

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: 10-19-2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE THE MARRIAGE OF:) 1 CA-CV 09-0418
)
TIFFANY BARRETT,) DEPARTMENT A
)
Petitioner/Appellant,) **MEMORANDUM DECISION**
) (Rule 28, Arizona Rules
v.) of Civil Appellate Procedure)
)
JAMES WALLACE,)
)
Respondent/Appellee.)

Appeal from the Superior Court in Maricopa County

Cause No. FC2003-092763

The Honorable David B. Gass, Judge

AFFIRMED

Tiffany Ivy
Appellant, *In Propria Persona*

Gilbert

B A R K E R, Judge

¶1 Tiffany Barrett ("Mother") appeals from the family court's order awarding her and James Wallace ("Father") joint custody of their two children. We affirm.

Background

¶2 Mother and Father married on April 25, 1997, and they divorced on October 3, 2003. When their marriage was dissolved,

Mother and Father had two minor children in common: N., born July 25, 1994; and L., born August 6, 1997 ("Children"). In the decree of dissolution, the court awarded Mother sole custody of the Children subject to supervised visitation by Father.

¶3 On April 29, 2008, Father filed a petition to modify custody. He sought sole legal custody of the Children. On May 4, 2009, the family court held a one-day evidentiary hearing on Father's petition. Mother, Father, and two other witnesses testified. In a signed minute entry filed May 11, 2009, the court considered the factors set forth in Arizona Revised Statutes ("A.R.S.") section 25-403(A) (2007),¹ made the findings required by A.R.S. § 25-403(B) (2007), and concluded joint legal custody was in the Children's best interests. The court also ordered Mother shall be the primary residential parent subject to a detailed parenting-time schedule for Father. Finally, the court found no substantial disparity of income between the parties and accordingly denied Father's request for attorneys'

¹ The factors include: the wishes of the parents as to custody; the wishes of the children; the interaction and interrelationship of the children with the parents; the children's adjustment to home, school and community; the health of the parties involved; which parent is more likely to allow the children frequent and meaningful contact with the other parent; whether one parent has provided primary care of the children; the extent of coercion or duress used by a parent in obtaining an agreement for custody; the parents' compliance with spousal maintenance obligations; and whether a parent has been convicted of an act of false reporting of child abuse or neglect. A.R.S. §§ 25-403(A)(1)-(10).

fees. Mother timely appealed. We have jurisdiction pursuant to A.R.S. § 12-2101(B) (2003).

Discussion

¶4 Mother raises three issues on appeal. First, she contends she was denied the opportunity to fairly present her case at the hearing because the exhibits she had previously delivered to the court were “inadvertent[ly] los[t].” Second, Mother claims the family court should have sanctioned Father’s counsel for failing to provide a pre-trial statement in accordance with procedural rules. Finally, Mother argues the court erred in finding the parties agreed to joint legal custody at a parenting conference.²

¶5 We are unable to fully address these claims of error because Mother failed to include the hearing’s transcripts in the record on appeal. *State ex rel. Dep’t of Econ. Sec. v. Burton*, 205 Ariz. 27, 30, ¶ 16, 66 P.3d 70, 73 (App. 2003) (stating that appellant has responsibility to ensure the record on appeal contains all transcripts and documents necessary to address the issues raised on appeal). For example, without the transcripts, we are unable to determine whether Mother sought to admit the exhibits she now claims were lost, or whether she otherwise objected to proceeding with the hearing absent the

² Father did not file an answering brief. Although we may treat this as a confession of error, in our discretion, we decline to do so. See *Gonzales v. Gonzales*, 134 Ariz. 437, 437, 657 P.2d 425, 425 (App. 1982).

exhibits. Similarly, we cannot ascertain whether Mother brought to the family court's attention any prejudice she may have suffered resulting from Father's alleged improper pre-trial statement. See *Trantor v. Fredrikson*, 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994) ("Because a trial court and opposing counsel should be afforded the opportunity to correct any asserted defects before error may be raised on appeal, absent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal."). Finally, regarding Mother's claim that the court erred in finding she and Father had previously agreed to joint custody, as well as the other claims, we assume the testimony at the hearing supports the trial court's decision. *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995) (stating that when a party fails to include necessary items in the record on appeal, this court must assume the missing items support the family court's findings and conclusions).

¶6 On the limited record before us, we cannot conclude that the family court abused its discretion in awarding Mother and Father joint custody. The court made findings on the relevant A.R.S. § 25-403(A) factors, and the order reflects the court considered the evidence presented. See *Armer v. Armer*, 105 Ariz. 284, 289, 463 P.2d 818, 823 (1970) (noting that 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); *Owen v. Blackhawk*, 206 Ariz. 418, 420, ¶ 7, 79 P.3d 667, 669 (App. 2003); see also *Goats v. A.J. Bayless Mkts., Inc.*, 14 Ariz. App. 166, 171, 481 P.2d 536, 541 (1971) ("The trial court is in the best position to judge the credibility of the witnesses, the weight of evidence, and also the reasonable inferences to be drawn therefrom.").

Conclusion

¶7 We affirm the orders of the family court.

/s/

DANIEL A. BARKER, Judge

CONCURRING:

/s/

DONN KESSLER, Presiding Judge

/s/

JON W. THOMPSON, Judge