



IN RE DEPENDENCY OF J.S.

2023 | Cited 0 times | Court of Appeals of Arizona | September 7, 2023

IN THE ARIZONA COURT OF APPEALS DIVISION TWO

IN RE DEPENDENCY OF J.S.,

No. 2 CA-JV 2023-0012 Filed September 7, 2023

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. NOT FOR PUBLICATION See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f); Ariz. R. P. Juv. Ct. 602(i)(17).

Appeal from the Superior Court in Cochise County No. JD202200068 The Honorable John F. Kelliher Jr., Judge

AFFIRMED

COUNSEL

Cochise County Office of the Legal Advocate, Bisbee By Xochitl Orozco, Legal Advocate Counsel for Appellant

Kristin K. Mayes, Arizona Attorney General By Autumn Spritzer, Assistant Attorney General, Tucson Counsel for Appellee Department of Child Safety MEMORANDUM DECISION

Judge Sklar authored the decision of the Court, in which Judge and Judge Gard concurred.

S K L A R, Judge:

¶1 motion to dismiss and adjudicating her son, J.S., born in April 2010,

dependent. She argues that collateral estoppel precludes the current dependency and that the court erred by not giving full faith and credit to court orders from Oregon and Washington. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND



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¶2 We view the facts in the light most favorable to upholding the juvenile court's findings. See *Econ. Sec.*, 211 Ariz. 231, ¶ 21 (App. 2005). Chasey and Eric S. are the parents of J.S. Based on a 2013 decree of dissolution from Washington, Chasey was designated as custodian and was given primary parenting time. In April 2022, J.S. was based on allegations of physical abuse, including that Chasey had [J.S.] with a belt. J.S. was placed in foster care, and Chasey later admitted the allegations in an amended dependency petition. She specifically admitted

¶3 In July 2022, the Oregon Department of Human Services (DHS) located Eric in Phoenix, Arizona. J.S. was ultimately placed with Eric. On October 13, 2022, the Oregon court dismissed the dependency [Eric] and to [J.S.] in [Eric] home. The court further noted that to defend the petition with evidence and each supported or agreed that

That same day, a DHS caseworker had a telephone conversation with Chasey, during which he explained that the dismissal was on [J.S.] being safe with Eric and not because [DHS] believe[s]

¶4 Later that day, Chasey, who had moved to Sierra Vista during home. Later, when Eric discovered a note from J.S., Eric contacted the DHS caseworker, who advised him to contact local law enforcement. The Sierra Vista Police Department, however, would not help because Eric only had the Oregon dependency paperwork and nothing from Arizona showing he had custody of J.S.

¶5 On October 14, 2022, the DHS caseworker made a report to the Arizona Department of Child Safety (DCS) about the Oregon dependency. When a DCS investigator contacted Chasey, she agreed to bring J.S. in to meet with the investigator, but only Chasey came to the meeting. Chasey agreed to another meeting three days later, but after attempting to reschedule for various reasons neither she nor J.S. showed up. That same day, the investigator sought and received a court order home. DCS removed J.S. and placed him with Eric.

¶6 A few days later, DCS filed a dependency petition, alleging J.S. was dependent as to Chasey due to abuse and neglect. It also alleged Chasey. Eric entered a no contest plea, and he is not a party to this appeal.

¶7 As for Chasey, she filed in December 2022 a motion to dismiss the dependency based on issue preclusion. She argued DCS was relying upon facts presented by the Oregon Department of Human Services to the those allegations litigated or the parties had a full and fair opportunity to litigate them Oregon. ate of Oregon was

the elements of the doctrine of In response, DCS maintained Chasey had not dependency petition also rests on additional facts which occurred in

DCS also argued there was no final decision from the Oregon court, which had only [Eric] could parent [J.S.]



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¶8 Before the January 2023 dependency hearing, the juvenile court held a hearing with a Washington court pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, A.R.S. §§ 25-1001 to 25-1067. Washington agreed that Arizona now has jurisdiction. At the dependency hearing the next day, the court denied dismissal. It explained, in part, that collateral estoppel did not apply because

the previous issues in Oregon, although re-raised as part of the current dependency, were in addition to new circumstances that had occurred after the Oregon proceeding was dismissed. The court then heard testimony and argument as to the dependency and adjudicated J.S. dependent as to Chasey. This appeal followed.

ISSUE PRECLUSION

¶9 Chasey argues that because dependency petition had already been handled by Oregon, they are subject to the principles of issue preclusion. We review de novo the trial issue preclusion is inapplicable. See *Crosby-Garbotz v. Fell*, 246 Ariz. 54, ¶ 9 (2019).

¶10 The common law doctrine of issue preclusion sometimes called collateral estoppel precludes a party from relitigating an issue identical to one he has previously litigated to a determination on the merits in another action. , 235 Ariz. 85, ¶ 20 (App. 2014) (quoting *State ex rel. Winkleman v. Ariz. Navigable Stream Adjudication*, 224 Ariz. 230, ¶ 33 (App. 2010)). Although the parties focus on Arizona law concerning issue preclusion, we are required to look to the law of the jurisdiction that issued the original judgment. See , 253 Ariz. 509, ¶ 11 (2022). We therefore look to the law in Oregon, which dismissed the prior dependency, to determine whether that dismissal has preclusive effect in Arizona.

¶11 re-litigation of that issue in another proceeding if five requirements are met:

(1) the issue in the two proceedings is identical ; (2) the issue was actually litigated and was essential to a final decision on the merits in the prior proceeding ; (3) the party sought to be precluded has had a full and fair opportunity to be heard on that issue ; (4) that party was a party or was in privity with a party to the prior proceeding ; and (5) the prior proceeding was the type of proceeding to which this court will give preclusive effect. . Dist., 862 P.2d 1293, 1296-97 (Or. 1993). In addition, the court *Duckworth v.*

Duckworth, 327 Or. App. 219, 249, ___ P.3d ___ (Ct. App. 2023) (quoting *Minihan v. Stiglich*, 311 P.3d 922, 931 (Or. Ct. App. 2013)).

¶12 Relating to the fifth element, Oregon law provides that *Matter of E. S. H.*, 473 P.3d 591, 600 (Or. Ct. App. 2020). However, Oregon courts will not apply issue preclusion where a subsequent dependency proceeding *Id.* at 601 (quoting *Matter of Newman*, 619 P.2d 901, 906 (Or. Ct. App. 1980)).



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Such new facts would negate multiple elements of issue preclusion, including the requirements that the two issues be identical and have been previously litigated. See *id.* (identifying additional evidence presented in subsequent dependency that had not been presented in prior case). In addition, Oregon case law cites policy considerations interests and welfare, *Id.*

¶13 In this case, Chasey argues that the trial court improperly declined to apply issue preclusion. She maintains:

[T]he Oregon Department had a full opportunity to litigate and resolve their dependency petition and in fact, the dependency in Oregon lasted from April to October 2022. A final judgment was entered when the Oregon court dismissed the petition. Finally, the Oregon Department litigated this matter until it moved to dismiss and agreed, along with all other parties that dismissal was appropriate.

In response, DCS argues that issue preclusion does not bar the current dependency because none of the elements have been satisfied.

¶14 We agree with DCS that issue preclusion does not apply here. First, the facts giving rise to the Oregon dependency were not actually litigated. In fact, the Oregon court dismissed the action because neither party wished to defend the petition. Second, even assuming the dismissal order were a final judgment, the facts at issue were not essential to that judgment. At best, the only fact embodied in the dismissal order was that there were no threats to J.S. given his placement with Eric.

¶15 In addition, Arizona after the Oregon dismissal order was entered. For example, despite the DHS caseworker telling Chasey that she should not pick up J.S. in Phoenix, Chasey did so the same day the Oregon dependency was dismissed. Chasey was uncooperative over the next several days, intentionally keeping J.S. away from the DCS investigator. Chasey also lied about enrolling J.S. in school in Sierra Vista. At the adjudication hearing, a DCS specialist described a visit in January 2023, during which Chasey had stated that if J.S. were to run away, she would not go after him. Chasey continued to minimize the physical abuse that had occurred in Oregon and blamed the children for her conduct. Both the DHS caseworker and DCS investigator testified Chasey had failed to make any behavioral changes since the Oregon dependency, such that J.S. remaining in her care would result in the same risks he was exposed to previously. Thus, under *Newman*, Oregon courts would not apply issue preclusion. This is especially true because the Arizona court was required to consider all the circumstances that existed at the time of the hearing. See , 239 Ariz. 47, ¶ 12 (App. 2016) involvement in October 2022 and the dependency adjudication in January 2023 are relevant.

¶16 Finally, Chasey points to the fact that the evidence supporting the current dependency adjudication includes testimony and exhibits from the DHS caseworker concerning the Oregon proceeding. He testified about multiple incidents of physical abuse by Chasey toward J.S. and his half-sister and about failure to provide J.S. with appropriate food and shelter. He described one incident, when J.S. was eleven, in which Chasey had kicked both [children] out of the home, and he



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was sleeping in a nearby park when strangers found him and offered to let him stay with them, which J.S. The implication y were addressed in the Oregon dependency. But as we have noted, nothing s an actual, necessary determination that the relevant incidents did not occur or were not proven.

¶17 At any rate, Oregon law characterizes Chas . Newman, 619 P.2d at 905. In Newman, a father argued that

in a second termination-of-parental-rights proceeding, the juvenile court could not consider evidence or facts that could have been considered in a prior proceeding where termination had been denied. Id. at 903-04. In rejecting that position, the court reasoned that termination proceedings Id. at 904. Thus, courts must be required to consider prior facts in connection with the new ones. That is precisely what the juvenile court did here.

FULL FAITH AND CREDIT

¶18 Chasey also raises an argument under the United States She argues that in violation of that clause, did not agree with the way the Oregon Department had resolved the dependency of J.S. and therefore filed a dependency in Arizona alleging the basis for a dependency that had been dismissed in Oregon She also argues that the juvenile court failed to give full faith and the Washington custody order and the Oregon dependency dismissal.

¶19 It is unclear whether Chasey intends her full-faith-and-credit argument to be distinct from her issue-preclusion argument or simply a restatement of it. Chasey did not raise full faith and credit until the January 2023 hearing. The juvenile court did not address it, and Chasey did not request separate findings on that issue. See *Trantor v. Fredrikson*, 179 Ariz. 299, 300 (1994) (because trial court and opposing counsel should have opportunity to correct asserted defects, absent extraordinary circumstances, errors not raised below cannot be raised on appeal). And as to the Washington custody order, she fails to meaningfully develop any argument. See , 241 Ariz. 576, ¶ 5 (App. 2017) (failure to develop argument on appeal results in abandonment and waiver). We therefore conclude that Chasey waived her full-faith-and-credit argument.

SUFFICIENCY OF THE EVIDENCE

¶20 Chasey also appears to challenge the sufficiency of the evidence to support the dependency adjudication. To the extent she is requesting that we reweigh the evidence, we will not do so. See *Jesus M. v.* , 203 Ariz. 278, ¶ 4 (App. 2002). Instead, we review the record for reasonable evidence supporting the dependency adjudication. See , 237 Ariz. 484, ¶ 12 (App. 2015). As described above, such evidence exists here. Accordingly, the juvenile court did not abuse its discretion in adjudicating J.S. dependent as to Chasey. See *Shella H.*, 239 Ariz. 47, ¶ 13.

DISPOSITION



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¶21 We affirm the juvenile court s order adjudicating J.S. dependent as to Chasey.

