

Marianne N. v. Department of Child Safety

Citation: 401 P.3d 1002 (Ariz. 2017).

Date Filed: September 25, 2017

Author: Justice Timmer

Joined by: Chief Justice Bales, Vice Chief Justice Pelander, and Justice Brutinel.

Dissent: Judge Eckerstrom,* joined by Justices Bolick and Gould.

Facts: Marianne N.'s three children were taken into custody by the Department of Child Safety ("DCS") in February 2015, and placed into foster care. Marianne had "continuing substance abuse issues", and her participation in family reunification services was "sporadic".¹ But she attended all fourteen hearings of her dependency case. The court held an initial termination hearing on December 18, 2015, attended by Marianne, during which the court scheduled a mediation and pretrial hearing for January 20, 2016. Marianne was twice reminded during the hearing that failure to attend future proceedings could constitute a waiver of her rights and an admission of DCS's allegations. She also signed a "Form 3," which further warned that failure to attend a hearing may lead to a termination of her parental rights. The form included the date and time of her upcoming mediation and pretrial conference.

Marianne did not attend the January 20 hearings and did not respond to her attorney's phone calls. The court proceeded to conduct a termination hearing pursuant to Rule 64(C) due to her absence, and the court then terminated Marianne's parental rights. A half hour after the start of the hearing Marianne called the court, but the court did not allow her to appear telephonically. Marianne claimed her copy of Form 3 contained an incorrect hearing date, but never submitted evidence to support her assertion.

Procedural history: Marianne appealed the termination decision to the Arizona Court of Appeals where she argued that Rule 64(C)—which allowed the court to immediately proceed to a final termination hearing if the parent fails to appear at a pretrial conference without good cause—conflicted with A.R.S. § 8-863(C), a statute that specifies the consequences for a parent's failure to attend a hearing. She argued Rule 64(C) was void because it violated the separation of powers between the courts and the legislature.. That court ruled that Rule 64(C) is a procedural rule, properly promulgated within the constitutional purview of the Arizona Supreme Court. The appeals court did not address if the rule and statute conflicted.

The Arizona Supreme Court granted review to determine the constitutionality of Rule 64(C).

Issue: The first step in the separation of powers analysis under the Arizona Constitution is to determine if a judicial rule and statute conflict or if they can be harmonized. Here, A.R.S. § 8-863(C) mentions the court may immediately proceed to the final termination hearing if a parent does not show up to "the hearing," while Rule 64(C) of the Arizona Rules of Procedure for the Juvenile Court allows the court to proceed if a parent does not appear at any hearing.

* Justice Lopez recused himself.

¹ Marianne N. v. D.C.S., 401 P.3d 1002, 1003 (Ariz. 2017).

Does the statute, when it only refers to the initial hearing in a motion-initiated matter, conflict with the juvenile court rules which allow the court to find a parent waived his or her legal rights when failing to attend a pretrial conference in a petition-initiated matter?

Holding: No, Rule 64(C) does not conflict with the statute. By looking at the legislative intent, it is clear that A.R.S. § 8-863(C) was not meant to limit the ability of the courts to go forward after a failure to appear. The rule and statute can be harmonized, with the rule creating an additional procedural framework. The court may immediately go forward with the termination proceeding if a parent does not appear at any initial hearing, pretrial conference, status conference, or termination adjudication hearing.

Disposition: The juvenile court's termination of Marianne's parental rights is affirmed, and the court of appeals' opinion is vacated because it reached its holding on different grounds.

Rule: If a parent fails to attend a hearing, no matter if the parental-termination proceedings were initiated by either motion or petition, the court may immediately terminate parental rights.

Reasoning:

- **The Rule and Statute Can Be Harmonized:** The court avoided the question of whether the rights in Rule 64(C) may be substantive, because the rule could be harmonized with A.R.S. § 8-863(C).² It was within the Arizona Supreme Court's power to create the framework for court procedure, and nothing in the statute prevented the court from creating a rule to convert a hearing into a termination adjudication hearing.³ The statute only prompts the court to "go forward" to a termination hearing when a parent does not attend the initial hearing.⁴ The statute does not prevent the court from promulgating rules for juvenile courts to "go forward" in other situations.⁵
- **There Is No Logical Reason for Treating Motion-Initiated and Petition-Initiated Proceedings Differently:** "Whether the case is initiated by petition or motion, when a parent fails without good cause to attend a pretrial conference, proceeding to termination provides a strong incentive for attendance and prevents delay in the resolution of the child's status."⁶ Dependent children are equally in need of finality whether or not the proceedings were initiated by petition.⁷ The court determined the legislature's intent was to fill a loophole exposed by *Don L.*, which held juvenile courts lacked authority to use a parent's failure to attend as the reason to sever parental rights by default.⁸

² *Id.* at 1006.

³ *Id.* at 1006-07.

⁴ *Id.* at 1006.

⁵ *Id.* at 1006-07.

⁶ *Id.* at 1007-08.

⁷ *Id.*

⁸ *Id.* (citing *Don L. v. Ariz. Dep't of Econ. Sec.*, 975 P.2d 146 (Ariz. Ct. App. 1998)).

Dissent (Eckerstrom): Judge Eckerstrom argued that the legislature clearly intended that “the hearing” only included motion-initiated hearings, while a different statute enacted on the same day laid out the steps for a petition-initiated proceeding and contained no such language about failure to attend.⁹ The petition statute, A.R.S. § 8-863(C), only specifies that the failure to attend a hearing “can result in forfeiture of substantial procedural rights.”¹⁰ The majority read that statute to permit the court to “go forward” with the termination hearing.¹¹

⁹ *Marianne N.*, 401 P.3d at 1009–10 (Eckerstrom, J., dissenting).

¹⁰ *Id.*

¹¹ *Id.* at 1007 (majority opinion).