IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

BUSINGE KATENTA, *Petitioner/Appellee*,

v.

HEATHER R. HARPEST, *Respondent/Appellant*.

No. 1 CA-CV 16-0545 FC
FILED 7-25-2017

Appeal from the Superior Court in Maricopa County
No. FC2011-004973
The Honorable Katherine Cooper, Judge

AFFIRMED

COUNSEL

Law Offices of Brad Reinhart, LLC, Tempe
By Brad Reinhart
Counsel for Respondent/Appellant

Businge Katenta, Phoenix
In propria persona

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Paul J. McMurdie joined.

T H O M P S O N, Judge:

¶1 Heather Harpest (mother) appeals from the family court's dismissal of her petition to modify legal decision making, parenting time and child support. Finding no error, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Mother and Businge Katenta (father) are the parents of one minor child born in 2011. The relationship between mother and father is of a highly litigious nature with over 560 items on the superior court docket since 2012. In February 2015, father was awarded sole legal decision making authority and primary residential custody. In June 2015, mother was ordered to pay $710.70 per month in child support. In September 2015, she filed a Motion to Amend or Modify Child Support, which was denied. In December 2015, she filed a Petition to Modify Child Support, which was denied. In February 2016, she filed another Petition to Modify Child Support, which was dismissed because there was no substantial or continuing change warranting a modification. In March 2016, she filed this petition to modify legal decision making, parenting time and child support which was dismissed.

¶3 In dismissing this final petition[1], the family court called the motion a "guise" to modify her support obligation and an "express abuse of process." It stated that mother's "focus on lowering her child support obligation for the past year suggests that Mother's effort to obtain more parenting time is not motivated by the best interests of the child." It highlighted that mother had now filed a motion for reconsideration in addition to the three petitions to modify child support that were "virtually identical" since June 2015. It asserted that mother had failed, again, to show any substantial or continuing change in circumstances or factors warranting a modification of child support, parenting time or legal decision making. The court further noted "Counsel [for mother] has filed multiple

[1] The family court refers to this motion as the "third" petition.

requests in two divisions. When [counsel] did not get what he wanted [] he appealed to this division rather than the Court of Appeals." The court called this motion a "gross abuse of the Court's limited resources."

¶4 Mother's motion to amend judgment and/or for trial was denied. Mother timely appealed.

ISSUES

¶5 On appeal mother argues the family court erred in dismissing her petition. She asserts it was error for the family court to dismiss her petition on any of these bases: (1) because the petition is "the same as a previous modification" request, (2) because the family court erroneously believed mother had not completed a parenting conflict resolution class, and (3) because the petition did not allege any substantial and continuing change and in opining mother's motivation was a desire to decrease child support.

DISCUSSION

¶6 Mother essentially raises two issues: the denial of her request for modification of support payments and the denial of her modification of parenting time and legal decision making.

¶7 A child support order may be modified "only on a showing of changed circumstances that are substantial and continuing." A.R.S. § 25-327(A) (2007); *Little v. Little*, 193 Ariz. 518, 520-21, ¶ 6, 975 P.2d 108, 110-11 (1999). The decision to modify a child support order is within the discretion of the court, and we will not disturb that decision absent an abuse of discretion. *Little*, 193 Ariz. at 520, ¶ 5, 975 P.2d at 110. The court abuses its discretion "when the record, viewed in the light most favorable to upholding the trial court's decision, is 'devoid of competent evidence to support' the decision." *Id*. (internal citation omitted).

¶8 Here the record is clear that mother sought a modification of her child support at least four times since support was ordered in June 2015. The petition mother submitted just prior to the instant one was denied for no substantial and continuing change of circumstances. This petition is substantively similar to the denied petition. In each of these petitions she has asked for a reduction from $710.70 to $476.87. In each she asserts that she is earning slightly more than what the family court determined in June 2015. In each she asserts that she believes father's income is not what it was previously determined to be and seeks discovery on that issue. In each she asserts that father has little or no childcare expenses as opposed to what

was represented in the June 2015 order. In each she asserts she should be given credit for her increase in parenting time to sixty days per year.

¶9 We have reviewed the record and find the family court did not abuse its discretion here. The evidence does not support a claim of substantial and continuing change of circumstances to support a modification of mother's ordered child support. The family court's order regarding child support is affirmed.

¶10 Next, we review mother's request for additional parenting time and to modify decision making. Father was given primary residential custody and legal decision making in February 2015. At that time, the family court issued a 22-page order addressing these issues. The court discussed mother's three driving under the influence (DUI) convictions in 2014, including one where the minor child was in the car, in addition to her prior DUI offense. It noted mother also had a conviction for interfering with a judicial proceeding, for which she was on probation. The court outlined the "constant" litigation and "outrageous" number of police contacts for issues involving the child or between the parents. It stated that "[t]hroughout the history of this case, the parties have consistently refused to reach any meaningful agreements regarding the minor child." It noted mother refused to comply with directives to communicate with father. Because "prior orders for joint decision-making authority have failed miserably," the court concluded that it was in child's best interest for father to have sole decision making authority. It stated that to give mother joint decision making authority "is so illogical that it defied any credibility at all."

¶11 In her March 2016 petition to modify parenting time mother asserted the following changes in circumstance, that she has: successfully exercised her overnight parenting time, completed the court ordered co-parenting class, obtained a 2-bedroom apartment, had her driver's license reinstated, has complied with TASC assessment and recommendations, and that she is substantially in compliance with her probation terms. She sought an equal parenting time schedule.

¶12 As to decision-making authority, mother argued it should be modified because, essentially, father has not communicated with her to her satisfaction, did not participate in the mediation in January 2016 in good faith, has the child call his new wife "mommy," attempted to restrict mother's communications with the minor child's childcare providers, and has travelled out of state with the child without notice to mother. She

sought joint legal decision-making authority and final decision-making authority.

¶13 The court dismissed her petition to modify. It stated that mother's request failed to comply with A.R.S. § 25-411(A) which generally requires waiting a year before attempting to modify. The family court noted that she had failed to comply with its August 10, 2015, order to attend a high conflict resolution class before filing any additional attempts to modify.

¶14 On parenting time, the court expressed that again there was no substantial and continuing change requiring modification. It stated "her focus on lowering her child support obligation for the past year suggests that Mother's effort to obtain more parenting time is not motivated by the best interests of the child."

¶15 In considering decision-making, the court stated that father has sole decision making authority and need not clear day-to-day decisions with mother beforehand. It found "there are no facts alleged to show that Father's alleged violation of court orders regarding emails and providers has materially affected the best interests of the child." It states "the parties tried and failed at joint legal decision making" miserably and, thus, such was not in the child's best interests.

¶16 Section 25–411(A) provides for a one-year waiting period when seeking modification of an existing parenting time order, unless there is evidence that "the child's present environment may seriously endanger the child's physical, mental, moral or emotional health." A.R.S. § 25–411(A) (2013); *Murray v. Murray*, 239 Ariz. 174, 176–77 ¶¶ 7–8, 367 P.3d 78, 80-81 (App. 2016). Arizona Rule of Family Law Procedure 91(D) requires any petition to modify custody to comply with A.R.S. § 25–411. The court shall deny a motion to modify unless it finds that adequate cause for hearing the motion is established by the pleadings. A.R.S. § 25-411(L). The court here found there was not adequate cause for a hearing on the modification motion. Specifically, there was no changed circumstances and that mother failed to take the high conflict parenting class.

¶17 We review child custody determinations under an abuse of discretion standard. *Owen v. Blackhawk*, 206 Ariz. 418, 420, ¶ 7, 79 P.3d 667, 669 (App. 2003). Before the family court can change a previous custody order, it must determine that there has been a material change in circumstances affecting the welfare of the child. *Canty v. Canty*, 178 Ariz. 443, 448, 874 P.2d 1000, 1005 (App. 1994). The court has broad discretion in

making this determination, and we will not disturb its decision absent a clear abuse of discretion. *Id.; In re Marriage of Diezsi*, 201 Ariz. 524, 525, ¶ 3, 38 P.3d 1189, 1191 (App. 2002).

¶18 "The trial court is in the best position to judge the credibility of the witnesses, the weight of evidence, and also the reasonable inferences to be drawn therefrom." *Goats v. A.J. Bayless Mkts., Inc.*, 14 Ariz. App. 166, 171, 481 P.2d 536, 541 (App. 1971). We will not substitute our opinion for that of the family court. *See id.* at 169, 481 P.2d at 539. Viewing the evidence in the light most favorable to sustaining the family court's findings, we determine whether the record reasonably supports the findings. *Gutierrez v. Gutierrez*, 193 Ariz. 343, 346, ¶ 5, 972 P.2d 676, 679 (App. 1998).

¶19 The family court's order is supported by the record, which is rife with evidence that the parties are litigious and cannot cooperate. We agree with the family court that the motion to modify did not specify sufficient grounds to show a material change in the child's circumstances warranting a change in parenting time or decision-making authority.[2]

CONCLUSION

¶20 For the above stated reasons, the family court is affirmed.

AMY M. WOOD • Clerk of the Court
FILED: AA

[2] As to the family court's assertion that mother failed to complete a high conflict resolution class that it ordered in 2015, she argues she took that class in 2012. Father asserts that, given their litigious history, the family court was requiring mother to take the class again. We agree. The family court may order a party to take the high conflict resolution class as often as necessary.