

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
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: 10/23/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ALESHA-MICHELE HESTER,) 1 CA-SA 12-0176
)
Petitioner,) DEPARTMENT B
)
v.) Maricopa County
) Superior Court
) No. FC 2012-050864
THE HONORABLE GERALD PORTER,)
Judge of the SUPERIOR COURT OF)
THE STATE OF ARIZONA, in and for)
the County of MARICOPA,)
) **DECISION ORDER**
) Respondent Judge,)
)
DARRYL G. HESTER,)
)
)
Real Party in Interest.)
_____)

The court, Presiding Judge Maurice Portley, and Judges Patricia A. Orozco and Randall M. Howe, has considered the petition for special action filed by Alesha-Michele Hester ("Mother"). For the following reasons, we accept jurisdiction but deny relief.

FACTS AND PROCEDURAL BACKGROUND

Mother and Darryl Hester ("Father") are embroiled in a tumultuous divorce that is only in its infancy. Over Mother's

objection, the family court granted Father parenting time that would be supervised by a therapeutic interventionist. Following an evidentiary hearing, the court stated that:

This Court finds that it is in the best interest of the children to have continued TI [therapeutic interventionist] services and parenting time with Father in accordance with this Court's prior orders. The TI may enlarge the parenting time as appropriate but shall insure [sic] that the locations of the visit are safe for the children. This Court adopts the recommendations of the TI dated July 24, 2012.

Additionally, the court resolved other pending motions. The child welfare specialist was ordered to review her file and give Mother's lawyer the contents of her file except for items that should not be disclosed to protect the child's privacy. The court also clarified that Dr. Weinstock, who had been ordered to perform an independent psychological evaluation on Mother, was "court appointed in accordance with Rule 63." Mother then filed her special action petition.

JURISDICTION

Special action jurisdiction is appropriate where there is no "equally plain, speedy, and adequate remedy by appeal." Ariz. R.P. Spec. Act. 1(a). "[A]n order that is merely 'preparatory' to a later proceeding that might affect the judgment or its enforcement is not appealable." *Villares v. Pineda*, 217 Ariz. 623, 624-25, ¶ 10, 117 P.3d 1195, 1196-97

(App. 2008). Because there is no right to appeal temporary orders, we exercise our discretion and accept special action jurisdiction.

DISCUSSION

I.

Mother raises four issues. She contends that the family court erred by (1) delegating the authority to modify parenting time to the therapeutic interventionist; (2) appointing Dr. Weinstock as the court's psychological evaluator; (3) providing Dr. Weinstock with a protective order until he completes his final evaluation of Mother;¹ and (4) providing the child welfare specialist, Ms. Kiffmeyer, with a protective order over items "necessary to protect the privacy of the children." We review the court's orders for an abuse of discretion. *Armer v. Armer*, 105 Ariz. 284, 289, 463 P.2d 818, 823 (1970); *Reid v. Reid*, 222 Ariz. 204, 206, ¶ 8, 213 P.3d 353, 355 (App. 2009).

A. Delegation to the Therapeutic Interventionist

Although Mother argues that the court delegated to the therapeutic interventionist the right to "enlarge the parenting time as appropriate," we find no such delegation. There is nothing in the court's ruling to suggest that the therapeutic

¹ Before the evidentiary hearing, the court issued a temporary order granting Dr. Weinstock's request to delay response to a subpoena duces tecum until Mother completes her psychological evaluation.

interventionist can order more, or less, parenting time without objection or a hearing as may be required to consider the best interests of the children as stated in *DePasquale v. Superior Court*, 181 Ariz. 333, 335, 890 P.2d 628, 630 (App. 1995).

B. Appointment of Dr. Weinstock as the Court's Psychological Evaluator

Mother contends that the court erred by designating Dr. Weinstock as the court-appointed psychological evaluator because he is Father's hired examiner and could reveal confidential matters to Father ex parte. We find nothing in the record to support her claim. Although Father may have requested that Dr. Weinstock perform the examination, absent objection that he could not perform the evaluation independently and according to psychological standards, the court did not err by appointing him.

C. Protective Order for Dr. Weinstock

Before Dr. Weinstock had completed his evaluation of Mother, she served him with a subpoena duces tecum. He sought a protective order to be effective until he has completed Mother's evaluation. After considering the status report from the psychologist and the court's file, a protective order was granted until the evaluation is completed. Although Mother

challenges the order,² because the "court has broad discretion in ruling on discovery and disclosure matters," *Reid*, 222 Ariz. at 206, ¶ 8, 213 P.3d at 355, it did not abuse its discretion or commit legal error by delaying discovery until after the evaluation is completed. *Am. Family Mut. Ins. Co. v. Grant*, 222 Ariz. 507, 511, ¶ 11, 217 P.3d 1212, 1216 (App. 2009).

D. Protective Order for the Child Welfare Specialist

Finally, Mother also contends that the order allowing the child welfare specialist not to disclose some of her notes used to make her recommendation to the court in order to protect the privacy of the children was an abuse of discretion. We disagree.

Although the court relied on a draft of the Uniform Representation of Children in Abuse and Neglect and Custody Proceedings Act,³ to support its ruling, we find no abuse of discretion even though the act was withdrawn. The key to any ruling on custody or parenting time is the best interests of the child. And, given the acrimony between the parents, the court

² Mother also asserts that the court imposed monetary sanctions and compelled her to submit to additional drug testing. Our review of the order does not suggest that sanctions were imposed so we will not address the assertion.

³ The Act states that "[a]lthough attorney-client confidentiality rules do not govern the court advisor's communications with the child, the advisor should protect the child's privacy and should reveal the child's statements only when necessary to fulfill the advisor's duties to the court." Unif. Representation of Children in Abuse and Neglect and Custody Proceedings Act, § 14 cmt. (Proposed Official Draft 2005) (withdrawn 2008).

did not abuse its discretion in considering the best interests of the children when making its ruling.

II.

Father has requested an award of attorney fees and sanctions. He, however, did not articulate a statutory basis for any such award as required by Arizona Rule of Special Action Procedure 4(g) or Arizona Rule of Civil Appellate Procedure 21. Moreover, we have no information about the financial resources available to either party. See *Countryman v. Countryman*, 135 Ariz. 110, 111, 659 P.2d 663, 664 (App. 1983). In our discretion, however, we will allow the family court to consider this special action proceeding when considering the award of any attorney's fees with the issuance of any decree.

CONCLUSION

Based on the foregoing, we accept special action jurisdiction but deny relief.

/s/

MAURICE PORTLEY, Presiding Judge