DIVISION ONE
FILED: 10/15/2013
RUTH A. WILLINGHAM, CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:	)	1 CA-CV 12-0313
	)	
KATHERINE WENDY SIGMON,	)	DEPARTMENT C
	)	
Petitioner/Appellee,	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
v.	)	Rule 28, Arizona Rules of
	)	Civil Appellate Procedure)
WILLIAM RANDOLPH SIGMON,	)	
	)	
Respondent/Appellant.	)	
	)	
_____	)	

Appeal from the Superior Court in Maricopa County

Cause No. FC2006-052833

The Honorable Stephen J. Kupiszewski, *Judge Pro Tem*
The Honorable Jay M. Polk, Judge

AFFIRMED

William Randolph Sigmon — Cottonwood
Appellant in *Propria Persona*

Katherine W. Sigmon Massey — Scottsdale
Appellee in *Propria Persona*

T H U M M A, Judge

¶1 William Randolph Sigmon (Father) appeals the superior court's orders addressing various issues, including parenting

time, past due child support, division of expenses, the appointment of a therapeutic interventionist and denying Father's motion for a new trial on these same issues. Finding no error, the orders are affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 Katherine W. Sigmon (Mother) and Father were married in 1998 and are the parents of two daughters born in 1999 and 2001 respectively. In August 2006, Mother filed a petition for dissolution and by early December 2006, the court entered a consent dissolution decree resolving all outstanding issues, including parenting time and child support. Unfortunately since 2008, there have been many disagreements between the two, yielding more than 250 superior court docket entries.

¶3 Based on an allegation that Father inappropriately touched one daughter, in March 2011, Mother filed a petition to amend parenting time and enforce child support. A flurry of filings by Mother and Father followed and, after an October 27, 2011 evidentiary hearing, the court took the matters under advisement.

¶4 On January 13, 2012, having considered the evidence and arguments, the superior court issued a signed minute entry that, as relevant here, (1) denied Father's request for appointment of a therapeutic interventionist; (2) awarded sole custody of the children to Mother; (3) required Father to pay

expenses for unreimbursed medical expenses and health insurance premiums; (4) held Father in contempt for failing to pay child support; (5) allocated certain therapy costs and (6) awarded Mother attorneys' fees. Father filed a timely motion for new trial, which was denied on March 21, 2012.

¶5 Father timely appealed from the denial of his motion for new trial and the January 13, 2012 minute entry. This court has jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) 12–2101(A)(5)(a)(2013).[1]

DISCUSSION

I. Appellant's Brief.

¶6 An opening brief, among other things, is required to "concisely and clearly set forth" the issues presented for review, a statement of facts relevant to those issues and an argument "with citations to the authorities, statutes and parts of the record relied on." Ariz. R. Civ. App. P. 13(a)(4), (5), (6). Issues not fairly raised in the opening brief are waived. *See Hurd v. Hurd*, 223 Ariz. 48, 50, n.3, ¶ 9-10, 219 P.3d 258, 260 n.3 (App. 2009). Although Father's pro se opening brief contains four pages of issues, the legal argument is limited to two pages citing two cases and one statute. Viewed most

[1] Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

favorably to Father, the issues properly raised in this appeal are assertions that the superior court:

1. Did not issue rulings on all pending requests;

2. Did not make findings required by A.R.S. § 25-403 (2009);[2]

3. Improperly denied Father's request for appointment of a therapeutic interventionist;

4. Erred in allocating financial responsibility for certain therapist costs; and

5. Did not treat Father fairly.

The court addresses Father's arguments in turn.

II. Standard Of Review.

¶7 The superior court's interpretation and application of statutes and rules are reviewed *de novo. See In re Reymundo F.,* 217 Ariz. 588, 590 ¶ 5, 177 P.3d 330, 332 (App. 2008). Denial of a motion for new trial, and rulings on custody and parenting time, are reviewed for an abuse of discretion. *See Owen v. Blackhawk,* 206 Ariz. 418, 420, ¶ 7, 79 P.3d 667, 669 (App. 2003) (standard for custody and parenting time); *Boatman v. Samaritan Health Serv., Inc.,* 168 Ariz. 207, 212, 812 P.2d 1025, 1030 (App. 1990) (standard for new trial motion). Factual findings are affirmed unless clearly erroneous. *In re Marriage of*

[2] Although the Legislature subsequently amended A.R.S. § 25-403, *see* 2012 Ariz. Sess. Laws, ch. 309 (2d Reg. Sess.), this decision applies the version of the statute in place at the time of the hearing and relevant orders.

Priessman, 228 Ariz. 336, 337, ¶ 2, 226 P.3d 362, 363 (App. 2011).

III. The Superior Court Issued Rulings On All Pending Requests.

¶8 Father first argues the superior court "must rule specifically on each matter and did not." More specifically, Father argues there were at least six motions pending for the October 27, 2011 evidentiary hearing but the court "only ruled specifically on the first one" and then "the others were just lumped in as one in the judgment." According to Father, the motions he filed "were not ruled on and were not really considered."

¶9 The detailed minute entry, filed January 13, 2012, addresses various arguments made by the parties, makes various findings and sets forth an entire page of specific directives to the parties. Recognizing that there had been numerous duplicative and redundant filings, and that competing filings by the parties sought mutually exclusive relief (such as the competing custody orders that were requested), the superior court took care to avoid any confusion or ambiguity by stating:

> All outstanding motions, petitions, and pleadings revolve around [Father's] actions and his relationship with his two children. Many of the petitions filed by [Wife] and [Husband] duplicate relief requests, and to that end this order comprehensively resolves all outstanding issues. To the extent . . . any issues are not specifically identified, the requested relief is denied.

As demonstrated by this express language, Father's argument that the superior court only ruled on one issue is factually incorrect and, as a result, fails.

IV. The Superior Court Complied With A.R.S. § 25-403 (2009).

¶10 Father next argues the superior court did not "make the required findings under A.R.S. § 25-403(B)" in awarding Mother sole custody of both children and designating her primary residential parent. "[A]bsent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal." *Trantor v. Fredrikson,* 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994). By the time Father filed his motion for new trial, he clearly knew of any issue regarding findings under A.R.S. § 25-403(B) (2009). Father's motion for new trial, with attachments, contained 325 pages, and at no time did he raise any issue about the adequacy of the court's findings. Having failed to raise the issue with the superior court, at a time that court could have resolved any issue, Father has waived his right to press the issue on appeal. *See Trantor,* 179 Ariz. at 300, 878 P.2d at 658.

¶11 Even if Father had not waived the issue, the superior court did not err. As applicable here, A.R.S. § 25-403(B) (2009) sets forth non-exclusive factors that may be relevant to child custody issues. "In a contested custody case, the court shall

make specific findings on the record about all relevant factors and the reasons for which the decision is in the best interest of the child." A.R.S. § 25-403(B) (2009). A failure to make the requisite findings can constitute reversible error. *See Hart v. Hart,* 220 Ariz. 183, 186, ¶ 9, 204 P.3d 441, 444 (App. 2009).

¶12 In this case, the superior court addressed substantial concerns regarding Father's lack of boundaries and insight, which relate to his parenting. Importantly, the court found the children did not yet have sufficient skills to address those behavioral issues. The court also noted:

> no information was presented regarding compliance with the Parenting Information Program. Neither party was convicted of an act of false reporting of child abuse or neglect. Child abuse was alleged against [Father] and the Court is convinced that [Father's] shortcomings listed above put the children at risk of abuse or neglect by [Father] unless properly addressed.

It is true that, after hearing all of the evidence and considering the parties' arguments, the court adopted other findings relevant to A.R.S. § 25-403 that it said could be found "in Exhibit 4, starting on page 7 and concluding on page 8." As reflected in the minute entry, those findings address the wishes of the parents and the children; the children's adjustment at home, school and community; mental and physical health of all involved; which parent is more likely to allow the children to have contact with the other parent and which parent had primary

care for the children, noting no parent-child interactions or coercion or duress had been observed.

¶13 Although disputing the superior court's conclusions, Father has not shown how any specific finding was not supported by the record or how the court abused its discretion in assessing any specific evidence or in the findings as a whole. Although it would have been preferable for the court to more specifically list findings in the minute entry itself, there is no suggestion from the record that the court used Exhibit 4 as "the baseline for custody" that had to be rebutted by Father or that the court delegated the custody issue to the author of the exhibit. *Compare Nold v. Nold*, 232 Ariz. 270, 274, ¶ 14, 304 P.3d 1093, 1097 (App. 2013) (reversing and remanding for further consideration when superior court "delegated its judicial decision to the [custody] evaluator, abdicated its responsibility to decide the best interest of the children, and therefore abused its discretion.").[3] Thus, there was no error in the application of A.R.S. § 25-403.

V. The Superior Court Did Not Abuse Its Discretion In Denying Father's Request To Appoint A Therapeutic Interventionist.

[3] Nor do the two cases Father cites change the conclusion. *See In re Marriage of Diezsi*, 201 Ariz. 524, 526, ¶ 5, 38 P.3d 1189, 1191 (App. 2002) (finding "deficient as a matter of law" custody order that did not contain required findings and did not "reflect that the court considered the factors enumerated in [A.R.S.] § 25-403(A)"); *Downs v. Scheffler*, 206 Ariz. 496, 500-01, ¶¶ 9-19, 80 P.3d 775, 779-80 (App. 2003) (same).

¶14 Father filed a petition to appoint a therapeutic interventionist using the grant-funded program for purposes of therapeutic reunification. The superior court noted that "[n]o such program exists; therefore, that request is denied." Although purporting to challenge that decision on appeal, Father offers no evidence that such a grant-funded program does exist. Moreover, Father cites no authority for his argument that a therapeutic interventionist "must be appointed in this scenario" and has not shown the court abused its discretion in denying Father's request.

¶15 Furthermore, the superior court adopted a reunification plan that does not involve a therapeutic interventionist. Although Father takes exception to that plan, he has not shown the court erred in adopting that reunification plan. Additionally, this court is not in the position to order Diana Vigil removed as case therapist and appointed as therapeutic interventionist, as Father requests on appeal. Therefore, Father has not shown any abuse of discretion by the court in this regard.

VI. The Superior Court Did Not Err In Allocating Financial Responsibility For Certain Therapist Services.

¶16 Father argues the superior court improperly changed prior orders regarding Father's financial responsibility for certain therapist services. Diana Vigil is the appointed

therapist for the two minor children. As reflected in prior orders, payment is allocated so that Mother pays 100% for all sessions involving herself and/or the minor children, and Father pays 100% for all sessions in which he participates. Financial responsibility for other aspects of Ms. Vigil's invoices (such as telephone calls, emails, file review) are split equally between Mother and Father.

¶17 At the evidentiary hearing, Mother demonstrated she had paid $4,200 in invoices from Ms. Vigil that should have been split equally with Father, thus "front-loading" her costs. Accordingly, the court ordered that Father pay the next $4,200 for such invoices from Ms. Vigil, with proper credit for any additional such costs paid by Mother or otherwise paid by Father. That allocation carries out, and does not alter, the court's prior cost-allocation orders.

¶18 Father objects to this payment order, arguing the superior court changed the allocation in the prior orders and "halted reunification." Contrary to Father's argument, there was no change in the prior orders. Instead, the $4,200 payment order assures compliance with those prior orders, given Mother's showing that she had paid both her share and Father's share of Ms. Vigil's prior fees totaling $4,200. In short, the $4,200 payment order does "even things up." After Father pays $4,200, the parties will have paid equal portions of Ms. Vigil's

invoices. They will then go back to paying for those services equally as required by the court's prior cost-allocation orders.

¶19 Paradoxically, Father appears to argue that the prior orders regarding financial responsibility for Ms. Vigil's services "is what's halted reunification." As noted above, those prior orders were not changed. Moreover, it is Father's failure to pay his share of Ms. Vigil's invoices that caused any such issue. Father has not shown any reversible error by the superior court in this payment order.

VII. Father Was Treated Fairly By The Superior Court.

¶20 Father alleges the superior court treated him "unfairly" and that Mother's attorney and the superior court Commissioner "are buddies, who play on the same softball team." Father, however, offers no evidence of any inappropriate relationship or communication between the Commissioner and Mother's attorney. Judicial officers "are presumed to be fair and may be disqualified only upon a showing of actual bias; mere speculation regarding bias will not suffice." *Pavlik v. Chinle Unified Sch. Dist. No. 24,* 195 Ariz. 148, 152, ¶ 11, 985 P.2d 633, 637 (App. 1999). Accordingly, this court summarily rejects Father's allegations of impropriety and bias, which are not supported by any evidence.

¶21 Father also notes he was excluded from the courtroom during a portion of the evidentiary hearing. The transcript

indicates Father interrupted the court and other speakers several times during that hearing. The court initially warned Father that if he continued interrupting, "I will have to exclude you from the Court." It also appears that Father, who was representing himself, was not familiar with courtroom procedure and had a difficult time formulating questions. During Mother's direct testimony, based on observed conduct by Father, the court interrupted Mother and the following exchange occurred:

> THE COURT: Hold on just a second, ma'am.
>
> Sir, we've talked about this before, I know, as well. When you sit there and you are shaking your head and you're sighing and you're doing that kind of stuff, there's only one way for me to interpret that, is that you're trying to intimidate this witness.
>
> [Father]: I don't ever remember you saying that to me. I will not do that anymore.
>
> THE COURT: I know I've said it to you before because you've done it before, and so I'm saying it to you again now. I'm not going to warn you again. If you do it again, I'll remove you from the courtroom.

Father's conduct apparently abated for a time but then resumed, resulting in the following exchange:

> THE COURT: Sir, I'm going to ask you to have a seat outside for me, please. I'll invite you back in when it's time to cross-examine, but I won't have you intimidate her anymore.
>
> [Father]: Okay.

Direct examination of Mother then continued for approximately six pages of transcript, during which Mother addressed financial information, addressed a summary of the relief she was requesting and Exhibit 8 was marked. Father was then allowed back into the courtroom and cross-examined Mother. When asked if he had any objection to Exhibit 8 for demonstrative purposes, Father responded "No, sir." Father apparently did not repeat the behavior that resulted in his exclusion from the courtroom and remained in court for the remainder of the evidentiary hearing.

¶22 It is, to be sure, an extreme sanction to exclude a party appearing pro se from personally observing direct testimony of an opposing party. However, Father was given fair warning that his misconduct toward Mother while she was testifying could not continue or he would be excluded and, when he failed to follow that warning, he was excluded for a short period of time. From the transcript, the testimony provided during that short period of time was not inflammatory or surprising in light of the parties' filings and positions. Finally, on appeal, Father's argument about his exclusion is limited to Exhibit 8, which was received without objection after Father was given the opportunity to object. In the circumstances, with the benefit of the transcript of the proceedings while Father was excluded and given the court's warning that Father failed to follow, Father has not shown that

the court abused its discretion in excluding Father from the courtroom for a brief period of time following his attempt to intimidate Mother during her direct testimony. *See* Ariz. R. Evid. 611(a).[4]

CONCLUSION

¶23 The superior court's January 13 and March 21, 2012 orders are affirmed.

/S/_____
SAMUEL A. THUMMA, Presiding Judge

CONCURRING:

/S/_____
DIANE M. JOHNSEN, Judge

/S/_____
PATRICIA A. OROZCO, Judge

[4] Finding no error in the superior court's rulings in the January 13, 2012 order, the court did not err in denying Father's motion for new trial. *See De Gryse v. De Gryse,* 135 Ariz. 335, 336, 661 P.3d 185, 186 (1983).