

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

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 09/21/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN RE THE MARRIAGE OF:) 1 CA-CV 09-0553
)
LISA A. BOWMAN,) DEPARTMENT D
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules
) of Civil Appellate
RASHAD S. BOWMAN,) Procedure)
)
Respondent/Appellant.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FC2009-001586

The Honorable Randall H. Warner, Judge

AFFIRMED

Rashad S. Bowman
Appellant

Florence

W I N T H R O P, Presiding Judge

¶1 Rashad S. Bowman ("Appellant") appeals the superior court's signed minute entry filed on December 28, 2009, denying his "Notice of Motion and Motion to Amend/Correct Order." For

the following reasons, we affirm the superior court's denial of Appellant's motion.

FACTS AND PROCEDURAL HISTORY

¶2 Appellant is currently an inmate at the Arizona State Prison Complex located in Florence, Arizona. He and Lisa A. Bowman ("Appellee") are the biological parents of a child who is in the Appellee's care. Both the Appellee and the child live in Minnesota.

¶3 On January 20, 2009, the district court of Minnesota ("the Minnesota court") issued an order ("the Minnesota order") granting Appellant the right to receive a weekly twenty-minute phone call (in addition to any existing phone privileges) so that he could participate in therapy sessions with the child. The Minnesota court joined the Maricopa County Superior Court ("the superior court") to the action as an interested third party. On March 4, 2009, the Minnesota court (ex rel. Appellant) filed a "Motion for Filing of a Foreign Judgment" in the superior court.

¶4 In response to the Minnesota court's motion, the superior court filed a minute entry ("the Arizona order") on May 13, 2009, recognizing the validity of the Minnesota order. The Arizona order also required that Appellant be allowed to participate in his child's therapy through either a weekly twenty-minute phone call or by any means "otherwise recommended

by the child's therapist." The order also included the qualification that Appellant's phone calls were "not [to] interfere with or violate the policies or legitimate penalogical needs of the Arizona Department of Corrections" ("ADOC").

¶15 To date, Appellant has never been permitted to either call or receive a phone call from his child's therapist.¹ On June 15, 2009, Appellant began a grievance process against the ADOC to enforce the Arizona order. On June 16, 2009, Appellant filed a "Notice of Motion and Motion to Amend/Correct Order," requesting that the superior court amend the Arizona order to incorporate the "exact language" of the Minnesota order. On July 22, 2009, the superior court filed a minute entry denying Appellant's motion to amend/correct the order. The superior court signed the minute entry on December 28, 2009.

¶16 Appellant timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(B) (2003).²

ANALYSIS

¹ Appellant has never provided the therapist's name or contact information to ADOC. Evidence was presented by ADOC to the superior court that called into question whether the therapist actually exists.

² An answering brief was not filed in this case. Although we could treat the failure to file an answering brief as a confession of reversible error, such treatment is discretionary, and we have chosen to reach the merits of this case. See *Nydam v. Crawford*, 181 Ariz. 101, 101, 887 P.2d 631, 631 (App. 1994).

¶7 Appellant argues that the superior court's failure to amend/change the Arizona order violates the Full Faith and Credit Clause embodied in Article IV, Section 1, of the United States Constitution, 28 U.S.C. § 1738 (West 2010), and A.R.S. § 12-1702 (2003).³ Appellant argues that by not adopting the exact language of the Minnesota order, the superior court has made compliance with the order "option[al]" - in violation of the Full Faith and Credit Clause.

¶8 We review the superior court's ruling for an abuse of discretion. See *Larsen v. Decker*, 196 Ariz. 239, 241, ¶ 6, 995 P.2d 281, 283 (App. 2000).

¶9 The Full Faith and Credit Clause is embodied in federal law and reflected in our state law. The United States Constitution states, in relevant part, that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const. art. IV, § 1; *Accord* 28 U.S.C. § 1738. Furthermore, A.R.S. § 12-1702 closely mirrors the federal legislation, requiring that Arizona treat "foreign judgment[s] in the same manner as a judgment of the superior court in this state."

¶10 In this case, we find that the Arizona order complied with the Full Faith and Credit Clause. A foreign judgment is

³ We cite the current version of the applicable statutes because no revisions material to this decision have since occurred.

given full faith and credit "when it is given the same effect that it has in the state where it was rendered with respect to the parties, the subject matter of the action and the issues involved." *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Greene*, 195 Ariz. 105, 108, ¶ 12, 985 P.2d 590, 593 (App. 1999) (quoting *Sainz v. Sainz*, 245 S.E.2d 372, 375 (N.C. App. 1978)). The Arizona order confers upon Appellant the ability to make a weekly twenty-minute phone call or any other communication as recommended by the therapist. The language in the Arizona order is neither ambiguous nor makes compliance with the order optional as Appellant contends. We have found no precedent or statutory requirement that the Full Faith and Credit Clause requires adoption of the exact language of a final foreign judgment. The Arizona order gives the same effect as the Minnesota order with respect to the parties, subject matter, and issues involved herein, and therefore, it has given full faith and credit to the Minnesota order. Until the therapist's contact information has been furnished by Appellant, ADOC will be incapable of complying with the Arizona order, but ADOC's incapacity to effectuate the order does not mean that compliance is optional as Appellant suggests.⁴

⁴ The record reflects several instances of unwillingness by the ADOC to comply with the court order. Appellant also claimed that ADOC has engaged in retaliatory action against him for seeking enforcement of this court order. We note that both the

¶11 Finally, the qualification in the Arizona order that the communications with the therapist "not interfere with or violate the policies or legitimate penalogical needs of [ADOC]" does not violate the Full Faith and Credit Clause. "The methods by which a judgment of another state is enforced are determined by the local law of the forum." *Id.*; see also Restatement (Second) of Conflict of Laws § 99 (1971) (stating "the local law of the forum determines the methods by which a judgment of another state is enforced"). The laws and policies of Arizona should be complied with when giving full faith and credit to a foreign judgment. See *Nat'l Union Fire Ins. Co*, 195 Ariz. at 108, ¶ 12, 985 P.2d at 593. Accordingly, it was neither an abuse of discretion nor a violation of the Full Faith and Credit Clause for the superior court to require that enforcement of the order not interfere or conflict with the legitimate penalogical policies and needs of ADOC.

Minnesota order and the Arizona order are legally binding, and once appellant has provided ADOC with the proper contact information, they must, without further delay, accommodate appellant's communications with his child's therapist in any manner that does not violate their policies or legitimate penalogical needs. Furthermore, the ADOC may not, under any circumstances, take any retaliatory action against appellant for attempting to enforce this order.

CONCLUSION

¶12 For the aforementioned reasons, we affirm the superior court's order denying Appellant's motion to amend/correct the Arizona order.

_____/S/_____
LAWRENCE F. WINTHROP, Presiding Judge

CONCURRING:

_____/S/_____
PATRICIA K. NORRIS, Judge

_____/S/_____
PATRICK IRVINE, Judge