



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**TRISHA A. v. DEPARTMENT OF CHILD SAFETY, L.A., L.A.,
CV-18-0178-PR**

PARTIES:

Petitioner/Appellee: The Department of Child Safety (“DCS” or “Department”)

Respondent/Appellant: Trisha A. (“Mother”)

FACTS:

On September 9, 2015, Mother was admitted to Banner Behavioral Health for substance abuse treatment for heroin and methamphetamine use. Mother did not complete the hospital’s substance abuse treatment and left against medical advice. Two days later DCS took temporary custody of the children and placed them with their maternal grandmother. DCS then filed a petition alleging the children were dependent as to Mother due to substance abuse and/or neglect. Mother contested the dependency, but the juvenile court found the children dependent as to her.

On August 3, 2016, DCS filed a petition to sever Mother’s parental rights based on abandonment, substance abuse, and out-of-home placement for a cumulative total period of nine months or longer. As a part of the severance proceedings, Mother received and signed a “Notice to Parent in Termination Action” (“Form 3”). Form 3 advised Mother that if she failed to attend any severance-related hearing without good cause, the court may find that she waived her legal rights and admitted the alleged grounds for severance.

Mother attended the initial severance hearing and the initial mediation. The juvenile court excused Mother from the next pretrial hearing on September 22, 2016. At that pretrial hearing, the court set a combined report and review status hearing and pretrial conference for January 18, 2017 (“January Hearing”). The court also set the severance adjudication hearing for March 28 and March 30, 2017. Mother did not appear at the January Hearing. Mother’s attorney informed the court that he had told Mother about the January Hearing, but that he had not heard from her. The court found that Mother did not have good cause for failing to appear. At the request of DCS, the court then converted the report and review hearing/pretrial conference into an accelerated severance adjudication hearing pursuant to Juvenile Rule 64(C) and heard evidence from DCS in support of its severance petition.

The DCS case manager testified that Mother had only sporadic contact with the children during the 16-month dependency and that Mother had not provided the children with reasonable support because she had not sent the children any gifts, birthday cards, or letters. Through the case

manager's testimony, DCS also contended that Mother was unable to maintain a normal parental relationship with the children because, in addition to failing to provide parental contact or guidance, she failed to provide the children with necessities such as food and shelter. Moreover, the case manager opined that Mother was unable to care for the children because of her history of substance abuse, inability to demonstrate sobriety, and failure to successfully participate in substance abuse treatment. At the end of a hearing that lasted twenty-five minutes, the juvenile court found DCS established by clear and convincing evidence all three grounds for severance. The court also found by a preponderance of the evidence that severance was in the children's best interests.

Nine days after the January Hearing, Mother moved to set aside the severance ruling, arguing she had been physically unable to appear. In support of her motion, Mother argued the maternal grandparents, who were present at the hearing, knew but failed to inform the juvenile court that she was in an in-patient drug treatment facility ("Lifewell") the morning of the hearing. Mother attached to her motion a copy of a "Behavioral Health Service Plan" form from Lifewell dated January 18, 2017, identifying her as a patient admitted to the facility. The court granted Mother's motion before DCS had an opportunity to respond, finding Mother was "physically unable to appear in Court [] for the Report and Review Hearing/Pretrial Conference set to January 18, 2017."

DCS filed an opposition to Mother's motion and moved the juvenile court to reconsider the order setting aside the severance ruling. DCS argued that Mother failed to establish good cause for her failure to appear at the January Hearing and it requested a status conference to resolve the pending motions. In her response to the DCS motion, Mother agreed to the status conference "to discuss rescheduling the Severance Trial," but maintained that the court properly granted her motion to set aside because she was physically unable to appear at the January Hearing.

The juvenile court set a status conference for February 23, 2017 ("February Hearing") to determine whether to "set aside the set-aside." Mother did not appear. At the hearing, DCS argued that documents Mother submitted with her motion showed she was admitted to Lifewell at 12:00 p.m. on January 18, more than two hours after the scheduled start of the January Hearing. From that, DCS argued Mother's admission to Lifewell did not prevent her from appearing at the hearing. DCS further argued that the court should affirm the severance because Mother did not notify either DCS or her attorney that she was going to Lifewell. DCS also noted that Mother had checked out of Lifewell against medical advice two days after checking in. The children's guardian ad litem pointed out that Mother had been asked throughout the case to participate in substance-abuse treatment but waited until the day of the pretrial conference to check into a treatment center, without notifying her attorney or the court—despite having been warned of the consequences of failing to appear in court. In Mother's defense, her attorney argued that the Lifewell paperwork did not show what time Mother arrived at the facility, but did show she was in Lifewell on January 18, 2017, the date of the January Hearing.

DCS also argued that even if the juvenile court found good cause for Mother's absence from the January Hearing, there was no good cause for Mother's absence from the February Hearing. The court, however, stated it was "not too concerned about [Mother's] nonappearance" at the informally set February Hearing. Ultimately, the court reinstated the severance ruling it had made at the end of the January Hearing. The court based its decision on the "additional information about the circumstances surrounding Mother's non-appearance" and because Mother had been in "contact [via e-mail] with her lawyer, [and] could have told" her lawyer about her treatment.

Mother timely appealed. At DCS's request, the court of appeals stayed the appeal pending the supreme court's decision in *Brenda D. v. Dep't of Child Safety*, 243 Ariz. 437 (2018). Following issuance of the opinion in that case, the court of appeals directed Mother and DCS to file supplemental briefs.

In an opinion filed June 14, 2018, the court of appeals vacated the severance decision of the juvenile court and remanded for further proceedings. DCS filed its petition for review in this Court on August 23, 2018.

ISSUE:

Whether the court of appeals erred in holding that a parent's burden of demonstrating good cause does not include providing evidence of a meritorious defense on a motion to set aside a severance order following a Rule 64(C) acceleration of the severance hearing?

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