

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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JESUS L.,  
*Appellant,*

*v.*

DEPARTMENT OF CHILD SAFETY AND J.S.,  
*Appellees.*

No. 2 CA-JV 2014-0095  
Filed February 6, 2015

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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NOT FOR PUBLICATION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).

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Appeal from the Superior Court in Pima County  
No. JD202493  
The Honorable K.C. Stanford, Judge

**AFFIRMED**

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COUNSEL

Curtiss Law, LLC, Tucson  
By Rebecca Curtiss  
*Counsel for Appellant*

Mark Brnovich, Arizona Attorney General  
By Cathleen E. Fuller, Assistant Attorney General, Tucson  
*Counsel for Appellee Department of Child Safety*

JESUS L. v. DEP'T OF CHILD SAFETY  
Decision of the Court

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**MEMORANDUM DECISION**

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

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M I L L E R, Presiding Judge:

¶1 Jesus L. appeals from the juvenile court's order refusing to set aside its order terminating his parental rights to J.S., his alleged child, born in July 2012. Finding no error, we affirm.

¶2 J.S. was removed from his mother's care in September 2012, and the Department of Child Safety (DCS)<sup>1</sup> filed a dependency petition as to the mother, Jesus, and John Doe that same month. Thereafter, DCS unsuccessfully attempted to locate Jesus, whom the mother had indicated was the child's father. J.S. was adjudicated dependent as to Jesus in January 2013 after DCS issued notice by publication to Jesus and "John Doe."

¶3 In December 2013, DCS filed a motion to terminate Jesus's parental rights on the ground of abandonment, which the court granted in March 2014 after Jesus was again served by publication and failed to appear. Jesus thereafter contacted DCS. The court appointed Jesus counsel, and he filed a motion to set aside the dependency adjudication, to dismiss the motion for termination of his parental rights, and to stay a pending adoption of J.S. He argued DCS had not met the requirements for service by publication because it did not exercise due diligence in searching for him and the court lacked personal jurisdiction over him. The juvenile court treated the motion as one to set aside its judgment terminating Jesus's parental rights and denied it.

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<sup>1</sup>The Department of Child Safety is substituted for the Arizona Department of Economic Security (ADES) in this decision. *See* 2014 Ariz. Sess. Laws 2d Spec. Sess., ch. 1, §§ 6, 20, 54.

JESUS L. v. DEPT OF CHILD SAFETY  
Decision of the Court

¶4 On appeal, Jesus again argues the juvenile court lacked “personal jurisdiction to proceed with either a dependency or termination adjudication against [him] because [DCS] had not complied with the requirements under Arizona Rules of Civil Procedure for proper service.” But, “[i]n severance proceedings, service of process need not be sufficient to confer *in personam* jurisdiction over the adverse party so long as it otherwise comports to service of process in civil actions.” *In re Maricopa Cnty. Juvenile Action No. JS-5860*, 169 Ariz. 288, 290, 818 P.2d 723, 725 (App. 1991), citing *In re Appeal in Maricopa Cnty. Juvenile Action No. JS-734*, 25 Ariz. App. 333, 338, 543 P.2d 454, 459 (1975).

¶5 Pursuant to Rules 4.1(l) and 4.2(f), Ariz. R. Civ. P., a person whose residence is unknown may be served by publication. “Before resorting to service by publication, a party must file an affidavit setting forth facts indicating it made a due diligent effort to locate an opposing party to effect personal service.” *Sprang v. Petersen Lumber, Inc.*, 165 Ariz. 257, 261, 798 P.2d 395, 399 (App. 1990). And evidence “available to the judge at the time the motion to set aside was heard” may be considered in support of the affidavit. *Barlage v. Valentine*, 210 Ariz. 270, ¶ 9, 110 P.3d 371, 375 (App. 2005), quoting *Hirsch v. Nat’l Van Lines, Inc.*, 136 Ariz. 304, 308, 666 P.2d 49, 53 (1983).

¶6 In this case, Jesus argues “[t]here is no actual evidence of any contact or communication made by [DCS] to the Mexican Consulate” and “it is improper to consider” the letter because it was not “produced.” And he maintains the juvenile court “found . . . that there was no letter sent.” The court, however, noted that the letter itself had not been admitted, but included in its statement of facts that “the State sent a letter to the Mexican Consulate seeking assistance in locating” Jesus. Indeed, the case manager’s report indicates she made such an effort.

¶7 Additionally, the DCS’s “Affidavit of Unknown Residence” indicated it had sought help in locating Jesus from Interpol. Jesus argues this was insufficient because DCS did not specifically state that Interpol had searched for him in Mexico, but he cites no authority requiring that level of specificity in the affidavit

JESUS L. v. DEP'T OF CHILD SAFETY  
Decision of the Court

to establish due diligence. In view of DCS's efforts to locate Jesus—which included not only contact with the consulate and Interpol, but calling the known telephone number for him, employing a private investigator, contacting Immigration and Customs Enforcement, searching federal prisons, and use of the internet and social networking sites—we cannot say the juvenile court erred in concluding DCS had performed a diligent search for Jesus.

¶8 Jesus contends, however, that had DCS contacted the consulate, “the document that [he] filled out and filed on September 5, 2012 at the Secretaria de Relaciones Exteriores . . . would have surfaced and would have provided” DCS with his address in Mexico. But, as DCS points out, that document does not appear in the record and Jesus has not cited anything in the record to establish it would have been known to the consulate, as it apparently was filed with a separate governmental agency.<sup>2</sup> Nor does he point to any evidence he presented to show that any other effort by DCS would have resulted in his being located. Thus, Jesus has not rebutted the presumption, created by DCS's affidavit, that his address or whereabouts were unknown and that service by publication was appropriate. *See* Ariz. R. Civ. P. 4.1(l), 4.2(f); *Barlage*, 210 Ariz. 270, ¶ 27, 110 P.3d at 378 (prima facie evidence raises rebuttable presumption).<sup>3</sup>

¶9 Service properly having been completed by publication, the appropriate means for Jesus to seek relief was through Rule 59(j), Ariz. R. Civ. P. Pursuant to that rule, “a new trial may be granted

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<sup>2</sup>Indeed, Jesus's entire opening brief on appeal includes only one citation to the record. Rule 106, Ariz. R. P. Juv. Ct., provides that Rule 13 of the Arizona Rules of Civil Appellate Procedure applies in this matter. That rule requires an opening brief to include a statement of facts and argument “with appropriate references to the record.” Ariz. R. Civ. App. P. 13(a).

<sup>3</sup>To the extent relief might be available pursuant to Rule 60(c), Ariz. R. Civ. P., in a situation such as that presented here, because service was proper, Jesus has not established the judgment was void.

JESUS L. v. DEP'T OF CHILD SAFETY  
Decision of the Court

upon application of the defendant for good cause shown by affidavit, made within one year after rendition of the judgment." Ariz. R. Civ. P. 59(j). To establish "good cause," a defendant is not required to excuse his failure to appear, but "[t]o obtain a new trial under this provision a defendant must show that he was served by publication, that he did not answer and that he has a good defense." *Collins v. Streit*, 47 Ariz. 146, 155, 54 P.2d 264, 268 (1936).

¶10 In this case, as the juvenile court concluded, Jesus has not shown a meritorious defense, or in fact, any defense. On the record before us, his paternity has never been established. Nor does the record show he presented anything to suggest he did not abandon J.S., who has been in DCS custody since he was removed from his mother in September 2012, when he was two months old. *See* A.R.S. § 8-533(B)(1). He did not present evidence of contact with the child, efforts to locate the child, or any other action on his part inconsistent with abandonment. Because Jesus has not established good cause for a new trial, he is not entitled to relief under Rule 59(j), and we cannot say the juvenile court abused its discretion in denying his motion to set aside the termination.

¶11 For these reasons, the juvenile court's order terminating Jesus's parental rights is affirmed.