

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

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TERESA Q.,  
*Appellant,*

*v.*

DEPARTMENT OF CHILD SAFETY, C.Q., J.Q., A.Q., J.Q., AND J.Q.,  
*Appellees.*

No. 2 CA-JV 2016-0090  
Filed September 2, 2016

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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NOT FOR PUBLICATION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 Pinal County  
No. S1100JD201400188  
The Honorable Henry G. Gooday Jr., Judge

**AFFIRMED**

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COUNSEL

Rosemary Gordon Pánuco, Tucson  
*Counsel for Appellant*

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Mark Brnovich, Arizona Attorney General  
By Laura J. Huff, Assistant Attorney General, Tucson  
*Counsel for Appellee Department of Child Safety*

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**MEMORANDUM DECISION**

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

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M I L L E R, Judge:

¶1 Appellant Teresa Q. challenges the juvenile court's order of May 10, 2016, terminating her parental rights to her five children, whose ages range from seven to sixteen, on grounds of abandonment and Teresa's inability to remedy the circumstances causing the children to remain in court-ordered, out-of-home placement for longer than nine and fifteen months. *See* A.R.S. § 8-533(B)(1), (B)(8)(a),(c). On appeal, Teresa argues the court lacked jurisdiction and she received ineffective assistance of counsel.

¶2 We view the evidence in the light most favorable to upholding the court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008). Teresa's children were removed from her care in July 2014 after the Department of Child Safety (DCS) received reports from two of the children's schools relating to their enrollment status, immunizations, and attendance. A separate report indicated that Teresa was allowing the oldest child to use marijuana. In total, between November 2004 and April 2014, DCS received eight reports about the family in Arizona. And DCS was contacted by the New Mexico Child Protective Services (New Mexico CPS), which indicated it was engaged in an active investigation of the family based on drug use and homelessness. New Mexico CPS reported the family was visiting family there, but had stated they would return to Arizona.

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Teresa did not return, but instead sent the children to live with an aunt in Arizona.<sup>1</sup>

¶3 At the preliminary protective hearing, the juvenile court found that Arizona was the children's home state. Teresa submitted to a dependency petition without admitting allegations, and the court adjudicated the children dependent as to her in December 2014. Teresa did not appeal that decision.

¶4 In February 2015, the Foster Care Review Board found that Teresa's whereabouts were unknown and that she had not been contacting DCS or participating in services. By June 2015, DCS had been informed Teresa was in Arizona, but she still had not completed a substance-abuse assessment or been drug tested. DCS had no documentation to show Teresa had engaged in parenting class and she had not seen the children in ten months.

¶5 In May 2016, after a contested severance hearing, the juvenile court severed Teresa's parental rights on the grounds of abandonment and length of time in court-ordered, out-of-home placement. Teresa timely filed a notice of appeal from that order.<sup>2</sup>

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<sup>1</sup>One of the children was placed in a psychiatric hospital in New Mexico, but she too ultimately returned to Arizona.

<sup>2</sup>DCS argues we lack jurisdiction over this appeal because Teresa is really challenging the juvenile court's December 2014 dependency determination, not its severance ruling and she failed to designate that ruling as a subject of her notice of appeal. Her challenge however, albeit somewhat unclear, is to the present subject matter jurisdiction of the court, a matter that may be raised at any time in a proceeding. *Health For Life Brands, Inc. v. Powley*, 203 Ariz. 536, ¶¶ 11-12, 57 P.3d 726, 728 (App. 2002); cf. *Ruiz v. Lopez*, 225 Ariz. 217, n.3, 236 P.3d 444, 449 n.3 (App. 2010) ("Void judgments are those rendered by a court which lacked jurisdiction, either of the subject matter or the parties."), quoting *Cockerham v. Zikratch*, 127 Ariz. 230, 234, 619 P.2d 739, 743 (1980).

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¶6 On appeal, Teresa first contends the “juvenile court did not have jurisdiction to enter the order severing [her] parental rights” because “the acts of dependency occurred” in New Mexico. She contends “[t]he fundamental question . . . is whether New Mexico or Arizona was the ‘home state’ for the children . . . when Arizona DCS filed the dependency petition.” Teresa did not challenge the court’s jurisdiction below, but a court’s subject-matter jurisdiction may be challenged at any time. *Health For Life Brands, Inc. v. Powley*, 203 Ariz. 536, ¶¶ 11-12, 57 P.3d 726, 728 (App. 2002).

¶7 Section 8-532, A.R.S., provides that the superior court has “exclusive original jurisdiction over petitions to terminate the parent-child relationship when the child involved is present in the state.” *See also Angel B. v. Vanessa J.*, 234 Ariz. 69, ¶ 12, 316 P.3d 1257, 1261 (App. 2014). When a court of another state has made a determination in a child-custody proceeding, however, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) applies. *Id.* In the context of severance proceedings involving child abuse or neglect, the fact that the abuse or neglect took place elsewhere does not deprive the Arizona court of jurisdiction, absent a pending proceeding in another state. *Ariz. Dep’t of Econ. Sec. v. Grant*, 232 Ariz. 576, ¶ 14, 307 P.3d 1003, 1008 (App. 2013).

¶8 Under the UCCJEA, the starting point in establishing subject matter jurisdiction when proceedings are pending in more than one state’s courts is a determination of the child’s “home state.” A.R.S. § 25-1031(A)(1). We review de novo whether the trial court has jurisdiction, *see Angel B.*, 234 Ariz. 69, ¶ 6, 316 P.3d at 1259, but the home-state determination includes factual findings, and we generally defer to a trial court’s factual findings that affect its jurisdiction, *cf. Bonner v. Minico, Inc.*, 159 Ariz. 246, 253-54, 766 P.2d 598, 605-06 (1988); *see also Frank R. v. Mother Goose Adoptions*, 239 Ariz. 184, ¶ 36, 367 P.3d 88, 99 (App. 2016), *review granted* (Ariz. Aug. 30, 2016).

¶9 In this case, as outlined above, Teresa and the children spent time in Arizona and New Mexico and, at a minimum, New Mexico CPS was involved with the family. DCS initially asked the court to take emergency jurisdiction pursuant to A.R.S. § 25-1034,

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but after the preliminary protective hearing, the court determined Arizona was the children's home state. Teresa has not, however, provided us with a transcript of that proceeding. In the absence of the transcripts, we must presume they support the trial court's factual findings and rulings. *See Kohler v. Kohler*, 211 Ariz. 106, n.1, 118 P.3d 621, 623 n.1 (App. 2005). That being so, we cannot say Teresa has established the court lacked subject matter jurisdiction in the severance proceeding, either because no other court had a pending proceeding or because the facts presented established Arizona was the children's home state. That some or even all of the abuse or neglect may have taken place in New Mexico—circumstances that apparently form the basis of Teresa's argument—does not itself deprive the Arizona court of jurisdiction. *See Grant*, 232 Ariz. 576, ¶ 14, 307 P.3d at 1008.

¶10 Teresa also contends her counsel was ineffective in failing to challenge the court's subject matter jurisdiction below. Because we cannot say the court lacked jurisdiction, we cannot say counsel was ineffective in failing to challenge jurisdiction. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984) (must show counsel's performance deficient and resulting prejudice to establish ineffective assistance).

¶11 Therefore, we affirm the juvenile court's order terminating Teresa's parental rights.