

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: 02-23-2010
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BY: DN

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:) 1 CA-CV 09-0038
)
MARK A. MEADOWS,) DEPARTMENT D
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules
) of Civil Appellate
TEJA SELLS,) Procedure)
)
Respondent/Appellant.)
)
)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FC 2008-002685

The Honorable Randall H. Warner, Judge

AFFIRMED

Mark A. Meadows Phoenix
Petitioner/Appellee

Teja Sells Phoenix
Respondent/Appellant

O R O Z C O, Judge

¶1 Appellant, Teja Sells (Mother), appeals from the family court's judgment awarding joint legal custody to Mother and

Appellee, Mark Meadows (Father). For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 On May 29, 2008, Father filed a petition for paternity, child custody, parenting time and child support regarding two children. In Mother's response to the petition, she conceded Father was the natural father of the children. Mother requested the court award her sole custody of the children, order supervised parenting time with Father, and order Father to pay child support and past medical expenses incurred for the care and treatment of the children.

¶3 The family court held a trial on November 10, 2008, and subsequently ordered the following: (1) that both parties complete an approved parent education program and file proof of completion of the program with the family court before December 15, 2008; (2) that based on the parties' stipulation and the evidence presented, Father was the natural father of the children; (3) that the parties take all necessary steps to amend J.S.'s birth certificate to reflect his true paternity; (4) that pursuant to Arizona Revised Statutes (A.R.S.) sections 25-403 (Supp. 2009)¹ and -403.01 (2007) it was in the best interests of

¹ We cite to the current version of the applicable statutes because no revisions material to this decision have since occurred.

the children to award the parties joint legal custody, with the children living with Mother and Father being entitled to substantial parenting time; and (5) that Father pay child support to Mother in the amount of \$293.00 per month. Mother filed a timely notice of appeal. We have jurisdiction pursuant to A.R.S. §§ 12-120.21.A.1 and -2101.B (2003).

DISCUSSION

¶4 Mother states that she is appealing the family court's final judgment regarding custody and parenting time "due to the parental denial, non-communication and lack of visitation."² We review a "[family] court's decision regarding child custody for an abuse of discretion." *Owen v. Blackhawk*, 206 Ariz. 418, 420, ¶ 7, 79 P.3d 667, 669 (App. 2003). Specifically, Mother cites four reasons why she is appealing: (1) Father has not completed a parental education program as ordered; (2) Father has not cooperated in adding his name to the children's birth certificates; (3) Father has not fully utilized his entitlement to visitation and parenting time as awarded; and (4) Father has become unsatisfied about paying child support.

² Father did not file an answering brief in response to this appeal, which we may regard as a confession of error. We decline to do so, on this record. See *Gonzales v. Gonzales*, 134 Ariz. 437, 437, 657 P.2d 425, 425 (App. 1982) ("Although we may regard [the] failure to respond as a confession of reversible error, we are not required to do so.").

¶15 Mother's arguments on appeal are based on allegations arising *after* the family court's November 13, 2008 judgment. Essentially, Mother is arguing that the family court's judgment should be modified because Father has allegedly failed to comply with the family court's judgment. Because the facts on which Mother relies were not part of the record before the family court, we cannot consider her arguments on appeal. *Ness v. W. Sec. Life Ins. Co.*, 174 Ariz. 497, 500, 851 P.2d 122, 125 (App. 1992) (stating that an appellate court cannot consider evidence outside the record); *GM Dev. Corp. v. Cmty. Am. Mortgage Corp.*, 165 Ariz. 1, 4, 795 P.2d 827, 830 (App. 1990) (stating appellate court's review is limited to the record before the trial court and reviewing court cannot consider any evidence that was not part of the record before the trial court at the time it entered the decision that is the subject of the appeal). Because her contentions involve events that allegedly occurred after the family court entered the judgment, Mother must raise her arguments in the family court, by filing a petition for modification or a petition to enforce the judgment. See Ariz. R. Fam. L. P. 91.

CONCLUSION

¶16 For the above stated reasons, we affirm the family court's judgment.

/S/

PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

DIANE M. JOHNSEN, Judge

/S/

JON W. THOMPSON, Judge