her from a treatment center and kill everyone there, including Marcella's therapist. After a contested hearing in September 2017, the juvenile court adjudicated Marcella dependent, finding the parents were "neglectful as to [Marcella's] mental health care treatment," and they had "failed to provide [her] the appropriate/necessary/adequate mental health treatment." Richard appealed and this court affirmed. *Richard R. v. Dep't of Child Safety*, No. 2 CA-JV 2017-0165 (Ariz. App. Feb. 6, 2018) (mem. decision). Marcella received treatment to address her mental-health issues and on DCS's recommendation, the court placed her in her parents' home in July 2018. After a permanency planning hearing in October 2018, the court dismissed the dependency proceeding over DCS's objection. Marcella turned eighteen about a month later.

¶3 In June 2021, appellants filed a motion citing Rule 60, Fed. R. Civ. P., requesting "relief from a judgement in state court and remove the fraudulent record in" the dependency action. Although they seemed to be challenging the dependency proceeding generally, they primarily sought to set aside the order adjudicating Marcella dependent, claiming it was based on "fraudulent and forged documents and false testimony," and no

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evidence. They asserted that medical and other records were fabricated or altered. They referred to a lawsuit they apparently had filed against DCS in federal district court and Maricopa County Superior Court and the Department of Justice's insurance and Medicare fraud investigation of a treatment facility where Marcella had received services, attaching purportedly supporting documentation.

¶4 The juvenile court denied the motion on June 30 in an unsigned order. Finding its subject matter jurisdiction is circumscribed by Title 8 of the Arizona Revised Statutes, the court concluded it had lost jurisdiction of the case when the dependency was dismissed and when Marcella reached her eighteenth birthday. Thereafter, appellants filed a motion for retrial under "Rule 59," which the clerk of Pinal County Superior Court apparently would not accept because it was not an original document with signatures from all parties listed on the motion. The court accepted a subsequent "Notice of Errata Exhibit AB and AC," which included a corrected copy of the motion for new trial in which appellants claimed the juvenile court had jurisdiction to hear their Rule 60 arguments because the three-year limitations period for fraud claims had not run. In an unsigned order the court denied the motion based on lack of jurisdiction. Appellants filed a notice of appeal from the June and July orders. This court suspended the appeal, revesting jurisdiction in the juvenile court so that it could enter a signed order, which it did in December.¹ We then reinstated the appeal.

¶5 As DCS asserts, appellants' arguments seem to be direct challenges to the 2017 order adjudicating Marcella dependent and, inferentially, the continued finding of dependency in 2018.² But as we

¹The juvenile rules "do not expressly incorporate the Arizona Rules of Civil Procedure," *William Z. v. Ariz. Dep't of Econ. Sec.*, 192 Ariz. 385, ¶ 7 (App. 1998), and they do not include a motion for new trial or incorporate Rule 59, Ariz. R. Civ. P. Appellants' amended Rule 59 motion was, in any event, in the nature of a supplement to their Rule 60 motion and we review the court's denial of the latter motion in that context. Moreover, in the signed order, the court specified it was denying the Rule 60 motion and did not include the Rule 59 motion.

²After DCS filed its answering brief, arguing, among other things, that appellants had failed to comply with the rules requiring citation to the record in an appellate brief, appellants filed a "Notice of Errata and Revised Appellants Opening Brief," a revised opening brief, a reply brief, and a revised reply brief. Appellants claimed in the notice that they did not have access to the record on appeal and could not cite to it. Assuming this is

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stated, Richard appealed that order and this court affirmed. Neither he nor Marcella and Gelliana may challenge any ruling from the dependency proceedings, the time for appealing that ruling having long since passed. *See* Ariz. R. P. Juv. Ct. 104(A). Appellants only obliquely refer to the denial of their Rule 60 motion in their opening brief. They do not argue, much less establish, that the court abused its discretion in denying the motion. *See Trisha A. v. Dep't of Child Safety*, 247 Ariz. 84, ¶¶ 18, 27 (2019) (appellate court reviews denial of motion to set aside for abuse of trial court's broad discretion).

¶6 The juvenile court's order denying appellants' motion to set aside is affirmed.

accurate, we also assume, without deciding, that this was a proper use of a notice of errata and not an attempt to cure deficiencies in appellants' briefs after DCS pointed out those deficiencies in its answering brief.