DIVISION ONE
FILED: 08/12/2010
RUTH WILLINGHAM, ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:	)	No. 1 CA-CV 09-0093
	)	1 CA-CV 09-0333
PATRICK KELLEDY,	)	(Consolidated)
	)	
Petitioner/Appellee,	)	DEPARTMENT B
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
KIMBERLY TARA COCKERHAM,	)	Rule 28, Arizona Rules of
	)	Civil Appellate Procedure)
Respondent/Appellant.	)	
	)	
	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. DR1999-014483

The Honorable Carey Snyder Hyatt, Judge

VACATED IN PART; AFFIRMED IN PART

Kimberly Tara Cockerham — Phoenix
Respondent/Appellant, *In Propria Persona*

Barry L. Brody PC — Phoenix
By Barry L. Brody
And
Law Offices of Robert E. Siesco, Jr. — Phoenix
By Robert E. Siesco, Jr.
Co-Counsel for Petitioner/Appellee

S W A N N, Judge

¶1 In this consolidated appeal, Kimberly Tara Cockerham ("Mother") appeals from two orders in which the superior court modified Mother's parenting time after considering several reports and recommendations from a Parenting Coordinator. We vacate two of the court's orders: one that required Mother to comply with an injunction against harassment to which she was not a party, and one that required Mother not to publish any audio, video, or written documentation about the legal proceedings. In all other respects, we affirm.

Facts and Procedural Background

¶2 This is a high-conflict family law case. Mother and Patrick Kelledy ("Father") married in May 1993. They divorced in August 2000 and were awarded joint custody of their two minor children. In April 2004, Father was awarded sole legal custody of the children and Mother was granted limited parenting time.

¶3 Mother's parenting time was modified in August 2008 to include overnight visits on alternate Mondays and weekends, plus two non-consecutive weeks of vacation time each year. At the same time it modified parenting time, the court appointed a new Parenting Coordinator and granted her the broadest authority permitted by ARFLP 74. In October 2008, the court held an evidentiary hearing to evaluate the success of the parenting time modification. After hearing testimony from the parties,

the court entered various orders concerning Mother's participation in counseling, difficulty in co-parenting, participation in the children's education, and safe transportation. The court set a January 2009 review hearing for the purpose of determining whether Mother's weekday parenting time would continue.

¶4 At the January 2009 hearing, the court entered additional orders, including an order that Mother inform Father of her address, and set a February 2009 review hearing for the purpose of addressing the weekday parenting time issue. At the February 2009 hearing, the court heard testimony from Mother and Father, and considered the reports of the Parenting Coordinator. The reports revealed significant problems in connection with Mother's parenting time. The Parenting Coordinator reported that Mother had interfered with an exchange of the children in dramatic fashion, made the younger child ride in a car on the older child's lap while sharing a seatbelt, interfered with the children's homework to the point that they felt compelled to hide their homework from her, failed to provide appropriate school clothing, and failed to comply with a court order concerning disclosure of her residential arrangements. Finally, Father obtained an injunction against harassment against Mother's live-in boyfriend after receiving a threat on his life.

¶5 After hearing testimony from both parties, the court adopted the recommendations set forth in the two Parenting Coordinator reports that had been submitted before the hearing; suspended Mother's weekday parenting, subject to possible reinstatement during the summer months after the next hearing; and entered several other orders that required Mother's ongoing compliance.

¶6 Immediately after disposing of the weekday parenting time issue, the court held a hearing on an order of protection that Mother had recently obtained against Father. The court heard testimony from Mother, Father, and a third-party witness. Finding that the evidence failed to support the allegations set forth in Mother's petition, the court dismissed the order of protection. Mother immediately filed a notice of appeal from this February 2009 signed minute entry.

¶7 Before the time set for the next review hearing, Father filed an "emergency petition" in which he requested that the court terminate Mother's parenting time and preclude her from participating in or attending the children's school-related activities. The court declined to grant Father's petition on an emergency *ex parte* basis, and instead set an evidentiary hearing for April 2009.

¶8 Mother did not attend the April 2009 hearing. According to the court's minute entry, an unidentified telephone

caller had informed court staff that Mother was unable to attend because she was ill and was going to see a doctor. Because the caller had not identified himself or herself, and Mother had not personally contacted the court, the court conducted the hearing in her absence.

¶9 Based on Father's testimony and the Parenting Coordinator's reports, the court made written findings and ordered Mother's parenting time modified to supervised, non-overnight parenting time pursuant to a schedule left to Father's discretion. The court further ordered Mother not to be present at or near the children's school for any reason without Father's prior written approval. The court also required Mother, before filing a petition to modify the new parenting time orders, to provide information concerning her residence, her progress in supervised parenting time, and the dismissal of "falsified" injunctions directed against Father. Finally, the court adopted the most recent report of the Parenting Coordinator, ordered that Mother and Father would be equally responsible for all future Parenting Coordinator fees, and required Mother to contribute $750 to Father's attorney's fees and costs. The trial judge also permanently assigned the case to herself.

¶10 Mother timely appealed from the court's signed minute entry. We consolidated that appeal with Mother's appeal from

the February 2009 minute entry, and allowed Mother to file a second opening brief.

¶11 We have jurisdiction over this appeal pursuant to A.R.S. § 12-120.21(A)(1) and A.R.S. § 12-2101(B) and (C) (2003).

Discussion

¶12 As an initial matter, we note that Mother's opening brief fails to comply with many of the requirements of ARCAP 13(a). We nonetheless decline Father's request to dismiss the appeal summarily based on Mother's failure to file a fully adequate brief. Unless a party's brief is "totally deficient," we "prefer to decide each case upon its merits rather than to dismiss summarily on procedural grounds." *Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984) (citation omitted). Mother's *pro per* brief is not "totally deficient."

I. The Parenting Coordinator's Reports

¶13 Mother contends that the court abused its discretion by considering the facts set forth in the Parenting Coordinator's reports and by adopting the recommendations. We disagree, and conclude that the court may afford evidentiary value to statements in a Parenting Coordinator's report.

¶14 Properly employed, a Parenting Coordinator assists the parties by undertaking fact-finding and minor decision-making responsibilities when ongoing conflicts render formal judicial

involvement an impractical or cumbersome means of meeting the parties' immediate needs. *See* ARFLP 74(A); ARFLP 74 committee cmt. (explaining that "[t]he appointment of a Parenting Coordinator is appropriate when parents have ongoing conflicts related to enforcement of custody and parenting time orders, which without a Parenting Coordinator would result in protracted litigation"). *See also* ARFLP Form 11 (explaining the related yet somewhat different roles of a Parenting Coordinator and a judge). The Parenting Coordinator is expressly charged with gathering and reporting factual information to support his or her recommendations. *See* ARFLP 74(F), (H). The Parenting Coordinator therefore serves a quasi-judicial role akin to that of a special master, and it would be anomalous to hold that the court cannot consider the information presented in support of a recommendation by such an officer of the court.

¶15 Though the rule plainly contemplates that the court will consider the information submitted by the Parenting Coordinator, it does not contemplate blind deference. No decision on a Parenting Coordinator's recommendation may become permanent over a party's objection without a prompt evidentiary hearing. *See* ARFLP 74(I). Here, Mother was provided copies of all relevant Parenting Coordinator reports, and she failed to object or request a hearing. The court nonetheless chose *sua sponte* to hold evidentiary hearings. Mother had the opportunity

to attend those hearings and present evidence to refute any facts in the report that she perceived as inaccurate.[1] Because Mother has not complied with ARCAP 11(b) by ordering the transcripts of the hearings and including them in the record on appeal, we assume that the evidence presented at the hearings was not inconsistent with the decision of the court.[2] *See Johnson v. Elson*, 192 Ariz. 486, 489, ¶ 11, 967 P.2d 1022, 1025 (App. 1998).

¶16 We further conclude that the Parenting Coordinator's recommendations were consistent with the grant of authority contained in ARFLP 74(E) because they were reasonably designed to implement, clarify, or modify parenting time.[3] The Parenting

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[1] Mother contends generally on appeal that the Parenting Coordinator's reports referenced falsehoods and information learned from Father that Father had no personal knowledge of.

[2] On April 13, 2010, Mother filed a motion in this court asking us to suspend our conference of the case until transcripts could be prepared. Mother's request for transcripts was not transmitted to the superior court until April 2010. ARCAP 11(b) requires an appellant to order transcripts no later than ten days after filing her notices of appeal – here, March and April 2009. Because Mother's request for transcripts was untimely, we deny her motion.

[3] Regarding implementation, in the reports considered at the February 2009 hearing, the Parenting Coordinator recommended that all future parenting time exchanges take place at a neutral location, that the judge assigned to the parties' family court case personally hold the hearing on Mother's order of protection, and that Mother be prohibited from making public any further audiotapes, videotapes, or written documentation about the legal proceedings. We conclude below that the recommended restriction on Mother's ability to publish information about the

Coordinator also made several temporary binding decisions, labeled "recommendations,"[4] which she had authority to make pursuant to ARFLP 74(G).[5]

¶17 The court acted within its discretion by adopting the Parenting Coordinator's recommendations after conducting evidentiary hearings.

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legal proceedings was unconstitutional. It was, however, within the Parenting Coordinator's authority to make a recommendation regarding behavior that she perceived as contrary to the best interests of the children.

Regarding clarification, the Parenting Coordinator recommended that the court affirm the holiday parenting time schedule because Mother was confused about what it provided. Regarding modification, she recommended that Mother's weekday parenting time be suspended for the remainder of the school year and reinstated for the summer months.

[4] In the reports considered at the February 2009 hearing, the Parenting Coordinator suspended Mother's next scheduled weekday visit and required that the next visit, when it occurred, involve a neutral exchange location. In the report considered at the April 2009 hearing, the Parenting Coordinator memorialized an earlier decision to suspend Mother's next scheduled weekend visit.

[5] ARFLP 74(G) provides that "[w]hen a short-term, emerging, and time sensitive situation or dispute within the scope of authority of the Parenting Coordinator arises that requires an immediate decision for the welfare of the children and parties, a Parenting Coordinator may make a binding temporary decision."

II. The February 2009 Minute Entry

¶18 In the February 2009 minute entry, the court entered several orders that required Mother to demonstrate certain behavior.

A. The Trial Court Improperly Ordered That Mother Follow an Injunction Against Harassment to Which She Was Not a Party.

¶19 The Parenting Coordinator reported learning from Father that in a separate proceeding, Father had obtained an injunction against harassment against Lenny Tasa-Bennett, an individual whom Father described as Mother's live-in boyfriend. The injunction restricted Mr. Tasa-Bennett from having contact with Father, the children, and other members of Father's family. The record contains no indication that the injunction named Mother as a defendant. But at the February hearing, the court ordered:

> IT IS FURTHER ORDERED directing *Mother to follow the Injunction* currently in place which restricts Mr. Tasa-Bennett from being around the minor children. If it is determined that this Order is violated, Mother's overnight parenting time will be suspended.

(Emphasis added.)

¶20 If the court reasonably found that it was in the children's best interests not to have contact with Mr. Tasa-Bennett, the court could have ordered Mother to avoid affirmative contact with Mr. Tasa-Bennett during her parenting

time. The court could likewise order Mother to take all appropriate measures to keep the children from having contact with him. The court could not, however, simply bind Mother to an injunction to which she was not a party or make her responsible for the compliance of another. We vacate the portion of the order that could be construed as binding Mother to the injunction, because the order does not provide fair notice of the conduct expected from Mother.

B. The Court Improperly Ordered That Mother Not Publish Further Audiotapes, Videotapes, or Written Documentation About the Legal Proceedings.

¶21 The Parenting Coordinator reported that Mother had made an audio recording of a voice mail message from Father, and had posted the recording on YouTube under the title "Dr. Patrick Kelledy yelling at his ex-wife AGAIN." The Parenting Coordinator immediately instructed Mother to remove the posting, and Mother complied with the instruction several days later. The Parenting Coordinator made the following recommendation to the court:

> That Mother be ordered not to make any further audio or videotapes or any written documentation about these legal proceedings public in any fashion and that any further violations will be punished by monetary sanctions.

The court made the recommendation its own order by approving and adopting it. *See* ARFLP 74(J).

¶22 Because the order preemptively forbade speech concerning a public proceeding, it constituted a classic prior restraint on speech. *See, e.g., Alexander v. United States*, 509 U.S. 544, 550 (1993). "[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights," *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976), and there is a heavy presumption against the constitutional validity of a prior restraint. *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (per curiam).

¶23 If the court reasonably found that Mother's publication of information related to the legal proceedings was harmful to the children, the court could have premised an order reducing Mother's parenting time or imposing other appropriate sanctions on such a finding. But by ordering that *any* speech concerning the legal proceedings would result in monetary sanctions, the court's order amounted to an unconstitutional prior restraint. Accordingly, we vacate the order.

C. There Is No Record Support for Mother's Challenge to the Proceedings Concerning Her Order of Protection.

¶24 Mother contends that the court improperly refused to hear a threatening recording during the hearing on the order of protection she had obtained against Father. The record contains no factual support for Mother's contention - the minute entry

does not indicate that the court made any evidentiary rulings regarding the exclusion of evidence, and we have not been provided the transcript of the hearing. Accordingly, we have no basis upon which to consider Mother's assignment of error.

III. The April 2009 Minute Entry

A. Mother's Absence at the Evidentiary Hearing

¶25 Mother had notice of the April 2009 hearing, but failed to attend. She failed to contact the court with an explanation for her nonattendance, and although a caller described a medical emergency to court staff, the identity of the caller was unknown. In these circumstances, we discern no abuse of discretion in the court's decision to proceed with the properly noticed hearing in Mother's absence. We note also that Mother did not attempt to seek relief in the superior court after the hearing by producing evidence of a medical emergency.

B. Parenting Time Modification

¶26 In the February 2009 minute entry, the court suspended Mother's weekday parenting time without comment.[6] In the April 2009 minute entry, the court stated:

[6] Nothing in the record supports Mother's argument that the court suspended her weekday parenting time as retribution for the fact that she had filed for an order of protection against Father. Similarly, nothing in the record supports Mother's argument that no witnesses or evidence were allowed at the February 2009 hearing. The record, which does not include a transcript of the hearing, indicates that Mother and Father both testified. The minute entry contains no indication that the

[T]he Court finds that Mother has repeatedly failed to abide by Court orders over the course of recent proceedings in this case and has failed to consider the best interests of her children as follows:

1) [T]o date, Mother has failed to provide the Court and/or the PC [Parenting Coordinator] with any proof of her current residence and whether she has sufficient and safe accommodations for her children during her parenting time with them;

2) Mother has failed to keep the children safe from her boyfriend/roommate, Mr. Lenny Tasa-Bennett, against whom Father was forced to obtain an Order of Protection to protect the children and himself. The children witnessed Mr. Tasa-Bennett in possession of firearms in the trunk of his and/or Mother's vehicle;

3) Mother has continued to fail to secure each of her children in separate, secure seat belts in the vehicles in which she is driving or riding;

4) Mother contributed to and assisted in setting in motion the public humiliation and police detention of Father at the boys' school play on February 20, 2009, providing a signal to her boyfriend, Mr. Tasa-Bennett, who brought the police to the school under false pretenses. Father was removed from the auditorium in full view of both of the minor children and was detained for many hours during the performance. When the police discovered the deception by Mr. Tasa-Bennett, he fled the scene;

5) Most disturbing is the fact that Mother left the school grounds with both children to begin her weekend parenting time after the play ended and while the police still had Father detained, and Mother failed to address the children's concerns about their Father, except to imply that he was going to jail. After more than 24 hours, the children were finally able to reach their Father by telephone to learn that he was safe and not in jail;

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court made any evidentiary rulings regarding the exclusion of evidence or other witnesses.

> 6) Mother affirmatively misled school officials on the day of the February 20th police incident at the school by providing the school with a copy of the Order of Protection that this Court had quashed ten (10) days earlier. Moreover, during the incident with the police at the school later that same evening, Mother failed to inform the officers that the Order of Protection they discovered in their records' [sic] search had been quashed;
>
> 7) Mother has failed to provide the Court and/or the PC a copy of a progress report from her Counselor, Cindy Baysdorfer, of the Family Services Agency, specifying the kinds of instruction and education being provided to assist Mother in the area of Co-Parenting.
>
> Based upon all of the foregoing,
>
> IT IS ORDERED modifying Mother's parenting time from alternate weekends to supervised parenting time only by Parenting Skills or similar agency and/or by a supervisor approved by Father, pursuant to a schedule left to Father's discretion with no overnight access until further Order of the Court or recommendation by the PC.

¶27 The superior court is in the best position to determine the parenting measures that are in a child's best interests, and therefore has broad discretion to determine parenting time. *Armer v. Armer*, 105 Ariz. 284, 289, 463 P.2d 818, 823 (1970). We will not disturb the superior court's determination of parenting time unless it clearly appears that the court has mistaken or ignored the evidence. *Id.*

¶28 A.R.S. §§ 25-411(D) (Supp. 2009)[7] and 25-410(B) (2007) govern the court's authority to modify parenting time and impose supervision requirements. A.R.S. § 25-411(D) (Supp. 2009) provides:

> The court may modify an order granting or denying parenting time rights whenever modification would serve the best interest of the child, but the court shall not restrict a parent's parenting time rights unless it finds that the parenting time would endanger seriously the child's physical, mental, moral or emotional health.

A.R.S. § 25-410(B) provides:

> [I]f the court finds that in the absence of the order the child's physical health would be endangered or the child's emotional development would be significantly impaired, and if the court finds that the best interests of the child would be served, the court shall order a local social service agency to exercise continuing supervision over the case to assure that the . . . parenting time terms . . . are carried out.

¶29 Contrary to Mother's argument on appeal, the court need not make written findings regarding the standards set forth in A.R.S. §§ 25-411(D) and 25-410(B) (2007). *Hart v. Hart*, 220 Ariz. 183, 187, ¶ 16, 204 P.3d 441, 445 (App. 2009). In the absence of written findings regarding the specific statutory standards, we will presume that the trial court knew the law and applied it correctly. *Id.* at 188, ¶ 18, 204 P.3d at 446. That

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

presumption may be overcome if the court uses language that indicates it applied an incorrect standard. *See id.*

¶30 Here, the court's written findings supporting the modification were labeled as examples of how Mother had failed to comply with court orders and consider the children's best interests. The findings themselves, however, illustrate that the court considered *both* the best interests and the endangerment portion of the A.R.S. § 25-411(D) standard, and also considered the significant impairment standard of A.R.S. § 25-410(B).

¶31 Mother contends that the findings were not supported by the evidence. But because Mother has not supplied us with transcripts of the hearings, we assume that the evidence supported the findings. *See Johnson*, 192 Ariz. at 489, ¶ 11, 967 P.2d at 1025. Additionally, we reject Mother's arguments that Father's testimony could not be considered as evidence because it was false and included inadmissible hearsay. Father's credibility was for the trial court to determine, *Gutierrez v. Gutierrez*, 193 Ariz. 343, 347, ¶ 13, 972 P.2d 676, 680 (App. 1998), and strict compliance with the Arizona Rules of Evidence had not been required. *See* ARFLP 2 (absent a party's timely pre-hearing request for strict compliance with the rules of evidence, all relevant evidence generally is admissible).

¶32 We note that if the court's second enumerated finding had relied on Mother's failure to comply with the earlier, invalid order regarding the injunction against Mr. Tasa-Bennett, that finding would be improper. But that was not the case, and the court's other findings provided sufficient independent evidence to support the conclusion that Mother seriously endangered the children's health and harmed their best interests by allowing Mr. Tasa-Bennett to be around them.

¶33 Based on the trial court's findings, we conclude that the order was a measured response to conduct palpably injurious to the interests of the children, and in no way constituted an abuse of discretion.

C. Restrictions on Mother's Ability to Seek Modification

¶34 After entering the order modifying Mother's parenting time, the court ordered:

> IT IS FURTHER ORDERED that prior to filing any Petition to Modify these Parenting Time Orders, except in an emergency pursuant to the requirements of A.R.S. § 25-411(A), Mother must:
>
> 1) produce to the Parenting Coordinator a signed, original copy of her current residential lease, including information as to all authorized cohabitants of said premises;
>
> 2) produce to the Parenting Coordinator a progress report from her counselor, Cindy Baysdorfer, regarding the education/tools being provided to Mother on the issue of Co-Parenting;
>
> 3) produce proof of the resolution/dismissal of any and all falsified Injunctions or Orders of Protection

> involving Father, the children, and Mother's boyfriend/roommate and/or any members of her household.

¶35 Mother contends that she had already complied with the court's earlier orders to provide her lease and the counselor's report. She further contends that she never misrepresented the existence of injunctions or orders of protection.

¶36 Nothing in the record demonstrates that the court's findings of fact were clearly erroneous. The court specifically found that Mother had failed to provide her lease and the relevant counselor's report. The court also found that Mother had affirmatively misled police and school officials regarding the status of her order of protection against Father, and had played a role in Mr. Tasa-Bennett's use of false pretenses to instigate a police confrontation with Father at the children's school. The Parenting Coordinator's report explained that Mr. Tasa-Bennett had told police that Father was in violation of an order of protection prohibiting Father from having contact with Mr. Tasa-Bennett's son, but police later discovered that the paperwork Mr. Tasa-Bennett showed them was not a valid order of protection.

¶37 The court's findings provided an adequate basis for the parenting time modification order. Therefore, we do not find that the court abused its discretion by requiring that

Mother remedy the deficiencies identified in the findings before seeking relief.

D. Reallocation of Parenting Coordinator Fees

¶38 When the Parenting Coordinator was appointed in August 2008, Father was ordered to pay all of the Parenting Coordinator fees. In the April 2009 minute entry, the court ordered that Mother and Father would share equal responsibility for all future Parenting Coordinator fees. Mother contends that the fee reallocation was an abuse of discretion because a significant disparity exists between her financial circumstances and Father's financial circumstances.

¶39 A.R.S. § 25-406(B) provides that when allocating the cost of a Parenting Coordinator,[8] the court must consider the parties' financial circumstances. Section 25-406(B) does not, however, make the parties' finances the exclusive consideration. And ARFLP 74(D) does not impose any limits on the court's discretion. The court had discretion to consider not only the parties' relative financial circumstances, but also each parent's responsibility for the conduct giving rise to the need for the expense of a Parenting Coordinator. The court held multiple hearings and became well versed in the totality of the

[8] The statute refers to the allocation of the cost of a "family court advisor." In ARFLP, the term "Parenting Coordinator" has replaced "family court advisor." ARFLP 74 committee cmt.

circumstances of the parties' dispute. On this record, we do not find that the court abused its discretion by reallocating future Parenting Coordinator fees equally between the parties.

E. Attorney's Fees

¶40 The court ordered Mother to pay $750 as a contribution toward Father's attorney's fees and costs. Mother contends that the court abused its discretion. She again contends that there is a significant disparity between her financial resources and Father's financial resources.

¶41 The court has discretion to award reasonable attorney's fees based not only on the parties' financial circumstances, but also on the reasonableness of the positions that the parties have taken throughout the proceedings. A.R.S. § 25-324(A) (Supp. 2009). In view of the unreasonableness of much of the conduct on this record, we find no abuse of discretion in the court's award.

F. Announcement Regarding the Assignment of the Case

¶42 The court ordered that the case be "permanently assigned to Judge Carey Hyatt for all further proceedings, in the event of a change in case type assignments." Mother contends that the court abused its discretion by entering this order.

¶43 Judge Hyatt was assigned to the parties' case for all proceedings relevant to this appeal. Should Judge Hyatt

determine it advisable to retain assignment of the case after rotation to a different department of superior court, the assignment would have to be approved by the presiding judge of the family court department. *See* Ariz. Local R. Prac. Super. Ct. (Maricopa) 6.1(b).

¶44 Contrary to Mother's contention on appeal, judicial rotation is not a right belonging to a party. It is the administrative prerogative of the presiding judge of the superior court in each county to assign judges as needed to manage the caseload of the court as a whole. Nothing on this record suggests that continued assignment of this case to a single judge is legally improper.

IV. Judicial Bias

¶45 Mother contends that Judge Hyatt has acted unprofessionally, and is biased against Mother because Mother is acquainted with Mr. Tasa-Bennett. According to Mother's appellate briefs, Mr. Tasa-Bennett was a litigant in a different case before Judge Hyatt.

¶46 There is a strong presumption that trial court judges are free of bias and prejudice. *State v. Cropper*, 205 Ariz. 181, 185, ¶ 22, 68 P.3d 407, 411 (2003). To overcome that presumption, a litigant must show by a preponderance of the evidence that a judge has feelings of ill will or favoritism toward one of the litigants. *Id.* Mother has failed to meet

that burden of proof. Nor does our review of the record reveal any evidence that suggests judicial bias.

Attorney's Fees and Costs on Appeal

¶47 Father requests attorney's fees and costs on appeal pursuant to A.R.S. § 25-324 and ARCAP 21. Mother requests costs on appeal pursuant to A.R.S. § 25-324 and ARCAP 21. In our discretion, we decline to award fees and costs on appeal.

Conclusion

¶48 For the reasons set forth above, we vacate in part but otherwise affirm.

/s/
_____
PETER B. SWANN, Judge

CONCURRING:

/s/
_____
PATRICIA K. NORRIS, Presiding Judge

/s/
_____
DANIEL A. BARKER, Judge