DIVISION ONE
FILED: 01-26-2010
PHILIP G. URRY, CLERK
BY: DN

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:	)	No. 1 CA-CV 08-0609
	)	
BARBARA WILLIAMS-HALL,	)	DEPARTMENT C
	)	
Petitioner/Appellee,	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
v.	)	Rule 28, Arizona Rules
	)	of Civil Appellate
MOSES CLINTON HALL,	)	Procedure)
	)	
Respondent/Appellant.	)	
	)	
_____	)	

Appeal from the Superior Court in Maricopa County

Cause No. FC 2007-092337

The Honorable Sherry K. Stephens, Judge

AFFIRMED

Moses Clinton Hall, Florence
Respondent/Appellant *in propria persona*

S W A N N, Judge

¶1 Moses Clinton Hall ("Father") appeals the judgment granting the dissolution of marriage with Barbara Williams-Hall ("Mother"). For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY[1]

¶2 Mother and Father married in January 2000. During the course of their marriage, they had two children in common.

¶3 On June 19, 2007, Mother filed a petition for dissolution of marriage. She requested that Father pay reasonable child support and that she be awarded sole custody of the children with no visitation rights extended to Father.

¶4 On August 8, 2007, Father filed an answer to the petition. Despite the fact that he is currently incarcerated and his expected date of release is not until 2023,[2] Father requested that the court (1) grant him visitation rights, (2) not allow Mother to move out of state, (3) order him to pay Mother child support, rather than spousal maintenance, and (4) award him joint custody of the children.

¶5 On December 17, 2007, the court set a trial date of February 20, 2008 and ordered that discovery be completed on or before January 21, 2008. The trial court ultimately reset trial for April 7, 2008. The record does not indicate that additional discovery orders were entered. On March 25, 2008, Mother filed a pretrial statement. In Section VI of the statement, she

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[1] While this decision was under advisement, Father filed a Motion for Status and Memorandum Decision in which he also requests an oral argument. We deny Father's motion.

[2] Pursuant to Ariz. R. Evid. 201, we take judicial notice of Father's May 17, 2007 convictions of one count of Sexual Abuse, two counts of Molestation of a Child, and one count of Aggravated Assault in CR2006-172375-001.

provided a list of exhibits that she planned to introduce at trial: (1) affidavit of financial information; (2) child support worksheet; (3) case details for Milwaukee County case numbers 1998CM012944, 2000CM011042, 2001FA006777, 2001FM010546, 2002CF007228; (4) minute entry for CR2006-172375-001; (5) Arizona Department of Corrections information for Father; (6) Maricopa County Superior Court sentencing/disposition sheet for Father; (7) presentence report re: CR2006-172375-001; (8) public record re: Chrysler Financial Co., LLC v. Hall; and (9) public record re: Stones Jewelry Co. v. Hall.[3]

¶6 On March 28, 2008, Father filed a motion for sanctions and a request for default judgment for Mother's purported failure to timely disclose. Father did not identify what Mother failed to disclose.

¶7 On April 7, 2008, the trial began; Mother appeared in person and Father appeared telephonically. After Mother began testifying, for reasons not fully explained in the minute entry, the court halted the proceedings and reset the trial date for April 25, 2008 to allow Father to be transported to attend the trial.[4]

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[3] Father failed to provide this court with any exhibits introduced at trial.

[4] In his Opening Brief, Father recites, either from his memory or from his own copy of the transcripts, what transpired during the April 7 trial. His recitation indicates that the trial court denied Father's motion for sanctions, but we were not provided

¶8 On April 15, 2008, Father filed a motion to continue the April 25 trial date. Two days later, Father filed a motion for reconsideration of the trial court's denial of his motion for sanctions. The trial court reset trial for July 15, 2008.

¶9 After the July 15, 2008 trial, the court considered the factors set forth in A.R.S. § 25-403 regarding the custody of the children and made the following findings: (1) Father is currently in prison and not expected to be released until 2023, so there is no feasible means by which the children can have an ongoing physical interaction with Father; (2) the children are adjusted to home, school, and community with Mother; (3) it is in the best interest of the children to award sole custody to Mother. The court expressly stated that it "has considered which parent [is] more likely to allow frequent and meaningful contact and finds that this factor is not relevant to the facts of this case." Based on its findings, the court awarded Mother sole custody of the children. The court also ordered that neither party pay child support to the other party.

¶10 With respect to parenting time, the court stated that it would appoint a Court Appointed Advisor to determine if contact between the children and Father either telephonically or through other means would be appropriate. The court set a

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transcripts for any proceedings conducted below and there is no minute entry reflecting the trial court's apparent denial of Father's motion.

Review Hearing on the issue of whether the children should have contact with Father in October 2008 – a date after the notice of appeal was filed.

¶11 After considering the factors set forth in A.R.S. § 25-319(A), the court declined to award either party spousal maintenance. It found that spousal maintenance was inappropriate because (1) Father was incarcerated and (2) Father failed to establish that he was incapable of being self-sufficient through appropriate employment to provide for his reasonable needs.

¶12 Father timely appeals. We have jurisdiction pursuant to A.R.S. § 12-2101(B) (2003).[5]

DISCUSSION

¶13 Father appears to argue that the trial court abused its discretion when it did not preclude evidence as a sanction for Mother's purported untimely disclosure of materials. Accordingly, Father appears to argue that this resulted in prejudice because evidence of his prior criminal convictions was introduced at trial, which caused the trial judge to be biased against him. We disagree.

¶14 We review a trial court's ruling denying a request for sanctions for a discovery violation for an abuse of discretion.

[5] We note that Wife did not file an answering brief. But we are not required to accept that as a confession of error and we decline to do so on this record. *See Gonzales v. Gonzales*, 134 Ariz. 437, 437, 657 P.2d 425, 425 (App. 1982).

See Jimenez v. Wal-Mart Stores, Inc., 206 Ariz. 424, 426, ¶ 5, 79 P.3d 673, 675 (App. 2003). We presume a trial judge is free from prejudice and bias. *State v. Hurley*, 197 Ariz. 400, 404, ¶ 24, 4 P.3d 455, 459 (App. 2000). A party may rebut this presumption by demonstrating prejudice or bias by a preponderance of the evidence. *Id.* at 404-05, ¶ 24, 4 P.3d at 459-60.

¶15 A.R.S. § 25-403(A) (Supp. 2009),[6] the statute that governs custody determinations, requires that "[t]he court *shall* consider all relevant factors." (Emphasis added.) This requires that the trial court hear all relevant evidence when the custody of a child is involved. *Hays v. Gamma*, 205 Ariz. 99, 103, ¶ 21, 67 P.3d 695, 699 (2003). The *Hays* court held that a trial court abused its discretion as a matter of law when it imposed evidentiary sanctions that impeded the court's ability to determine the best interest of the child. *Id.* at 103-04, ¶¶ 22-23, 67 P.3d at 699-700.

¶16 The record on appeal is incomplete. We therefore cannot determine the basis on which the trial court denied Father's request for sanctions, whether it found that there was a discovery violation at all, or whether the evidence that Father sought to preclude was relevant to the best interest of

[6] We cite to the current versions of statutes when no revisions material to our decision have occurred since the relevant time.

the children. *Rancho Pescado, Inc. v. Nw. Mut. Life Ins. Co.*, 140 Ariz. 174, 189, 680 P.2d 1235, 1250 (App. 1984) (noting that it is the appellant's responsibility to provide the necessary transcripts to this court). Therefore, we must presume that the record would support the trial court's ruling. *State ex rel. Dep't of Econ. Sec. v. Burton*, 205 Ariz. 27, 30, ¶ 16, 66 P.3d 70, 73 (App. 2003).

¶17 Father also fails to establish that the court's conduct or words evinced bias. The genesis of his argument appears to be that the trial court's exposure to evidence that was improperly admitted (e.g., his prior convictions) resulted in biased findings and conclusions.[7] But in our review of the judgment from which Father appeals, we do not find any evidence of such bias.

¶18 To determine custody and the best interests of the children, the court properly considered the factors enumerated in A.R.S. § 25-403(A) (Supp. 2009), and made specific findings with respect to the relevant factors as required by § 25-403(B). Similarly, the court properly considered all of the enumerated factors in A.R.S. § 25-319(A) (2007) to determine whether spousal maintenance was appropriate. And although the court awarded Mother sole legal custody, the judgment left open the

[7] We note that it is within the trial court's discretion to take judicial notice of adjudicative facts, such as prior felony convictions. Ariz. R. Evid. 201.

question of whether contact between Father and the children was appropriate.

¶19 The language and tone of the judgment appear measured and well-reasoned. This, coupled with the fact that the court set a Review Hearing to fully address the visitation matter at a later date, contradicts Father's contention that the rulings were made "out of [p]assion and [p]rejudice." Because Father has not presented *any* evidence of bias, much less proof by a preponderance of the evidence, we conclude that Father has failed to rebut the presumption that the court was free from bias and prejudice.

CONCLUSION

¶20 For the foregoing reasons, we affirm.

/S/

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PETER B. SWANN, Presiding Judge

CONCURRING:

/S/

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LAWRENCE F. WINTHROP, Judge

/S/

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ANN A. SCOTT TIMMER, Judge