

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

CONNIE V.,
Appellant,

v.

ADAM V., A.J., A.P., AND Z.A.,
Appellees.

No. 2 CA-JV 2016-0018
Filed September 8, 2016

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NOT FOR PUBLICATION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. S1100SV201500088
The Honorable Henry G. Gooday Jr., Judge

AFFIRMED

COUNSEL

Rosemary Gordon Pánuco, Tucson
Counsel for Appellant

CONNIE V. v. ADAM V.
Decision of the Court

MEMORANDUM DECISION

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

V Á S Q U E Z, Presiding Judge:

¶1 Connie V. appeals from the juvenile court's order terminating her parental rights to her children, A.J. born January 2005, A.P. born August 2008, and Z.A. born March 2010, on neglect and abuse grounds. *See* A.R.S. § 8-533(B)(2). In the sole argument she raises on appeal, Connie asserts she received ineffective assistance of counsel during the termination proceeding. We affirm.

¶2 Connie was arrested in December 2013 and charged with the first-degree murder of one of her children, as well as with the attempted first-degree murder of her former husband, Adam, and their three children, and child abuse. In October 2015, Adam moved to terminate Connie's parental rights, alleging various grounds including neglect and abuse. After a contested hearing, the juvenile court granted the petition and found termination was in the children's best interests.

¶3 Connie timely appealed, arguing her trial counsel had been ineffective and asking that we suspend the appeal and reconstitute jurisdiction in the juvenile court for an evidentiary hearing to address that claim. We granted that request, and after an evidentiary hearing the juvenile court rejected her claim of ineffective assistance, concluding that her trial counsel had not rendered deficient performance and that, in any event, "the outcome would still have been exactly the same."

¶4 On appeal, Connie repeats her claim that her trial counsel was ineffective by refusing to accept information about potential witnesses and other evidence from Connie's defense

CONNIE V. v. ADAM V.
Decision of the Court

attorney in the pending criminal case, by failing to seek appointment of a guardian ad litem for her younger children, and by failing to “respond[] in writing” to a motion to waive the home study. The law governing ineffective assistance claims in proceedings to terminate parental rights is not fully developed in Arizona. We previously have suggested a parent has a due process right to the effective assistance of counsel to the extent necessary to ensure severance proceedings are fundamentally fair and the results of those proceedings are reliable. *See John M. v. Ariz. Dep’t of Econ. Sec.*, 217 Ariz. 320, ¶¶ 14, 19, 173 P.3d 1021, 1025-26 (App. 2007). As we did in *John M.*, we assume here, by analogy to the standard established in *Strickland v. Washington*, 466 U.S. 668 (1984), for ineffective assistance in criminal cases, that a parent claiming ineffective assistance in a severance proceeding must similarly establish both incompetence by counsel and resulting prejudice. *John M.*, 217 Ariz. 320, ¶ 17, 173 P.3d at 1026. That is, Connie is required to “demonstrate that counsel’s alleged errors were sufficient to ‘undermine confidence in the outcome’ of the severance proceeding and give rise to a reasonable probability that, but for counsel’s errors, the result would have been different.” *Id.* ¶ 18, quoting *Strickland*, 466 U.S. at 692-94.

¶5 Even if we agreed with Connie that her trial counsel’s performance fell below prevailing professional norms, she tacitly acknowledges that she cannot show it would “have made a difference in the ultimate result” because the case was “hopeless[.]” Absent a showing the result of her proceeding would have been different, Connie has not demonstrated prejudice and her claim of ineffective assistance fails. *See id.* ¶ 17 (parent must establish both incompetence and prejudice).

¶6 Connie suggests, without citation to authority, that we should adopt some lesser prejudice standard in cases involving termination of parental rights because termination is “final.” She has not explained, however, why a new trial would be warranted if there is not a reasonable probability the result of that trial would be different. Because she has not developed this argument in any meaningful way, we decline to address it. *See Polanco v. Indus.*

CONNIE V. v. ADAM V.
Decision of the Court

Comm'n, 214 Ariz. 489, n.2, 154 P.3d 391, 393 n.2 (App. 2007) (undeveloped argument waived on appeal).

¶7 Connie also complains that the procedure for her evidentiary hearing was flawed because her former counsel was permitted to cross-examine her sole witness, her criminal defense attorney. We cannot discern any reason former counsel should have been permitted to examine a witness in these circumstances. He was not a party to the proceedings, had no legal interest in the outcome, and did not represent any party; his sole proper role would have been as a witness, if Connie or Adam had elected to call him to testify. *See* Ariz. R. Sup. Ct. 42, ER 1.9, 3.7; *see also* Ariz. R. Evid. 607 (impeachment of witness permitted by “[a]ny party”). But Connie did not object below and has not developed any argument on appeal that she is entitled to another hearing on this basis. Thus, we do not address this issue further. *See Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393 n.2; *Christy C. v. Ariz. Dep’t of Econ. Sec.*, 214 Ariz. 445, ¶ 21, 153 P.3d 1074, 1081 (App. 2007) (“We generally do not consider objections raised for the first time on appeal.”).

¶8 We affirm the juvenile court’s ruling terminating Connie’s parental rights to A.J., A.P., and Z.A.