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OCT 16 2007
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

VALERIA G.,	)	
	)	2 CA-JV 2007-0038
Appellant,	)	DEPARTMENT A
	)	
v.	)	MEMORANDUM DECISION
	)	Not for Publication
ARIZONA DEPARTMENT OF	)	Rule 28, Rules of Civil
ECONOMIC SECURITY and	)	Appellate Procedure
MARIA V.,	)	
	)	
Appellees.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17212200

Honorable Charles S. Sabalos, Judge

APPEAL DISMISSED

Jacqueline Rohr — Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Claudia Acosta Collings — Tucson
Attorneys for Appellee Arizona
Department of Economic Security

B R A M M E R, Judge.

¶1 Nine days before her fifteenth birthday, appellant Valeria G. gave birth to Maria V. in October 2004. The two lived with Valeria's mother until December 2004, when Child Protective Services (CPS) took both Valeria and Maria into protective custody. Maria was adjudicated dependent as to Valeria in March 2005 after Valeria admitted the allegations of an amended dependency petition. At some point, apparently Valeria herself was adjudicated dependent in a separate dependency proceeding.

¶2 Until May 2, 2007, the case plan goal for Maria was reunification with Valeria. But at the conclusion of a permanency hearing held in installments over a sixteen-month period, the juvenile court on May 2 ordered the permanency plan changed to severance and adoption and directed the Arizona Department of Economic Security (ADES) to file a motion to terminate Valeria's parental rights.

¶3 At the same hearing on May 2, the juvenile court relieved ADES of any obligation to provide further reunification services, including visitation. Our record does not contain a transcript of the May 2 hearing, but the minute entry from that date reflects that Valeria's counsel made an oral motion for visitation services to continue. The juvenile court denied the motion, and its signed minute entry was filed on May 7. Although the order denying further visitation was a final, appealable order, *In re Maricopa County Juvenile Action No. JD-5312*, 178 Ariz. 372, 374, 873 P.2d 710, 712 (App. 1994), Valeria did not file a timely notice of appeal within the fifteen days allowed by Rule 89(A), Ariz. R. P. Juv. Ct.

¶4 She did, however, file on May 7 a motion for an order requiring CPS to make Maria available to participate in a comprehensive, all-day family psychological assessment. In that motion, she asked the juvenile court to order CPS to make Maria "available for the assessment at the initial severance hearing," which was scheduled for May 31. On May 8, ADES filed, as directed, a motion to terminate Valeria's parental rights to Maria.

¶5 On May 31, the juvenile court held a combined initial severance hearing and hearing on Valeria's motion for Maria's participation in the comprehensive family psychological assessment. At the hearing, Valeria's counsel asked the court, in effect, to reconsider its May 2 order terminating visitation. Counsel stated:

> We filed a special action on the issue of visitation. We think that's so critical in this case, and the denial of visitation a month ago by this Court . . . [is] a de facto severance . . . . We need this visitation restarted right away.
>
> . . . .
>
> So our position, visitation should never have been stopped. We are asking it be started again immediately.

¶6 The juvenile court denied both of Valeria's motions. It confirmed its ruling of May 2, 2007, terminating visitation; found that restarting visitation would be contrary to Maria's best interest; and declined to require that Maria participate in "a comprehensive psychological evaluation of the family." At the same hearing on May 31, the juvenile court scheduled the contested severance hearing for three days in October 2007.

¶7 On June 11, 2007, Valeria filed a notice of appeal from the juvenile court's "decision terminating the mother['s] visitation rights on the 31st day of May 2007 . . . [and] the order denying the mother's request that [Maria] be made available for a family assessment." This court, noting the seeming absence of a final, appealable order below, ordered Valeria to show cause why her appeal should not be dismissed. In her written response to our order, Valeria stated, somewhat disingenuously, that she was appealing the juvenile court's May 31 order "ending her right to visitation with her child." Her response was silent with respect to the other order from which she purportedly appealed, the juvenile court's denial of her request to have Maria participate in a comprehensive family psychological assessment.

¶8 In its answering brief, the state did not address the substantive issues Valeria sought to raise on appeal, arguing instead that we lack jurisdiction to consider those issues because Valeria had not timely appealed from a final, appealable order. In her reply brief, Valeria cites *Rita J. v. Arizona Department of Economic Security*, 196 Ariz. 512, ¶ 8, 1 P.3d 155, 158 (App. 2000), for the proposition that orders entered after a permanency hearing are interlocutory, nonappealable orders. Although that is true of the juvenile court's permanency determination changing the case plan goal for Maria from reunification to severance and adoption, it is not true of the court's contemporaneous decision to terminate further visitation between Valeria and Maria. *See id.* ¶ 4 ("[A]n order in a dependency proceeding terminating a parent's visitation is a final, appealable order because it

conclusively defines the parent's visitation rights."). We reject Valeria's implicit assertion that an otherwise appealable order terminating visitation is rendered nonappealable if entered simultaneously with the juvenile court's permanency determination.

¶9 The juvenile court's signed minute entry from the May 2 hearing, entered on May 7, states unmistakably that Valeria's counsel "move[d] for continued visitation services," and the court denied the motion. The minute entry further permits counsel for Maria to "submit a position statement as to visitation for the Initial Severance [hearing] on 5-31-07." Valeria relies on that portion of the minute entry as supporting her belief that "[t]he actual hearing on visitation was set for May 31, 2007."

¶10 But the minute entry from May 31, under the general heading "Initial Severance/Motion Minute Entry," contains a subheading referring only to Valeria's written motion for an order to make Maria available for a comprehensive family psychological assessment, not to a "hearing on visitation." The May 31 minute entry further states: "[Counsel for Valeria] moves to reinstate the mother's visitation services," which motion the court denied. The court's use of the term "reinstate" only confirms what the May 2 minute entry plainly states: that the juvenile court had previously ordered the termination of Valeria's visitation rights. In short, Valeria's contention that the signed May 2 minute entry was not a final order finds no support in the minute entries from either May 2 or May 31.

¶11 As we have noted, the juvenile court's initial, appealable order terminating Valeria's visitation with Maria was entered on May 7, 2007, and Valeria did not timely

appeal from that ruling. The court's subsequent order of May 31, from which she did appeal, was effectively the denial of an oral motion to reconsider its earlier ruling and, thus, not an appealable order.[1] Nor was the denial of Valeria's motion for Maria's participation in an extensive family psychological evaluation—the other order cited in the notice of appeal—a final, appealable order.

¶12 For the reasons stated above, the appeal is dismissed.

_____
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

_____
JOHN PELANDER, Chief Judge

_____
JOSEPH W. HOWARD, Presiding Judge

[1]Although the rules of procedure for juvenile court do not provide for the filings of motions for reconsideration, such motions do not extend the time for filing a notice of appeal in any event. *See Ariz. Dep't of Econ. Sec. v. Valentine*, 190 Ariz. 107, 109, 945 P.2d 828, 830 (App. 1997); *see also* Ariz. R. Civ. App. P. 9(b).