IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

MELODY PICARD, *Petitioner/Appellant*,

v.

WILLIAM MARSHALL, *Respondent/Appellee*.

No. 1 CA-CV 22-0059 FC
FILED 7-19-2022

Appeal from the Superior Court in Maricopa County
No. FC2019-052926
The Honorable Melissa Iyer Julian, Judge

AFFIRMED

COUNSEL

High Desert Family Law Group, LLP, Phoenix
By Craig P. Cherney
Counsel for Petitioner/Appellant

MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the Court's decision, in which Presiding Judge Brian Y. Furuya and Judge Jennifer B. Campbell joined.

M c M U R D I E, Judge:

¶1 Melody Picard ("Mother") appeals from the superior court's order modifying legal decision-making, parenting time, and child support for two of the children she has with William Marshall ("Father"). She argues the court erred by denying her the right to cross-examine Father and that the court's order conflicted with its earlier decree and was not in the children's best interests. We find no reversible error and affirm.

FACTS[1] AND PROCEDURAL BACKGROUND

¶2 Mother petitioned for dissolution in March 2019. When the petition was filed, both Mother and Father lived in Phoenix. Mother later moved to Vernon, about 180 miles from Phoenix. In November 2019, the superior court entered a decree awarding Mother sole legal decision-making authority and all parenting time over the parties' fourteen-year-old daughter, Alex,[2] and ten-year-old son, Spencer, except during Father's two hours per week of supervised parenting time. The decree allowed Father's parenting time to become more frequent and less restricted if Father met certain conditions. The court found that Father had a significant history of domestic violence, which justified limiting and requiring parenting time supervision. A local social worker was appointed to supervise Father's parenting time, and Father was ordered to pay the supervision costs.

¶3 In February 2021, Mother told the parenting time supervisor she was concerned that one of the children had seen a gun in Father's home during a visit. The supervisor explained to Mother that the child had seen

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1 We view the record in the light most favorable to affirming the court's legal decision-making and parenting time order. *Little v. Little*, 193 Ariz. 518, 520, ¶ 5 (1999).

2 We use pseudonyms to protect the children's identities.

a BB gun and that Father had agreed to remove it. With no authority to ignore or modify the court's order, Mother refused to allow the children to visit Father at his home and informed the supervisor that she would only allow the children to meet with Father through video chat.

¶4 In March, the supervisor filed a report with the court claiming that Mother refused to allow the children to attend supervised visitation with Father and no longer communicated with the supervisor. As a result, Father petitioned to enforce the parenting time order. After a hearing, the court found Mother in contempt for violating its order.

¶5 In May, Mother and Father each petitioned the court to modify legal decision-making, parenting time, and child support. Mother alleged that the supervisor was biased and unprofessional and requested a new supervisor. Father asked that he be awarded unsupervised parenting time, sole legal decision-making authority, and child support from Mother. The court appointed an advisor to recommend the children's best interests.

¶6 The court allotted an hour for the trial. It gave the parties notice that they would be allowed half the time to present all direct, cross, and redirect examinations and arguments. Both parties proceeded to trial without counsel.

¶7 At the trial, the court first heard testimony from the court-appointed advisor. The advisor recommended the current supervisor continue to supervise Father's parenting time and that Father be gradually allowed more time with Spencer. The advisor also suggested that, because Alex was nearing the age of majority, she should be allowed but not required to attend Spencer's visits with Father.

¶8 The court questioned the advisor before allowing Mother to cross-examine the witness. During Mother's cross-examination, the court directed Mother to ask questions rather than make statements. The court also reminded Mother that her time was limited and that she and Father still needed to testify.

¶9 The court allowed Father to cross-examine the advisor and then asked Mother several questions about Alex's education and health, and Mother explained why she moved the children out of Phoenix. Mother was invited to make additional direct testimony supporting her position. She testified that Father had made untrue statements about their daughter's health to the advisor.

¶10 Father then provided direct testimony. He testified that Mother had changed the children's schools at least six times, had made it difficult to spend quality time with the children by changing the location of the visitations, and had not provided him with information about the children's health and education. He also testified that he could not afford the supervisor's fees and that Mother had continued to make visits with the children difficult after the court found her in contempt. The court did not ask Mother if she had any questions for Father, and Mother did not request to question Father or challenge his testimony and did not object to the lack of opportunity for cross-examination.

¶11 The court found that the parties had shown a change of circumstances based on Mother's relocation to a home in a remote location, Father's improved behaviors and participation in anger management therapy and counseling, and Mother's interference with Father's parenting time. Still, the court determined that it was in the children's best interests that Mother be awarded sole legal decision-making authority and most of the parenting time. Thus, the court ordered that Father be allowed parenting time with Alex and that his parenting time with Spencer be increased using a graduated plan as recommended by the advisor. Under the plan, Father was awarded supervised parenting time every other Saturday for eight hours for eight weeks. After completing those four visits, Father would have unsupervised parenting time under the same schedule for another eight weeks. Once Father completed the visits, his unsupervised parenting time would be increased to alternating weekends, including overnights.

¶12 Mother appealed and we have jurisdiction under A.R.S. § 12-2101(A)(1).

DISCUSSION

¶13 Mother asserts that Father continues to display an inability to control his anger and argues the court's graduated parenting plan is not in the children's best interests. Mother claims that if she had been allowed to continue her examination of the advisor, she would have elicited testimony that Father had ignored the benchmarks originally established by the court as preconditions to Father's unsupervised parenting time. Mother argues the superior court denied her due process by failing to adequately advise the parties that they could present their case through direct testimony and allow Mother to finish cross-examining the advisor or cross-examining Father.

A. The Court Did Not Err by Finding a Graduated Parenting Plan is in the Children's Best Interests.

¶14 We first address Mother's argument that the court could not implement a graduated parenting plan for Father because he had not satisfied the conditions of the court's original decree. Under A.R.S. § 25-411(A), a parent may petition to modify the court's parenting time order after the order has been in place for a year. The court then engages in a two-stage inquiry, first determining whether there has been a material change in the child's circumstances and then deciding whether a modification to the original order is in the child's best interests. *Backstrand v. Backstrand*, 250 Ariz. 339, 343, ¶ 14 (App. 2020). The superior court has broad discretion to decide whether circumstances have materially changed, and we will not reverse the court's determination unless it is unsupported by the record. *Id.*

¶15 Mother's claim that Father did not comply with the court's decree about what was necessary to achieve unsupervised parenting time is irrelevant. A petitioner seeking to modify a legal decision-making or parenting time order must provide "adequate cause for [a] hearing" and "present detailed facts which are relevant to the statutory grounds for modification." A.R.S. § 25-411(L); *Pridgeon v. Superior Ct.*, 134 Ariz. 177, 181 (1982). "[A]ccess to courts is a fundamental right." *Madison v. Groseth*, 230 Ariz. 8, 14, ¶ 17 (App. 2012). Section 25-411(A) provides the time frames and a cause requirement to allow a party to have court access. *See also In re Marriage of Dorman*, 198 Ariz. 298, 302, ¶ 9 (App. 2000). A previous court order cannot create time frames and conditions that conflict with the statutory ability of a party to petition for modification. *See* A.R.S. § 25-411; *Vera v. Rogers*, 246 Ariz. 30, 35, ¶ 20 (App. 2018). Once a court determines that there has been a material change from a previous order, it must evaluate the child's best interests on the current record.

¶16 The record supports the court's finding that there had been a change of circumstances materially affecting the welfare of the children. Mother had moved the children 180 miles away from Phoenix and enrolled them in online schooling. At the time of trial, Mother expressed uncertainty about when they would return to school in person because their living arrangements were temporary. The court-appointed advisor was also concerned about the children's isolation. Reasonable evidence supported the court's finding that there had been a change of circumstances justifying modification of the parenting time order.

¶17 After concluding there had been a material change in circumstances, the court considered the enumerated best-interests factors under A.R.S. § 25-403. We will also affirm a best-interests finding if it is supported by reasonable evidence. *Backstrand*, 250 Ariz. at 346, ¶ 27. Here, the court's conclusion that the graduated parenting plan was in the children's best interests is supported by the record given the court-appointed advisor's concern about Mother's isolation of the children and the evidence that Father had engaged in anger management and individual counseling. The court thus did not err.

B. The Court Did Not Err by Imposing Time Limitations for the Trial.

¶18 The superior court enjoys broad discretion to reasonably limit the time of proceedings, but in exercising its discretion, the court must still afford the parties procedural due process. *Volk v. Brame*, 235 Ariz. 462, 468, ¶¶ 19–20 (App. 2014). The court must allow the parties a meaningful opportunity to be heard and confront adverse evidence to provide due process. *Id.* at 468, ¶ 20. But we do not substitute our judgment for that of the trial court in the day-to-day management of cases, *Findlay v. Lewis*, 172 Ariz. 343, 346 (1992), and a reversal is required only when a party shows they incurred some harm because of the court's time limitation, *Gamboa v. Metzler*, 223 Ariz. 399, 402, ¶ 17 (App. 2010).

¶19 Mother was given notice that the court had allotted an hour for the trial and the procedures by which she could request more time. In its minute entry setting a date for the trial, the court explained:

> Each party will be allowed 1/2 of the available time to present all direct, cross, redirect examination and any argument. The parties are expected to complete the hearing in the allotted time, and the time will not be extended absent a motion granted by the Court and filed at least 30 days prior to the hearing setting forth good cause to extend the time and specifically including a list of each and every witness who will testify and an estimate of time and subject matter of the expected testimony for each witness.

¶20 Mother did not request more time for the trial. Mother represented herself at trial and may have been unaware that she could run out of time to present her case in chief or cross-examine Father if she spent a significant portion of her allotted time cross-examining the advisor. But in Arizona, we hold self-represented parties to the same standards as those represented by counsel and do not give special leniency to parties

unfamiliar with the court procedures, statutes, rules, and legal principles relevant to their cases. *Higgins v. Higgins*, 194 Ariz. 266, 270, ¶ 12 (App. 1999). Thus, in her case, Mother had to manage the time allotted and balance "cross-examination's strategic value against the time necessary to present testimony and other evidence." *Backstrand*, 250 Ariz. at 347, ¶ 32.

¶21 Mother made no objections before or during the trial that she was dissatisfied with the court's schedule or its management of the parties' testimony or witness examination. Mother spent much of her time cross-examining the court-appointed advisor but also provided direct testimony, both in response to specific questions from the court and after being asked if "there [was] anything else [she] wanted to tell [the court] in support of [her] position." Although Mother argues on appeal that she would have asked additional questions of Father if given the opportunity, nothing in the record other than her case management prevented her from presenting additional direct testimony or cross-examining Father. We find no error.

CONCLUSION

¶22 We affirm.

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