



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**MARIANNE N. v. DEPARTMENT OF CHILD SAFETY/O.N./I.T./A.G.
CV-16-0259-PR**

PARTIES:

Petitioner: Marianne N. (“mother”).

Respondent: The Arizona Department of Child Safety (“DCS”).

FACTS:

Mother is the biological parent of three children. In February 2015, DCS petitioned to have the court adjudicate the children dependent as to mother on grounds of neglect and substance abuse. After a contested hearing, the court adjudicated the children dependent and approved a case plan of family reunification concurrent with severance and adoption. (Father’s rights are not at issue in this appeal.)

Mother’s participation in services was allegedly inconsistent; she also allegedly continued to minimize DCS’s concerns regarding her substance abuse, history of domestic violence, and mental health; and, on some occasions when she participated in drug testing, she tested positive for methamphetamine.

In November 2015, the case plan was changed to severance and adoption. DCS then moved to terminate mother’s parental rights on grounds of neglect, substance abuse, and time in out-of-home placement.

At the initial severance hearing, the juvenile court set a mediation and pretrial conference for January 20, 2016 and advised mother both orally and in writing of the consequences if she failed to attend the initial severance hearing, pretrial conference, or termination hearing without good cause. Mother received, signed, and returned this notification, which correctly identified the date and time of the pretrial conference as January 20. However, mother was not present at 1:00 pm on January 20, when the pretrial conference began. Although mother attempted to appear telephonically thirty minutes after the pretrial conference commenced, she had not received permission to appear telephonically, and the court did not allow her to participate by phone.

Through counsel, mother told the judge she been given a handwritten piece of paper at the initial severance hearing indicating the pretrial conference was scheduled for January 27. The court noted that the notification mother signed and returned contained the correct date (January 20), determined mother did not have good cause for her failure to appear, and proceeded to a severance hearing in her absence based upon the record and evidence. *See* A.R.S. § 8-863(C) (governing severance hearings and providing that, if a parent does not “appear at the hearing,” the court may

terminate his or her parental rights “based on the record and evidence presented”) and Rule 64(C), Rules of Procedure for the Juvenile Court (providing for notice to a parent that failure to appear “at the initial hearing, pretrial conference, status conference or termination adjudication hearing, without good cause” may result in a finding that the parent has waived legal rights and is “deemed to have admitted the allegations in the . . . petition for termination,” and the hearing may go forward “based upon the record and evidence presented”)(emphasis supplied).

After receiving exhibits and testimony from DCS, the court found DCS had proven all three statutory grounds for severance by clear and convincing evidence. It also found that termination “would free the children for adoption with a family would be able to provide with security and stability in their lives. . . . [and] further the plan of adoption.” The court severed mother’s parental rights to the children.

Mother appealed the severance of her parental rights, raising two issues, the first of which contended that Rule 64(C)’s waiver provision improperly expands the provision for a parent’s waiver beyond the circumstances specified in A.R.S. § 8-863(C) and therefore violates the Separation of Powers doctrine under the Arizona Constitution. The Arizona Supreme Court granted review of the mother’s first contention.

ISSUE:

“Whether the Court of Appeals was correct in affirming the juvenile court’s termination of a biological mother’s, Marianne N.’s (“Petitioner/Appellant’), rights. Particularly, Petitioner/Appellant contends that the Court of Appeals reasoning is erroneous in the following sections of the opinion:

- (1) Rule 64(C) is constitutional.”

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