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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 07/19/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:) 1 CA-CV 11-0643 A
)
MAMAK CHAREPOO,) DEPARTMENT C
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication
v.) - Rule 28, Arizona
) Rules of Civil
SHIDAN DAHNAD,) Appellate Procedure)
)
Respondent/Appellant.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FC2008-003017

The Honorable Sam J. Myers, Judge

VACATED AND REMANDED

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N O R R I S, Judge

¶1 Shidan Dahnad ("Father") timely appeals the family court's order granting Mamak Charepoo's ("Mother") Petition for Modification of Visitation and Telephone Contact ("Petition"). In its order, the family court found Mother had "demonstrated a significant and continuing change of circumstances based upon the increased age of the children since the entry of the parenting time orders." Because the family court did not apply the appropriate standard, we vacate the family court's order and remand for further proceedings.

¶2 First, as an initial matter, we disagree with Father's argument the family court abused its discretion in failing to make specific findings under Arizona Revised Statutes ("A.R.S.") section 25-403 (Supp. 2011).¹ This statute was inapplicable as Mother was seeking to modify Father's parenting time, not the custodial placement of the children.

¶3 Second, in response to Mother's argument in her answering brief, Father argues the family court incorrectly

¹A.R.S. § 25-403(A) lists non-exclusive factors the family court must utilize when determining "custody, either originally or on petition for modification, in accordance with the best interests of the child."

applied A.R.S. § 25-411(J) (Supp. 2011).² We agree. While the family court considered both changed circumstances and the best interests of the children, it did not consider whether continuing parenting time with Father as previously ordered would “endanger seriously the [children’s] physical, mental, moral or emotional health” as required by § 25-411(J).

¶14 Although the statute does not require specific findings on the record, the family court did not apply the standard in § 25-411(J). “Had the court not stated the standard incorrectly, we would have presumed that it applied the appropriate standard and then considered whether there were facts to support that determination.” *Hart v. Hart*, 220 Ariz. 183, 188, ¶ 19, 204 P.3d 441, 446 (App. 2009) (citation omitted). Because the family court did not apply the appropriate standard, we vacate its order and remand for it to reconsider Mother’s petition based on the existing record or, at the court’s discretion, as supplemented by the parties.

²A.R.S. § 25-411(J) states the family court may “modify an order granting or denying parenting time rights whenever modification would serve the best interest of the child.” The family court, however, may not restrict parenting time unless it “finds that the parenting time would endanger seriously the child’s physical, mental, moral or emotional health.”

