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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

HOUSTON LAWELLIN, *Petitioner/Appellant*,

v.

CHARITY GOMEZ WILSON, *Respondent/Appellee*.

No. 1 CA-CV 16-0547 FC
FILED 7-11-2017

Appeal from the Superior Court in Maricopa County
No. FC2016-000210
The Honorable Dewain D. Fox, Judge

AFFIRMED

COUNSEL

Houston Lawellin, Phoenix
Petitioner/Appellant

Udall Shumway, PLC, Mesa
By Steven H. Everts
Counsel for Respondent/Appellee

MEMORANDUM DECISION

Judge Patricia K. Norris¹ delivered the decision of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Kenton D. Jones joined.

NORRIS, Judge:

¶1 Houston Lawellin (“Father”) appeals the family court’s orders regarding legal decision-making, parenting time, and attorneys’ fees. On appeal, he argues the family court failed to provide him with a meaningful opportunity to present his case at the temporary orders hearing in violation of his due process rights and otherwise abused its discretion in entering these orders because they were unsupported by the evidence or the record. We reject these arguments and affirm the family court’s orders.

FACTS AND PROCEDURAL HISTORY

¶2 In March 2015, Charity Gomez Wilson (“Mother”) gave birth to a child in Arizona. The parties lived together in Arizona until January 2016, when Mother moved with the child to Washington. Shortly thereafter, Father petitioned to establish paternity, legal decision-making, parenting time, and child support. Based on evidence presented by the parties at the return hearing, the family court found Father was the child’s father and Arizona was the child’s “home state” under the Uniform Child Custody Jurisdiction and Enforcement Act. *See* Ariz. Rev. Stat. (“A.R.S.”) § 25-1031 (2017).² The court set a three-hour temporary orders hearing on Father’s petition, allotting each party one hour and 15 minutes for direct, cross, and redirect examination of witnesses and argument to the court. Neither party requested additional time.

¶3 As relevant to this appeal, Mother alleged “significant” domestic violence by Father—an allegation Father denied. The parties

¹The Honorable Patricia K. Norris, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

²The Legislature has not materially amended the statutes cited in this decision after the date of Father’s petition. Thus, we cite to the current version of the statutes.

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disputed the circumstances of a July 2014 incident in which Mother injured her hand while her friend, Allie, was visiting. Mother alleged Father had pushed her into a mirror because he was angry that Allie was at the house. In contrast, Father alleged Mother “got mad at me and punched the mirror” because he had asked Allie to leave.

¶4 At the hearing, Father testified and called one witness. He introduced a July 2014 emergency room record that reflected Mother had sustained an injury to her hand because she “was upset and punched a mirror.” After Father presented his case, the family court told Father he had five minutes and 25 seconds remaining. Again, Father did not request additional time.

¶5 Mother called M.B., a domestic violence advocate, and A.H., her therapist, as witnesses. Both witnesses testified (i) Mother had reported being the victim of Father’s domestic violence, (ii) her reporting was consistent with the objective evidence, and (iii) it was not uncommon for domestic violence victims to under-report or false-report the facts, circumstances, or responsibility for any injury. Father utilized his remaining allotted time to cross-examine both witnesses.

¶6 Mother then testified in her case-in-chief about Father’s domestic violence. Mother explained she did not punch the mirror, but Father had told her to say she did or “worse things would happen to me.” Mother introduced an email from Allie stating, “I don’t remember the exact date [in July 2014] but [the parties] were fighting and he shoved her into the glass mirror and she ended up cutting open her hand.” Mother also testified about other incidents of being abused by Father. At the conclusion of Mother’s direct examination, the family court told Father he had no time remaining to cross-examine Mother. The following exchange occurred between the court and Father’s counsel:

THE COURT: We have an issue about no time remaining for you, [Counsel]. I don’t know if you want to make a record or if you were intending to save time for cross-examination of [Mother].

COUNSEL: I was. I was hopeful for that.

THE COURT: Okay. Do you believe that there’s anything you need to elicit from this witness as a matter of fundamental fairness that hasn’t already been elicited?

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COUNSEL: Well, I had a whole bunch of questions for her that I prepared. I was hoping I had about 10 minutes left, at least, to ask her some cross-examination. I had a lot of questions to ask her about these incidences.

THE COURT: Okay. I'm not going to extend the time because I've divided it fairly between the parties, and it was the allotted time that was agreed to by prior counsel for both parties.

Thereafter, Mother called three more witnesses. Through counsel, Father requested time to cross-examine two of these witnesses as a matter of fundamental fairness, and the family court granted his requests.

¶7 After taking the matter under advisement, the family court awarded Mother sole legal decision-making authority, finding, first, Father had committed at least one act of domestic violence against Mother and Mother had not committed any acts of domestic violence against Father; and second, the preponderance of the evidence established both the existence of significant domestic violence and a significant history of domestic violence. *See* A.R.S. § 25-403.03(A), (D) (2017). The court granted Father one weekend per month of supervised parenting time in Washington pending his completion of a domestic violence treatment program and compliance with certain other requirements. The court further ordered Father to pay \$200 per month in child support.³ Finally, the court awarded \$1,500 in attorneys' fees to Mother, finding Father had "acted unreasonably in the litigation by denying the existence of domestic violence." *See* A.R.S. § 25-324(A) (2017).

³Under the Arizona Child Support Guidelines, Father's child support obligation was \$482.62 per month. The family court deviated downward to account for the costs associated with Father's exercise of parenting time in Washington. *See* A.R.S. § 25-320 app. § 18 (2017) (travel expenses associated with parenting time).

DISCUSSION

I. Legal Decision-Making Authority and Parenting Time

A. Time Limits

¶8 Father argues the family court failed to provide him with a meaningful opportunity to present his case at the hearing in violation of his due process rights when it refused to grant him additional time to cross-examine Mother. Under the circumstances presented here, the family court neither violated Father’s due process rights, *Jeff D. v. Dep’t of Child Safety*, 239 Ariz. 205, 207, ¶ 6, 367 P.3d 109, 111 (App. 2016) (whether court afforded party due process at trial constitutes question of law subject to de novo review on appeal), nor, for that matter, abused its discretion, *Gamboa v. Metzler*, 223 Ariz. 399, 402, ¶ 13, 224 P.3d 215, 217 (App. 2010) (trial court has broad discretion in managing trial), in refusing to grant him additional time to cross-examine Mother.

¶9 The family court may impose reasonable time limits on a proceeding unless doing so precludes a meaningful opportunity to present evidence.⁴ *Volk v. Brame*, 235 Ariz. 462, 468, ¶ 20, 333 P.3d 789, 795 (App. 2014); *Gamboa*, 223 Ariz. at 402, ¶ 13, 224 P.3d at 218; *see generally Mathews v. Eldridge*, 424 U.S. 319, 333, 36 S. Ct. 893, 902, 47 L. Ed. 2d 18 (1976) (explaining that due process generally requires the opportunity to be heard “at a meaningful time and in a meaningful manner”) (citation and quotation omitted). The party asserting a denial of due process must show how the lack of additional time prejudiced his case. *Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, 91, ¶ 30, 977 P.2d 807, 813 (App. 1998).

¶10 The court gave Father a meaningful opportunity to be heard. The court also gave both parties timely notice both before and during the hearing about presumptive time limits, and Father did not object to the time limits or request additional time to present evidence. Due process does not require a party be afforded relief from his own time management decisions. *Gamboa*, 223 Ariz. at 402, ¶¶ 14-16, 224 P.3d at 218; *see also Volk*, 235 Ariz. at

⁴*See generally* Ariz. R. Fam. Law P. 77(B)(1) (authorizing the court to impose reasonable time limits on trial proceedings); Ariz. R. Fam. Law P. 22(1) (authorizing the court to impose reasonable time limits on all proceedings); *see also* Ariz. R. Evid. 611(a) (instructing the court to “exercise reasonable control over the mode and order of examining witnesses and presenting evidence”).

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469, ¶ 22, 333 P.3d at 796 (in applying time limitations, court need not “indulge inefficient use of time by parties or their counsel”).

¶11 Further, Father has made no showing of prejudice nor does the record support such a finding. When the court asked Father whether there was anything he wanted to “elicit” from Mother as a matter of fundamental fairness, Father responded only with generalities, and did not identify any specific issue or topic for cross-examination. *Cf. Gamboa*, 223 Ariz. at 402-03, ¶ 17, 224 P.3d at 218-19 (although offer-of-proof requirement relaxed with a hostile witness, nevertheless, complaining party must still show what the evidence would show with reasonable specificity); *see also Molloy v. Molloy*, 158 Ariz. 64, 68, 761 P.2d 138, 142 (App. 1988) (“Offers of proof serve the dual function of enabling the trial court to appreciate the context and consequences of an evidentiary ruling and enabling the appellate court to determine whether any error was harmful.”).

¶12 Father also suggests the court denied him due process because it did not allow him to cross-examine Mother’s friend, Allie. However, Allie did not testify at trial. To the extent Father challenges the admissibility of Allie’s e-mail, he waived this issue by failing to raise it in the family court.⁵ *See Cullum v. Cullum*, 215 Ariz. 352, 355 n.5, ¶ 14, 160 P.3d 231, 234 (App. 2007) (stating issues raised for the first time on appeal are waived).

B. Domestic Violence Presumption

¶13 Father also argues the family court abused its discretion in awarding Mother sole legal decision-making because it misapplied the domestic violence presumption, asserting Mother had committed domestic violence by punching the mirror after she became angry. *See* A.R.S. § 25-403.03(D) (presumption inapplicable if both parents have committed domestic violence). We reject this argument. *See generally, Owen v. Blackhawk*, 206 Ariz. 418, 420, ¶ 7, 79 P.3d 667, 669 (App. 2003) (appellate court reviews legal decision-making order for abuse of discretion); *Fuentes v. Fuentes*, 209 Ariz. 51, 56, ¶ 23, 97 P.3d 876, 881 (App. 2004) (court abuses discretion if it makes “an error of law in the process of exercising its discretion”).

⁵Moreover, Father did not request strict compliance with the Arizona Rules of Evidence. *See* Ariz. R. Fam. Law P. 2(B).

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¶14 As noted above, the parties presented conflicting evidence regarding this incident, and the family court resolved this conflict in the evidence in Mother’s favor based on her testimony and the testimony from M.B. and A.H. The court did not abuse its discretion in relying on this evidence. *See Little v. Little*, 193 Ariz. 518, 520, ¶ 5, 975 P.2d 108, 110 (1999) (abuse of discretion exists if no competent evidence supports court’s decision). Further, we defer to the family court to decide witness credibility and the weight to give the evidence. *Gutierrez v. Gutierrez*, 193 Ariz. 343, 347, ¶ 13, 972 P.2d 676, 680 (App. 1998).

C. Reasonable Parenting Time

¶15 Father argues the family court abused its discretion in failing to provide him with reasonable parenting time. *See* A.R.S. § 25-403.01(D) (2017). Because of the domestic violence findings, the court had discretion to place conditions on parenting time to protect Mother and the child from harm. *See* A.R.S. § 25-403.03(F)(2), (3), (9). Further, the court was compelled to create a long-distance parenting plan. In so doing, the court properly considered the child’s best interests, *see* A.R.S. §§ 25-403(A), -403.03(B) (2017), and that Mother had relocated in good faith to protect the child from witnessing any further acts of domestic violence. *See* A.R.S. § 25-403(A)(6). Finally, the court appropriately considered the financial burden associated with Father’s parenting time in calculating his child support obligation. On this record, the court did not abuse its discretion in restricting Father’s parenting time. *Owen*, 206 Ariz. at 420, ¶ 7, 79 P.3d at 669 (appellate court reviews parenting time order for an abuse of discretion).

II. Attorneys’ Fees

¶16 Father argues the family court abused its discretion in awarding attorneys’ fees to Mother, suggesting his denial of “fabricated stories of abuse” was reasonable. We disagree. *MacMillan v. Schwartz*, 226 Ariz. 584, 592, ¶ 36, 250 P.3d 1213, 1221 (App. 2011) (appellate court reviews fee award for abuse of discretion).

¶17 The reasonableness of a party’s legal position is evaluated by an objective standard. *In re Marriage of Williams*, 219 Ariz. 546, 548-49, ¶¶ 10, 12, 200 P.3d 1043, 1045-46 (App. 2008). In this case, the parties presented conflicting testimony on the issue of domestic violence, and the family court resolved the issue in Mother’s favor. The family court was in the best position to observe and assess the parties’ conduct. *See MacMillan*, 226 Ariz. at 592, ¶ 38, 250 P.3d at 1221; *see also Gutierrez*, 193 Ariz. at 347, ¶ 13, 972 P.2d at 680. Because Mother presented competent evidence of Father’s

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domestic violence, the family court did not abuse its discretion in awarding attorneys' fees to Mother.

CONCLUSION

¶18 For the foregoing reasons, we affirm the family court's orders regarding legal decision-making, parenting time, and attorneys' fees. Mother has requested an award of attorneys' fees on appeal pursuant to A.R.S. § 25-324 (2017). In the exercise of our discretion, we award her reasonable attorneys' fees contingent upon her compliance with Arizona Rule of Civil Appellate Procedure ("ARCAP") 21. We also award Mother her costs on appeal contingent upon her compliance with ARCAP 21.



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