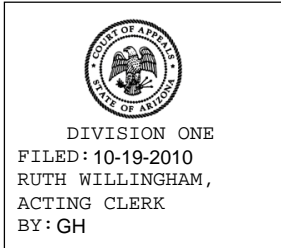


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



IN THE MATTER OF: ) No. 1 CA-CV 09-0653  
)  
SPENCER A. ISOM, ) DEPARTMENT T  
)  
Petitioner/Appellant, ) **MEMORANDUM DECISION**  
) (Not for Publication -  
v. ) Rule 28, Arizona Rules  
) of Civil Appellate  
TAMMY K. STRATTON, ) Procedure)  
)  
Respondent/Appellee. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Navajo County

Cause No. CV D020050428

The Honorable Michala M. Ruechel, Judge

**AFFIRMED**

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Spencer Isom	El Mirage
Petitioner/Appellant <i>In Propria Persona</i>	
Tammy Stratton	Snowflake
Respondent/Appellee <i>In Propria Persona</i>	

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**D O W N I E**, Judge

¶1 Spencer Isom ("Father") appeals from the denial of his petition to modify child custody and parenting time. For the reasons that follow, we affirm.

## FACTS AND PROCEDURAL HISTORY

¶12 Father and Tammy Stratton ("Mother") married in 1999. On May 27, 2004, Mother gave birth to a son, S., who was conceived via in vitro fertilization by a donor egg inseminated with Father's sperm. The parties divorced in March 2007. The court awarded them joint legal custody of S., with Mother having primary physical custody.

¶13 In July 2007, Father filed a modification petition seeking, *inter alia*, primary physical custody or equal parenting time. After an evidentiary hearing, the trial court denied Father's requests. Among other things, the court noted that Father had voluntarily relocated from Snowflake to El Mirage, which rendered his proposed parenting schedule unrealistic.

¶14 In March 2009, Father filed a second petition to, *inter alia*, modify primary physical custody and parenting time. The court conducted an evidentiary hearing on June 29, 2009. In a written decision dated August 17, 2009, the court ruled that it was in S.'s best interests for the parents to retain joint legal custody and for S. to remain in Mother's primary physical custody in Snowflake.

¶15 Father timely appealed from the August 17, 2009 decision.<sup>1</sup> We have jurisdiction pursuant to Arizona Revised

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<sup>1</sup> Father appears to challenge other rulings made over the course of the protracted family court proceedings. However, the

Statute ("A.R.S.") section 12-2101(B) (2003).

#### DISCUSSION

¶6 We review the denial of a custody modification request for an abuse of discretion. See *Owen v. Blackhawk*, 206 Ariz. 418, 420, ¶ 7, 79 P.3d 667, 669 (App. 2003).

##### A. Biology as a Factor

¶7 Father concedes that Mother is S.'s legal parent. He argues, however, that he has superior custody rights because S. is genetically related to him. We disagree.<sup>2</sup>

¶8 Father's reliance on *Soos v. Superior Court*, 182 Ariz. 470, 897 P.2d 1356 (App. 1994), is unavailing. *Soos* did not establish a superior right to custody for parents who are genetically related to their children. It merely held that a then-existing statute, A.R.S. § 25-218(C), which was intended to prohibit surrogate parent contracts in Arizona, violated a biological mother's equal protection rights. *Id.* at 474-75, 897

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only decision subject to our review is the August 17, 2009 ruling, and we confine our discussion to that ruling.

<sup>2</sup> We assume without deciding that Father may properly raise this issue on appeal. He litigated this same claim in earlier proceedings and did not appeal from the March 2008 determination that "it is not the desire of the legislature to limit the birth mother's (as stated on the birth certificate) rights to her child under these medical circumstances." In the August 17, 2009 ruling, the court noted that nothing had changed regarding S.'s "birth circumstances," that Mother "is not and was never intended to be a surrogate parent," that she delivered S., is listed as his mother on the birth certificate, and has developed a committed parent-child relationship.

P.2d at 1360-61. *Soos* is also distinguishable because, unlike Father here, the father in *Soos* denied that his wife was the child's legal parent. See *id.* at 472, 897 P.2d at 1358.

¶9 Mother is S.'s legal parent. Father has cited no relevant Arizona authority to support his claim that his rights are superior to hers, and we are aware of none.

**B. Best Interests Findings**

¶10 The primary consideration in determining custody is the child's best interests. *Downs v. Scheffler*, 206 Ariz. 496, 499, ¶ 7, 80 P.3d 775, 778 (App. 2003). In determining best interests, a court is required to consider all relevant factors enumerated in A.R.S. § 25-403(A) (Supp. 2009), including:

1. The wishes of the child's parent or parents as to custody.
2. The wishes of the child as to the custodian.
3. The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.
4. The child's adjustment to home, school and community.
5. The mental and physical health of all individuals involved.
6. Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent. This paragraph does not apply if the court determines that a parent is acting in good

faith to protect the child from witnessing an act of domestic violence or being a victim of domestic violence or child abuse.

7. Whether one parent, both parents or neither parent has provided primary care of the child.

8. The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody.

9. Whether a parent has complied with chapter 3, article 5 of this title.

10. Whether either parent was convicted of an act of false reporting of child abuse or neglect under section 13-2907.02.

11. Whether there has been domestic violence or child abuse as defined in § 25-403.03.

¶11 Father argues that the court failed to make necessary statutory findings. He appears to assign error as follows: (1) there was no interview of S. to determine his wishes; (2) the court did not properly consider S.'s relationship with his half-sibling; and (3) the court did not state its reasons for continuing Mother as primary residential parent.

**1. In Camera Interview**

¶12 Pursuant to A.R.S. § 25-403(A)(2), the court must consider "[t]he wishes of the child as to the custodian" if it determines that the factor is relevant. Whether a court elects to conduct an *in camera* interview, though, is left to its sound discretion. See A.R.S. § 25-405(A) (2007) ("The court may

interview the child in chambers to ascertain the child's wishes as to the child's custodian and as to parenting time.") (emphasis added); *J.A.R. v. Superior Court*, 179 Ariz. 267, 274, 877 P.2d 1323, 1330 (App. 1994) (court not required to conduct an *in camera* interview to determine custody).

¶13 The trial court here expressly found that "it would not be appropriate to conduct an interview with [S.] at the age 5." The court did not abuse its considerable discretion in deciding not to conduct a judicial interview of such a young child.

## 2. Sibling Interaction

¶14 Pursuant to A.R.S. § 25-403(A)(3), the court may consider "[t]he interaction and interrelationship of the child with the child's . . . siblings and any other person who may *significantly affect the child's best interest.*" (Emphasis added.) Although the court did not make an express finding in its 2009 ruling about S.'s relationship with his half-sibling, in its December 2007 ruling, the court found that contact between the two was limited to four times per year. And Father testified at the June 2009 hearing that S.'s half-sibling, who resides out-of-state, has never visited Arizona. Because the court took judicial notice of its prior findings and rulings, we presume it did not deem S.'s relationship with his half-sibling

sufficiently relevant to warrant an independent finding. The record supports such a conclusion.

### 3. Specificity of Findings

¶15 When custody is contested, a court must "make specific findings on the record about all relevant factors and the reasons for which the decision is in the best interests of the child." A.R.S. § 25-403(B). Citing *Reid v. Reid*, 222 Ariz. 204, 213 P.3d 353 (App. 2009), Father argues that the court's findings here were inadequate. We conclude otherwise.

¶16 Unlike the trial court in *Reid*, the court here made detailed findings and gave explanations for its ruling. It is clear that one of the central factors the court considered was S.'s "adjustment to home, school and community." A.R.S. § 25-403(A)(4). Father chose to move from Snowflake to El Mirage, and the court concluded it was in S.'s best interest "to remain in the only community he has know [sic] as home" and because he was soon to enroll in the Snowflake Unified School system. The court also commented on Father's changed position about raising S. in Snowflake, stating:

[Father] originally advocated the benefits of Snowflake as an appropriate if not superior environment for [S.] to be raised and educated in when he opposed [Mother's] request to raise [S.] in another environment.

¶17 The trial court's findings were sufficiently detailed to comply with statutory requirements and to allow us to meaningfully review the decision regarding Father's modification request.

**C. Weight of the Evidence**

¶18 Father next argues that the court acted against the weight of the evidence. He asks us to "review the circumstances and evidence" and reassess the credibility of the witnesses. However, it is not the function of an appellate court to "reweigh the facts or to second-guess the credibility determinations of the judge who had the opportunity to evaluate the witnesses' demeanor and make informed credibility determinations." *In re Estate of Newman*, 219 Ariz. 260, 271, ¶ 40, 196 P.3d 863, 874 (App. 2008).

¶19 The court articulated the circumstances that had changed since the last custody ruling and those that remained unchanged. One important circumstance that had *not* changed was the fact that both parents remained "fit and proper persons" to raise their son. And although the court found that it is in S.'s best interests to "spend as much time with both parents as possible," it concluded from the evidence that Mother is able to spend more time with S. based on her work schedule.

¶20 Father presented evidence that Mother had neglected the child medically and otherwise. Mother presented contrary



