NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MARIA A., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and RUBY M., Appellees.	2 CA-JV 2009-0133 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J-16332500

Honorable Joan L. Wagener, Judge Pro Tempore

AFFIRMED

Joan Spurney Caplan — Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Pennie J. Wamboldt — Prescott
Attorneys for Appellee

V Á S Q U E Z, Judge

¶1 Appellant Maria A. appeals from the juvenile court's November 2009 order terminating her parental rights to her daughter, Ruby M., on the grounds of mental illness/chronic substance abuse, A.R.S. § 8-533(B)(3), and length of time in care, § 8-533(B)(8)(c). Maria contends the court erred by conducting an initial severance hearing without first holding a permanency hearing. She asserts this violated her "fundamental right to due process" and rights "guaranteed" by A.R.S. § 8-862 and Rule 60, Ariz. R. P. Juv. Ct. We affirm for the reasons stated below.

¶2 When reviewing a juvenile court's order terminating parental rights, we "will not reweigh the evidence but will look only to determine if there is evidence to sustain the court's ruling. 'We will not disturb the juvenile court's disposition absent an abuse of discretion.'" *Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 8, 83 P.3d 43, 47 (App. 2004), *quoting Maricopa County Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996). An abuse of discretion, however, includes an error of law, *see In re Nickolas T.*, 223 Ariz. 403, ¶ 4, 224 P.3d 219, 220 (App. 2010), and we review issues of law de novo, *Bobby G. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 506, ¶ 1, 200 P.3d 1003, 1005 (App. 2008).

¶3 In September 2007, the Arizona Department of Economic Security (ADES) took Ruby and her half brother, Pedro A., into protective custody and filed a dependency petition. ADES alleged in the petition it had received reports Maria was addicted to methamphetamine and it was concerned about her "mental health and financial stability." After Maria failed to appear at a settlement hearing, the juvenile court found she had been given notice of that hearing, deemed the allegations of the dependency petition admitted,

and adjudicated the children dependent as to her. In February 2008, ADES filed a dependency petition alleging Maria's other son, Cezar, also was dependent. He was adjudicated dependent after Maria admitted allegations in an amended petition, including the allegation that she was not in compliance with her case plan relating to Pedro and Ruby.

¶4 Belying Maria's contention there was no permanency hearing, the record irrefutably establishes such a hearing was held in September 2008. After that hearing, the juvenile court found Maria was "compliant with the case plan," and returned Cezar to her care in December. Pedro was returned to her in January 2009. The plan was to return Ruby to the care either of Maria or Ruby's father, depending on their compliance with the case plan. By this point, Ruby's father had been participating in a case plan relating to him; he wanted Ruby placed with his sister. The court set what it referred to as a Placement Review and Dependency Review hearing for June 12, 2009, which Maria attended. At the time of that hearing, Cezar was incarcerated and Pedro was on runaway status; Ruby remained in foster care. A variety of issues were addressed at that hearing, including the possible severance of Maria's parental rights as to Ruby. ADES's permanency hearing report was introduced into evidence. The court held a "continued placement review/dependency review" hearing in September at which ADES reported Maria had not been participating in services and essentially requested that the case plan be changed to severance and adoption.

¶5 The juvenile court then set the matter for and conducted six more hearings that it called continued placement review and dependency review hearings. Maria

appeared at three of these hearings; she did not appear at the October 30, 2009 hearing. At that hearing, ADES asked the court to change the case plan goal to severance and adoption. The court agreed with ADES, directed it to file a motion to terminate Maria's parental rights, and set the matter for an initial severance hearing on November 30. On November 6, 2009, ADES filed the motion to terminate Maria's parental rights to Ruby.

¶6 Maria did not appear at the initial severance hearing on November 30. Her attorney told the juvenile court he had sent her a letter after the previous hearing, advising her the date of the initial severance hearing, but the letter had been returned as undeliverable. Counsel added that he had called his last known telephone number for her, but it had been disconnected. Over counsel's general objection, the matter proceeded in Maria's absence. Based on various documents, including permanency hearing reports, which were admitted as exhibits, and the testimony of the case manager, the court terminated Maria's parental rights.

¶7 Maria contends on appeal that the permanency hearing on September 24, 2008, was "the last held before the Initial Severance Hearing at which [her] parental rights were terminated . . . ." She asserts the juvenile court abused its discretion by setting the matter for intervening placement and dependency review hearings and then an initial severance hearing without "an intervening Permanency Hearing." She argues "there was no Permanency Hearing" and the court "simply ordered [ADES] to file a motion to terminate parental rights at a placement hearing and at the same time set a date for the Initial Termination hearing." She claims the court violated Rule 60, Ariz. R. P. Juv. Ct., and § 8-862, and this failure to follow the proper procedure resulted in a

violation of her due process rights because she did not receive adequate notice before her rights were terminated.

¶8 We agree with ADES that Maria had numerous opportunities to object when the juvenile court addressed permanency issues at hearings the court referred to as placement and dependency review hearings, which were conducted after the initial permanency hearing in September 2008. Although Maria did not appear at some of those hearings, her counsel did. And although Maria did not appear at the initial severance hearing, she was represented by counsel, who did not raise the arguments that are being raised on appeal, objecting only generally to the case proceeding in Maria's absence. Therefore, Maria has waived the arguments she now raises. *See State v. Gendron*, 168 Ariz. 153, 154, 812 P.2d 626, 627 (1991) (generally, "[a]bsent a finding of fundamental error, failure to raise an issue at trial . . . waives the right to raise the issue on appeal"); *Monica C. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 89, ¶ 23, 118 P.3d 37, 42 (App. 2005) (applying fundamental error doctrine in severance case). *But see Bradshaw v. State Farm Mut. Auto. Ins. Co.*, 157 Ariz. 411, 420, 758 P.2d 1313, 1322 (1988) ("The doctrine of fundamental error is sparingly applied in civil cases and may be limited to situations . . . [that] deprive[] a party of a constitutional right.").

¶9 The juvenile court did not err in any event. As we previously stated, it did, in fact, conduct a permanency hearing in September 2008. And regardless of what the subsequent hearings were called, they were tantamount to permanency review hearings,

even if combined with dependency review and placement hearings.[1] Indeed, the case worker continued to prepare permanency reports after September 2008, which were submitted at various times and constituted three of the exhibits introduced at the initial severance hearing. There is nothing in § 8-862 or Rule 60 prohibiting the court from continuously reviewing the propriety of its decision at the initial permanency hearing. Indeed, § 8-862(C) contemplates such review hearings, requiring the court to conduct at least annual permanency reviews if a child is to remain out of the home for eighteen months or longer after the initial permanency review hearing. We see no error here.

¶10 Nor has Maria established her due process rights were violated. She received adequate notice that, if she did not appear at any scheduled hearing, matters could proceed in her absence, including the termination of her parental rights. At the October 10, 2007, preliminary protective hearing, Maria received and signed a "Notice to Parent in Dependency Action," informing her that she was required to appear for all court hearings. The notice further informed her that, if she did not appear at the pre-trial conference, settlement conference or dependency hearing, the court could adjudicate the children dependent in her absence and, if she did not appear at the termination hearing, her parental rights could be terminated. The juvenile court noted in its minute entry that it "advised [Maria] of the need to keep her attorney . . . informed of her residence at all

[1]For example, as ADES points out, after the January 2009 dependency review hearing, the juvenile court set another hearing for May 18, 2009, "for Dependency Review with permanency issues." And the minute entry from the June 12, 2009 hearing unequivocally reflects that the court addressed the continuing propriety of its previous permanency order and whether reunification remained the appropriate case-plan goal as to Ruby. At that time, a permanency hearing report dated June 3, 2009 was admitted.

times." The minute entry also states the court ordered the parents to "be present at all future hearings." At the March 2008 preliminary protective hearing relating to Cezar, Maria again received and signed the "Notice to Parent in Dependency Action."

¶11 Maria did not attend the October 2009 review hearing and, consequently, did not receive the parental notice form that Ruby's father received at that time. But she had attended the June 12, 2009 hearing at which ADES's permanency hearing report of June 3, 2009 was admitted into evidence; she was on notice that ADES no longer believed reunification was in Ruby's best interests and was seeking leave from the juvenile court to file a motion to terminate her parental rights. And the case worker testified that the week before the initial severance hearing she had spoken with Maria and had reminded her of the upcoming hearing.

¶12 Although Maria waived the arguments she now raises, we nevertheless find no error warranting reversal, constitutional or otherwise. We therefore affirm the juvenile court's order terminating Maria's parental rights to Ruby.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge