



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



BRENDA D. v. DEPT OF CHILD SAFETY AND Z.D.
CV-17-0136-PR

PARTIES:

Petitioner: Department of Child Safety and Z.D.

Respondent: Brenda D.

FACTS:

Brenda D. (“Mother”) is the parent of Z.D., a child with special needs. In 2014 when Mother was arrested for misdemeanor offenses, there was no one to care for the child. The Department of Child Safety (“DCS”) took custody of the child, who was adjudicated dependent.

DCS offered Mother reunification services but she failed to fully participate or to demonstrate sobriety. DCS filed a motion to terminate the parent-child relationship between Z.D. and her parents. Mother was told that if she failed to appear at the adjudication hearing without good cause, the hearing could go forward without her and that her failure to appear could constitute a waiver of parental rights. A.R.S. §§ 8-862(D) and 537(C); Rule 66(D)(2), Ariz. R. P. Juv. Ct.

On the day of the severance hearing, Mother failed to appear but participated by telephone. She explained that she was experiencing severe back pain and was unable to attend. The court continued the hearing until the next day at 1:30 p.m., and directed Mother to obtain documentation from a physician concerning the back pain.

The next day, the court convened the hearing but stated, “And Mom is not here, again.” Mother’s counsel agreed, and the judge stated, “I’m going to proceed in her absence,” to which counsel stated, “I understand, Judge.”

The guardian ad litem (“GAL”), Thomas Vierling, then asked, “Judge, are you finding that Mom has waived her right to contest and has admitted ----?” The judge then stated, “I am finding at this point in time that Mom has no good cause for her failure to appear and, yes, she has waived her right to contest,” to which Mr. Vierling responded, “Okay, Thank you.” The judge then added, “So, the only thing that [Mother’s counsel] has an opportunity to address is the weight of the evidence, not the admissibility of the evidence.”

DCS then called the DCS case manager, who testified as to Mother’s history of substance abuse and non-participation in services. When asked if severance was in the child’s best interests, the case manager testified that the current foster placement was willing to adopt the child, and that adoption and severance would be in the child’s best interests “[b]ecause the child needs stability;

the child is in a loving home, [and] her needs are being met.” The case manager was then questioned by GAL Vierling, then Mother’s counsel, and DCS on redirect.

At that point, 45 minutes after the scheduled commencement of the hearing, Mother entered the courtroom. The judge said to Mother’s counsel: “This matter was scheduled to start at 1:30, we didn’t get ----.” Mother then interjected, “No,” and the judge continued, “---- started until about 1:45 was it, 1:50, and it’s now 2:14.” The court then ruled that “[DCS] has shown that Mother has willfully refused or neglected to participate in . . . services . . . and that the child has now been in care for more than 15 months and Mother is unable to rectify these issues.” The Court found that it was in the child’s best interests to terminate the parental rights. At that point, Mother attempted to interject a denial, saying, “No, it’s not.” The judge, however, continued with her findings:

THE COURT: I don’t doubt that Mother loves [the child], but Mom is not able to take—

MOTHER: I’m a good mom.

THE COURT: -- Care of [the child]. So it’s ordered terminating the parental rights –

MOTHER: Can I please say something, Your Honor, please?

THE COURT: No.

MOTHER: Yes, I was on the bus and the bus was 17 minutes late. . . .

THE COURT: Ma’am, I need to advise you that the moment my signature goes on the order you have 15 days to file a notice of appeal.

Mother timely appealed the order of severance. The Court of Appeals reversed, holding that a parent does not “fail to appear” simply because she is tardy without good cause; and that the juvenile court unconstitutionally limited Mother’s counsel’s participation and denied Mother’s right to testify after her tardy arrival. The Arizona Supreme Court granted review.

ISSUES:

- (1) Did the court of appeals err in holding that, for purposes of A.R.S. section 8-863(C) and Arizona Rule of Juvenile Procedure 66(D)(2), “a parent has not ‘failed to appear’ simply because he or she is tardy without good cause”?
- (2) Did the court of appeals err in holding that the parent’s due process rights were violated by the juvenile court placing restrictions on counsel before the parent’s arrival at the hearing and refusing to allow the parent to testify based on a tardy arrival?”

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