IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JENNIFER A. PLUMACHER, *Petitioner/Appellee*,

v.

ANTHONY R. SHEEDY, *Respondent/Appellant*.

No. 1 CA-CV 12-0573
FILED 12-10-2013

Appeal from the Superior Court in Maricopa County
No. FC2011-071870
The Honorable Michael W. Kemp, Judge

VACATED IN PART AND REMANDED

COUNSEL

Jennifer A. Plumacher, Peoria
In Propria Persona

Anthony R. Sheedy, Phoenix
In Propria Persona

MEMORANDUM DECISION

Presiding Judge Peter B. Swann delivered the decision of the Court, in which Judge Patricia K. Norris and Judge Margaret H. Downie joined.

S W A N N, Judge:

.

¶1 Anthony R. Sheedy ("Father") appeals from rulings granting physical custody of his daughter ("Child") to Jennifer A. Plumacher ("Mother") and authorizing Mother to enroll Child in the school of Mother's choice. Under A.R.S. § 25-403, the court was required to support the custody ruling with express findings of fact.[1] It did not do so. We therefore vacate that order and remand so that the court may decide physical custody by considering the relevant factors and making the required findings.

FACTS AND PROCEDURAL HISTORY

¶2 Child was born to Mother and Father, an unmarried couple, in January 2008. In October 2011, Mother filed a petition by which she sought sole custody of Child and child support from Father. Father answered Mother's petition, filed counterclaims by which he sought joint custody and equal parenting time, filed a request for findings of fact and conclusions of law under ARFLP 82 on parenting time only, and filed a petition for temporary orders. The parties also disputed whether Child, who was to start school in September 2012, should attend a school near Mother's residence or a school halfway between Mother's place of employment and Father's residence.

¶3 In March 2012, the court entered temporary orders on custody, parenting time, and child support, deferring the issue of Child's school enrollment until the June 2012 trial. The parties agreed before trial that they should share joint legal custody of Child.

¶4 At trial, Mother testified that the parties had shared a nearly equal parenting schedule when Father lived in Surprise and she was able

[1] We apply the laws of Title 25 as they existed at the time the petition regarding custody was filed.

to care for Child at her home in Peoria when he was at work, but the schedule proved unworkable after Father moved to Tempe and was unable to provide reliable child care when he was at work. According to Mother, she and Father then agreed to a schedule whereby Father took the Child every weekend. Mother testified that she and Father had used that schedule for almost a year, and she wanted it to continue because of the significant distance between the parties' residences and their differing work schedules. Mother testified that the school Father had selected for Child was approximately 40 miles from her home and 16 miles from where she worked, which would require Mother to wake Child extremely early on weekdays and place Child in before-school and after-school care. Mother testified that if she had care of Child during the week and Child was placed in a school near her home, Child's maternal grandparents could provide after-school care. Mother also expressed concern regarding Father's ability to get Child to school on time and the stability of his marriage to Child's stepmother.

¶5 Father disputed Mother's testimony, claiming that the parties had continued an equal parenting schedule up until the time that Mother filed her petition, and that any difficulties regarding Child's travel to a school nearer to his residence could be overcome through cooperation.

¶6 According to the court-appointed parenting-conference provider, Dr. Denise Glassmoyer, Father had stated that he wanted equal parenting time on an alternating 5-2-2-5 schedule. Dr. Glassmoyer noted that the distance between the parties' homes presented logistical challenges and suggested that the court consider a parenting plan that would maximize stability as Child transitioned to attending school. Dr. Glassmoyer opined that a "structured parenting plan with Mother as the primary custodial parent and Father with consistent, frequent parenting time" might be in Child's best interest.

¶7 The court adopted the findings, conclusions, and recommendations of Dr. Glassmoyer's written report and expressed the intent to follow Dr. Glassmoyer's recommendations. The court further found:

> I do agree with [Dr. Glassmoyer] that at this time the best interests of the child is served by the schedule that Mom has proposed. I think it is too much for a four-year old for all of that travel time to and from school.

> At this time I do think that Mother's schedule and this school that she has chosen . . . is appropriate.

¶8 Entering judgment "[f]or the reasons stated on the record," the court affirmed the parties' agreement for joint legal custody, ordered Father to pay child support, ordered that Child would attend the school chosen by Mother, and ordered that Father would have parenting time every weekend from Friday afternoon to Sunday evening. Father timely appeals.

DISCUSSION

¶9 Father contends that the superior court erred because its ruling encompassed custody decisions but it failed to make specific findings pursuant to A.R.S. § 25-403. As an initial matter, we hold that though the parties and the superior court characterized the dispute as one concerning parenting time, the court's ruling was actually an initial determination of physical custody. By seeking equal parenting time on a 5-2-2-5 schedule, Father was seeking joint physical custody of Child. *See* A.R.S. § 25-402(3) ("joint physical custody" means shared physical residence that assures substantially equal time and contact with both parents). By denying Father's request and establishing Mother as the primary residential parent, the court granted physical custody to Mother. *See Owen v. Blackhawk*, 206 Ariz. 418, 421, ¶ 11, 79 P.3d 667, 670 (App. 2003). We review this decision for a clear abuse of discretion. *Diezsi v. Diezsi*, 201 Ariz. 524, 525, ¶ 3, 38 P.3d 1189, 1191 (App. 2002).

¶10 The court must determine custody in accordance with a child's best interests. A.R.S. § 25-403(A). In reaching its decision, the court must consider all relevant factors, including certain statutory factors. *Id*. When custody is contested, the court must make specific findings on the record about all relevant factors and the reasons for which its decision is in the child's best interests. A.R.S. § 25-403(B). The requirement for express findings serves not only to allow effective appellate review, but also to provide the superior court with necessary baseline information

against which to measure future petitions for change of custody.[2] *Reid v. Reid*, 222 Ariz. 204, 209, ¶ 18, 213 P.3d 353, 358 (App. 2009).

¶11 Here, the court based its denial of Father's request for joint physical custody in large part on its wholesale adoption of Dr. Glassmoyer's report. The responsibility to make all required findings was the court's alone. *DePasquale v. Superior Court (Thrasher)*, 181 Ariz. 333, 336, 890 P.2d 628, 631 (App. 1995). The court was required to weigh the evidence and exercise its independent judgment in determining Child's best interests. *Nold v. Nold*, 232 Ariz. 270, 273-74, ¶ 14, 304 P.3d 1093, 1096-97 (App. 2013). Failure of the court to make its own independent findings constitutes an abuse of discretion. *See id.*

¶12 We therefore must vacate the physical custody order and remand to allow the court to decide physical custody by considering the relevant factors and making the required findings. *See Diezsi*, 201 Ariz. at 527, ¶ 11, 38 P.3d at 1192. We express no opinion as to the merits on remand, and note that it is for the superior court to decide whether additional evidentiary proceedings will be necessary. *See Hart v. Hart*, 220 Ariz. 183, 187, ¶ 14, 204 P.3d 441, 445 (App. 2009). As a consequence of our holding, the March 2012 temporary orders regarding physical custody are reinstated pending the court's decision on remand. But to avoid undue disruption of Child's life, we leave in place the court's final order regarding Child's school enrollment pending the resolution on remand.

¶13 Because we vacate and remand for findings under A.R.S. § 25-403, we need not address Father's contention that the court erred by failing to comply with his request for findings of fact and conclusions of law under ARFLP 82. Father is correct that on remand, the parties should submit proposed parenting plans to the court for its consideration as required by A.R.S. § 25-403.02.

---

[2] For these reasons, we do not find waiver based on Father's failure to object to the lack of findings in the proceedings below. *See Reid v. Reid*, 222 Ariz. 204, 209, ¶ 19, 213 P.3d 353, 358 (App. 2009).

CONCLUSION

¶14 For the reasons set forth above, we vacate in part the superior court's order regarding physical custody and remand for findings on the record.