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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: 05-20-2010
PHILIP G. URRY, CLERK
BY: PJL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE THE MARRIAGE OF:) No. 1 CA-CV 09-0534
)
ALLEN M. WEST,) DEPARTMENT C
)
Petitioner/Appellant) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 28, Arizona Rules
v.) of Civil Appellate
) Procedure)
ADRIANA M. BELMONT,)
)
Respondent/Appellee)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FC 2008-053221

The Honorable Alfred M. Fenzel, Judge

AFFIRMED

Miles & Stockbridge, P.C.	Baltimore
By Stephen J. Cullen	
Jennifer M. Schwartzott	
Sacks Tierney, P.A.	Scottsdale
By James W. Armstrong	
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Adriana M. Belmont, Respondent/Appellee	Scottsdale
<i>In Propria Persona</i>	

D O W N I E, Judge

¶1 Allen West ("Father") appeals certain decisions by the family court. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Father and Adriana M. Belmont ("Mother") were married in Arizona in 2007, and their daughter was born September 19, 2007. Father filed for divorce in October 2008.

¶3 Prior to trial, the parties agreed to joint custody. Father, however, expressed concern that Mother might flee to Brazil with the child, who has both Brazilian and United States passports. Father claimed that Mother, a dual citizen of the United States and Brazil, fit the profile of an individual who might abduct a child. He identified several "risk factors," including Mother's alleged statement that she returned from a prior trip to Brazil solely "because of the baby," a previous request by Mother to raise the child in Brazil, a lack of family or real property tying her to Arizona, employment at a minimum wage job, and significant pre-marital debt. Father sought an order that neither party could remove the child from the country without a written agreement or court order and that the child's passports be placed in a safety deposit box accessible only with both parents' consent. Mother's position was that travel and passport restrictions were unnecessary because she was "aware of her responsibilities and will not take the child out of the

country without notice to Father and only for short periods of time to visit relatives."

¶4 At the time of trial, Father's counsel stated that his client's primary concern was the issue of international travel. After resolving parenting time issues, the court indicated it would allow Mother to travel with the child to Brazil, stating:

I know Dad's objection to -- about Brazil. I understand that. But I'm going to allow it. They're a signatory of the Hague Convention. If Mom has to post some sort of bond or something, maybe you ought to do that. There's no indication here. Mom has, you know, agreed to visitation. She's been level with that. She is an American citizen. She has a right to travel. I don't see that I have really any business preventing her from traveling to Brazil. There's no intention for her to stay there.

Father's counsel asked to be heard further on this point, and he presented additional argument. Among other things, counsel stated:

I would ask the Court that if you are disposed to allow her to take the child to Brazil that it be for no longer than two weeks, that there be at least a roundtrip ticket that -- that would be purchased and that if she does not return with the child that immediate custody, full custody, will invest in my client.

Mother agreed to the terms suggested by Father's counsel, and the decree includes them.¹

¹ Specifically, the decree states:

¶15 Father moved for a new trial regarding the travel issue, asserting that the court failed to conduct a trial and merely took "brief statements . . . without allowing [the parties] to offer any formal evidence." The court denied Father's motion without comment. Father timely appealed. We have jurisdiction pursuant to Arizona Revised Statute ("A.R.S.") sections 12-120.21(A) (2003) and -2101 (B), (F) (2003).

DISCUSSION

¶16 Father challenges the ruling that Mother may travel to Brazil with their daughter. He also challenges the denial of his motion for new trial.

1. International Travel

¶17 At the time of trial, the family court had before it the joint pretrial statement, as well as the parties' respective written statements detailing their positions about travel to Brazil. The court also had information about Mother's debt and earnings--factors Father cited as support for his concerns about international travel.

IT IS FURTHER ORDERED that Mother may travel to Brazil with the child for no more than 14 consecutive days, so long as she provides Father with an itinerary, contact telephone numbers and a copy of the airline ticket designating Mother and the child's round trip flights. In the event Mother does not return to Arizona at the time set on the airline ticket, Father shall be awarded sole custody of the child until such time as Mother returns.

¶18 Father claims he wished to present documentary evidence at trial, including "the State Department's Report on Brazil's noncompliance with the Hague Treaty." Father, however, listed only one exhibit relevant to the international travel issue in the joint pre-trial statement: "Excerpts from Family Abduction Prevention and Response (5th Ed. 2002) Publication of the National Center for Missing and Exploited Children." See Ariz. R. Fam. L.P. ("Rule") 76(C)(1)(f) (requiring parties to file a pretrial statement that includes "a list of the exhibits that each party intends to use at trial"); Rule 76(C)(3) ("No exhibits . . . shall be offered or presented during the trial other than those listed and exchanged, except when otherwise permitted by the court in the interest of justice and for good cause shown."). Father did not attempt to introduce this exhibit at trial. Moreover, after the court stated that it would allow international travel with the suggested restrictions, Father did not seek to introduce evidence, cross-examine witnesses, or make an offer of proof.

¶19 The family court admittedly proceeded informally, but it noted at the outset of trial that "99 percent of what we're here for has been resolved *and the items that aren't resolved really are more argument than they are testimony.*" (Emphasis added.) Neither party objected to this characterization. When

issues became contested, the court placed both parties under oath.

¶10 At no point did Father seek to admit evidence that the family court rejected. Each time counsel asked to be heard, he was allowed to speak. When the court indicated its intent to allow Mother to take the child to Brazil, instead of asking to present evidence relevant to the decision, counsel suggested certain travel restrictions, which the court imposed. When the court summarized the restrictions, asking "Does that make sense[,]" neither Father nor his counsel voiced any objection. At the conclusion of trial, Father's counsel told the court, "[T]he only thing we really would argue with about the decision today is -- is the international travel *stipulation*," but he made no specific objection and did not seek to introduce any evidence. (Emphasis added.)

¶11 If Father disagreed with the family court's statement that the case could be resolved with arguments rather than evidence, it was incumbent on him to make this clear to the court. Given the record before it, the family court would have been correct in believing that its decisions about international travel, while not precisely what either party advocated, were acceptable to both parents.

¶12 Much of Father's briefing is devoted to discussing how he believes the family court should have weighed the parties'

conflicting views about international travel.² However, the family court interacted with both parents. Father's concerns were clearly articulated, and Mother readily agreed to Father's proposed travel restrictions. The court found no basis for restricting Mother's travel beyond the imposed limitations and stated its belief there would be no problems in this area.³ Based on the record developed below, we will not second guess that decision.

2. Motion for New Trial

¶13 Father also claims the court abused its discretion by denying his motion for new trial. That motion was brought

² Father also suggests that the family court was required to make findings of fact regarding the international travel issue. We disagree. First, Father did not advance this claim below. See *Van Dusen v. Registrar of Contractors*, 12 Ariz. App. 518, 520, 472 P.2d 487, 489 (1970) ("The scope of the appeal may not be enlarged beyond the matters assigned as error in the motion for new trial.") (citation omitted); see also *Englert v. Carondelet Health Network*, 199 Ariz. 21, 26, ¶ 13, 13 P.3d 763, 768-69 (App. 2000) ("[W]e generally do not consider issues, even constitutional issues, raised for the first time on appeal.") (citation omitted). Second, Father's reliance on A.R.S. § 25-403 is misplaced. That statute requires the court to make specific findings on the record in contested custody cases. A.R.S. § 25-403(B) (Supp. 2009). The parties here agreed to joint custody.

³ In opposing Father's supplement to his motion for new trial, Mother reiterated that she had "no intentions of ever living in Brazil again."

pursuant to Arizona Rule of Family Law Procedure 83(A)(1), (5), and (6),⁴ asserting that the family court:

did not consider crucial evidence about the substantial risk that [Mother] poses of abducting the parties' minor child to her home country of Brazil. The irregularity of the proceedings . . . deprived [Father] of a fair trial. The Court's decision not to admit any evidence confirming the abduction risk that [Mother] poses materially affected [Father's] rights in an adverse way. The Court's decision not to prohibit [Mother] from taking the parties' minor child outside of the United States is not justified by the evidence and the high risk of irreparable harm that will result from a failure of [Mother] to return the child to the shared custody of the father in the United States.

¶14 An appellate court will not reverse a trial court's ruling on a motion for new trial absent a clear abuse of discretion. *State v. Neal*, 143 Ariz. 93, 97, 692 P.2d 272, 276 (1984); *Styles v. Ceranski*, 185 Ariz. 448, 450, 916 P.2d 1164, 1166 (App. 1996). As we have previously determined, the record

⁴ Rule 83(A) allows a new trial to be granted for any of the following causes materially affecting that party's rights:

1. irregularity in the proceedings of the court or a party, or abuse of discretion, whereby the moving party was deprived of a fair trial;

. . . .

5. error in the admission or rejection of evidence or other errors of law occurring at the trial or during the progress of the action;

6. that the ruling, decision, findings of fact, or judgment is not justified by the evidence or is contrary to law.

