IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

DESIREE N. LEONARD,
Petitioner/Appellant,

v.

MARK R. MYERS,
Respondent/Appellee.

No. 2 CA-CV 2023-0110-FC
Filed April 29, 2024

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Maricopa County
No. FC2008000355
The Honorable Gregory Como, Judge
The Honorable Daniel Martin, Judge

VACATED AND REMANDED

COUNSEL

Michael J. Shew LTD., Phoenix
By Michael J. Shew
Counsel for Petitioner/Appellant

Mark R. Myers, Gilbert
In Propria Persona

MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Judge Kelly and Judge O'Neil concurred.

E C K E R S T R O M, Judge:

¶1 Desiree Leonard ("Mother") appeals from the trial court's denial of her petition for modification of legal decision-making, parenting time, and child support regarding the minor son she shares with Mark Myers ("Father"), as well as its award of attorney fees and costs to Father. We lack jurisdiction to address Mother's challenges to the court's February 2022 quashing of the order of protection—an issue that is not before us. We also reject her challenges to certain pretrial rulings. However, for the reasons that follow, we vacate the court's April 2023 judgments and remand.

I. FACTUAL AND PROCEDURAL BACKGROUND

¶2 We view the facts in the light most favorable to upholding the trial court's rulings. *Ball v. Ball*, 250 Ariz. 273, n.1 (App. 2020). Given the posture of this case and the nature of the claims presented, a detailed review of the factual and procedural background is necessary.

2007-2015: Early Arrangements

¶3 The parties' son was born in December 2007. During their brief relationship, Mother and Father never cohabitated or married. During the first four years of the child's life, Mother served as primary custodial parent and exercised final decision-making authority. Father had regular but limited parenting time and paid child support.

¶4 In February 2011, the trial court entered a stipulated order under which the parties agreed to joint physical custody, equal parenting time, and the elimination of Father's child support obligation. These modifications were entered based on "a substantial and continuing change in the circumstances of the parties and the minor child, namely his age."

January-May 2016: Father Obtains Modification

¶5 In January 2016, when the son was eight years old, Father sought modification of legal decision-making, parenting time, and child support. As grounds, he alleged that Mother's then-boyfriend had mistreated the child by insulting and threatening him and by duct-taping his half-clothed body to a kitchen chair to force him to finish food he did not want to eat. This occurred in Mother's presence, and she did not intervene or report the incident to Father or the authorities. The Arizona Department of Child Safety became involved, and the Phoenix Police Department investigated the matter. Mother admitted the incident and her own failure to intervene. The police submitted the case to the Maricopa County Attorney's Office and requested that Mother and the boyfriend both be charged with one count of child abuse.[1]

¶6 In March 2016, at the hearing on Father's petitions for modification, the parties reached an agreement on legal decision-making and parenting time. The trial court approved and adopted the agreement pursuant to Rule 69, Ariz. R. Fam. Law P., finding that the parties had knowingly, intelligently, and voluntarily entered into it, that it was in the best interests of the child, and that it was equitable to both parties. Accordingly, in May 2016, it entered a formal stipulated order shifting sole legal decision-making and primary custody to Father and establishing an alternating parenting time schedule under which Mother would have the child every other Wednesday to Sunday, approximately eight nights per month.

May 2016-October 2021: Informal Adjustment of Parenting Time

¶7 For the ensuing six years, Father served as primary residential parent and sole legal decision-maker. Eventually, at Mother's request, Father allowed her additional parenting time. In particular, by 2018 and for the subsequent three years, Father picked up the child each Sunday evening, and Mother picked him up eight days later, the following Monday evening: one day short of equal time. However, the parties never sought any formal modification of the May 2016 stipulated order.

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[1]The record before us does not establish whether Mother was ever so charged. However, she states in her reply brief that she "was never charged by any law enforcement agency, nor was she indicted, with any crime related to [the former boyfriend]'s actions."

October-December 2021: Mother's Order of Protection, Motion for Temporary Orders, & Petition to Modify

¶8 In mid-October 2021, prompted by disagreements between the parties regarding parenting time, Father threatened to "go back to the court ordered parenting time." Shortly thereafter, Mother obtained an *ex parte* order of protection. To secure the order, she alleged that Father had verbally and physically abused the parties' son on a number of occasions over the preceding year. She maintained this led the child to "repeatedly express[] reasonable fear for his physical safety and that he does not want to spend time with [Father] because of the abuse he is suffering." The order prohibited Father from having any contact with the child except through electronic means. As a result, Mother assumed full residential custody.

¶9 Mother then filed a motion for temporary orders, as well as a petition to modify legal decision-making, parenting time, and child support. She based her petition for modification on the same allegations underlying the order of protection, as well as additional allegations of "abuse and concerning treatment" by Father. Mother sought, on both a temporary and ongoing basis: sole legal decision-making authority or, at minimum, final decision-making authority; primary residential custody; either no or only supervised parenting time for Father; a corresponding modification of child support; and an order prohibiting Father from using corporal punishment. In both filings, Mother also requested that the trial court appoint a court-appointed advisor ("CAA") to interview the son "regarding his wishes about legal decision-making and parenting time, and make recommendations to the Court regarding [his] best interest."

¶10 Father requested a hearing on the order of protection. In response to Mother's petition for modification, he denied her allegations of abuse and other mistreatment. He argued that he should retain sole legal decision-making authority or, at minimum, final decision-making authority. He rejected Mother's contentions that his parenting time should be restricted or supervised. Although he clarified that "the parties never followed an equal parenting time plan" under the May 2016 stipulated order or the informal arrangements that followed, he urged the trial court to order equal parenting time and modify child support accordingly.

January 2022: Appointment of CAA & First Interview Report

¶11 The parties agreed to conduct a joint hearing on Mother's order of protection and motion for temporary orders. She sought to call the parties' then-fourteen-year-old son as a witness at that hearing. Father

objected. Mother then twice suggested, as an alternative to the child testifying, that the trial court appoint a CAA to interview the child regarding the allegations underlying the order of protection and to prepare a report.

¶12 Finding that testifying would not be in the child's best interests, the trial court sustained Father's objection. However, the court indicated that it would allow in hearsay testimony regarding statements the child "may have made to Mother about any abuse or other conduct by Father that led to Mother seeking the order of protection in the first instance." The court further indicated that if either party deemed it "necessary, or important" for the child to be interviewed by a professional, it would delay the hearing to have that interview scheduled and a report prepared. Mother then requested that the child be interviewed before the adjudication of her petition for temporary orders. Thus, over Father's objection, the court delayed the hearing to allow for the child's interview as the "reasonable substitute" for his testimony. Reiterating that "[i]t's important that the evidence come in, and that it come in in the most useful, meaningful way," the court appointed a CAA to "interview the minor child in lieu of his direct testimony," conduct "a general investigation in this matter," and "make recommendations to the Court."

¶13 Later that month, the CAA filed an initial report with the trial court based on her first interview of the child. The report stated that, although "there was a time [the son] felt safe with [Father]," he had been reporting issues to Mother "for over a year and did not feel safe anymore." It further noted: "[The son] reports that over the course of the last two years things have become worse and [F]ather has been physically abusive to him and verbally abusive to others." The report went on to describe some, but not all, of the incidents mentioned in Mother's application for the protective order and petition for modification. It noted the son felt that it was "a huge relief just being with [Mother] as he doesn't have to worry anymore what he will wake up to" and that he "does not want to live with [Father] again," but that he "would be comfortable with [Father] coming to his baseball games in the future as this is his happy place and where he gets stress out and also where he feels safe." The CAA noted that "the child did not appear coached in any way" and provided responses that appeared to be "genuine to how he truly felt as well as what he had experienced." However, the CAA refrained from making recommendations, noting that the parents had not yet been interviewed.

February 2022: Joint Hearing, Quashing of Order of Protection, Temporary Orders, & Mother's Motion to Amend Them

¶14 In early February, the trial court held the evidentiary hearing regarding the order of protection and Mother's motion for temporary orders. The court took judicial notice of the CAA's initial report, admitted documentary evidence, and heard testimony from the parties and Father's pastor. The court then found that, although it had "concerns about Father's treatment and interaction with" the son—and although it was "a very close call"—Mother had failed to prove that Father had committed domestic violence or child abuse. Thus, noting that an order of protection is "a very crude tool" and that the "tension that exists" between Father and son would be better addressed through temporary orders, the court quashed the order of protection.[2] At the same time, the court explained, "Whether there's physical abuse going on or not, the relationship between Father and [son] right now is not a good one." The court then admonished Father as follows: "[Your son] doesn't want to spend time with you, sir. And so that's something that you're going to have to figure out and work on. And I think that's going to probably involve some parenting classes or something. I don't know. I really have to give this more thought." The court then verbally ordered that Father have no parenting time, no in-person contact, and only phone contact with the child until the issuance of the court's written temporary orders. Finally, the court set a status conference for April 2022, noting the desire to "give the parties a chance to try to see if they can resolve this matter."

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[2]One of Mother's claims on appeal is that the trial court abused its discretion in quashing the order of protection. That ruling "was immediately appealable under A.R.S. § 12-2101(A)(5)(b)," which allows for the appeal of an order dissolving an injunction. *Moreno v. Beltran*, 250 Ariz. 379, ¶ 13 (App. 2020). The deadline for filing such an appeal was thirty days after the order's entry in February 2022. *See* Ariz. R. Civ. App. P. 9(a). That deadline was not extended by Mother's subsequent motion to alter or amend the court's temporary orders, as such a motion does not fall within the scope of the post-*judgment*, time-extending motions described in Rule 9(e)(1). Moreover, when appealing from the court's April 2023 final judgments, Mother did not reference the separate cause number under which the order quashing the order of protection was apparently entered. For all these reasons, the order quashing the order of protection is not before us and we lack jurisdiction to address Mother's challenges to it.

¶15 A few days later, the trial court entered temporary orders. It ordered the parties to exercise joint legal decision-making authority. It further established a temporary parenting time plan under which Mother would continue to serve as primary residential parent but Father would be able to resume unsupervised parenting time every other weekend and one night midweek. It also temporarily suspended Mother's child support obligation, forbade either parent from "us[ing] corporal punishment or any form of physical discipline," and ordered Father to complete ten hours of parenting classes regarding "communicating with teenage children" and "utilizing positive discipline methods." Mother immediately filed a motion to alter or amend the temporary orders.

April 2022: CAA Recommendations, Status Conference, & Denial of Mother's Motion to Alter or Amend Temporary Orders

¶16 In early April, the CAA filed a second report based on her interviews of both parents, a second interview of the child, and her review of assorted materials provided by the parties. After summarizing the interviews and documentation reviewed, the CAA began by noting: "[F]ather loves his son very much and has also been the primary parent for several years. This therapist does not have evidence that all or even some of the allegations in the [order of protection] truly occurred." However, the CAA concluded that "[F]ather's rules and home life are isolating for [the son] at this age in his life."

¶17 The CAA's report noted that one lengthy audio recording from March 2022 provided "a window into what the child was talking about in regards to [F]ather." In it, Father is "rambling, angry bringing up the court case, what [the son] said, what [M]other said, etc." The son "does not say one word for the first 10-15 minutes or so," and "Father barely takes a breath and is consistently inappropriate on this particular audio stating he just knows the child is going to tell [M]other and her attorney on him. The tone and content is concerning," as is the "constant ring[ing]" corroborating reports that Father does not require the use of seatbelts in his car.[3]

¶18 The CAA's report also referenced nine letters provided by Mother from the child's coaches and former teacher, two grandparents, and

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[3]During his deposition, Father testified that he has "a rule" that the son is not required to wear a seat belt while riding in Father's car, even when he sits in the front seat.

the mothers of certain friends and teammates. The CAA stated, "All letters describe the difference they see in [the child] when with [F]ather versus not with [F]ather using words like anxiety, nervous, worried, lights go out, embarrassed and doesn't play as well." According to the CAA, the teacher had indicated that "she saw that [F]ather had a hard time allowing [the son] to grow up and he could not do things his peers could do," reporting that the son "would cry to her periodically about the tension there." Finally, the CAA concluded with the following recommendation: "While I am comfortable keeping the current orders made by the Court in February in place I am not recommending the schedule revert back to what it was previous to the [order of protection]."

¶19 Two weeks later, the parties and the CAA appeared before the trial court for the scheduled status conference. Father advised the court that he had completed the ten ordered hours of parenting classes. In response to a comment from Father's counsel that Mother had made "false accusations," the court clarified that it had quashed the order of protection "fairly reluctantly," after a "very contested" hearing at which the evidence was "very close," and that it "wasn't at all convinced that there wasn't some overzealous disciplining or reacting by Father." The court strongly agreed with the CAA's recommendation that the child should see a therapist and rejected Father's argument that he should not be required to pay for such services. The parties agreed to confer regarding a provider.

¶20 The following week, the trial court denied Mother's motion to alter or amend the temporary orders. In so doing, it stated: "The Court understands that the minor child has concerns about spending time with Father. However, after reviewing the full report provided by the Court-Appointed Advisor, the Court continues to believe that Father does not present a danger to the child." The court further noted that the parties had agreed, in principle, to the child receiving therapy, which the court stated it believed would "assist the child in rebuilding his relationship with Father."

May 2022: Email Exchange Between Counsel[4]

¶21 On Friday, May 20, at Father's direction, his then-counsel initiated an email exchange with Mother's counsel to discuss "possible

[4]Father argues that he "does not feel that any discussions of potential settlement of the matter are relevant or properly considerable by any court," citing Rule 408, Ariz. R. Evid. But the emails discussed here were admitted by the trial court for the sole purpose of ascertaining whether the

resolution." Through telephone and email correspondence, the attorneys reached an agreement on the general terms of a resolution, under which Mother would exercise sole legal decision-making and primary custody, with Father bearing no financial responsibility for the child and seeing him only when the parties agreed or the child so desired. Each attorney expressed his client's agreement. Father's counsel offered, and Mother's counsel accepted, the opportunity to draft a consent order.

¶22 The attorneys then discussed Father's desire to exercise his already-scheduled parenting time on Wednesday, May 25, and over the subsequent weekend, as "his 'goodbye' parenting time"—something Mother believed would be emotionally distressing to the child. Father's counsel emailed, "The deal is contingent on [Father] exercising parenting time tonight @ 6:30 PM and this weekend. [Father] is adamant that he wants one final weekend with [the son]." He continued that "from [Father's] perspective the alternative is not agreeing to the deal and affirming the August trial date." He then reiterated that Father "wanted the weekend," and that "[f]rom Monday onward the circumstances will be completely different." Father's counsel then rejected a proposal from Mother that they switch weekends, concluding "[Father] wants this to be his final weekend." The next day, May 26, Mother's counsel emailed a draft stipulation and a draft consent judgment and order modifying legal decision-making, parenting time, and child support pursuant to the terms discussed and approved two days before. Father's counsel confirmed receipt and requested the documents in Word files so that he could "make a few minor changes." The attorneys continued their discussion, with Mother providing assurances that Father could text the son and attend practices and games if the son so desired. Father's counsel stated he would discuss with his client and report back, which never occurred. The son then spent the weekend with Father, which Mother understood to be the "last goodbye weekend."

Summer 2022: Additional Motions & Third CAA Report

¶23 On June 1, Mother contacted Father directly regarding the settlement discussions that had occurred the prior week between their

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parties' counsel reached an agreement under Rule 69. We have expressly rejected Father's argument in this context. *Murray v. Murray*, 239 Ariz. 174, ¶¶ 14-16 (App. 2016) ("To the extent Rule 408 applies to these proceedings . . . it does not prevent consideration of Mother's evidence to prove the parties reached an enforceable agreement.").

lawyers. Father responded, "I haven't seen any such settlement proposal. However, if the agreement proposed is equal shared parenting and joint-legal custody with me being the final-decision maker, I accept." Mother then forwarded to him the drafts that her counsel had previously sent to his. Father responded, "What you've attached is the first time I've seen this document." He further notified Mother that he had terminated the attorney involved.

¶24 Two weeks later, Mother filed a new motion to modify the temporary parenting-time order. She asked the trial court to order that Father not have any parenting time or electronic contact with the son "except as may otherwise be agreed to by the parties, in consideration of [the son]'s wishes." Later the same day, she also filed a motion under A.R.S. § 25-321 and Rule 10, Ariz. R. Fam. Law P., requesting that the court appoint an attorney for the minor child, a best-interests attorney, or both. She argued, in the alternative, that the court could order the CAA to file a supplemental report after conducting a third interview of the child and reviewing events since the April status conference.

¶25 As grounds for both motions, Mother alleged that—since the May 2022 "goodbye weekend"—the son had "endured hours and hours of bullying, harassment, and emotionally abusive and manipulative treatment from Father and his family members." She asserted a range of examples. Both motions also recounted the communications between the parties' respective attorneys. Mother claimed that "[t]he parties, through their respective counsel, entered a binding agreement" under Rule 69, "which Father then refused to finalize." She argued that the trial court had "authority to modify the temporary order in accordance with the parties' agreement," whose terms were consistent with her requested modifications to Father's parenting time.

¶26 Father objected, arguing that, although the parties had been "going back and forth to try to resolve this matter," they ultimately failed to "come to settlement or even a Rule 69 Agreement." He also opposed the appointment of any additional attorney, arguing that it would be superfluous given the existing involvement of the CAA. He urged the trial court to deny both motions and award him attorney fees.

¶27 In July 2022, a different trial judge summarily denied both of Mother's motions. However, he did request that the CAA interview the child a third time for the purpose of the upcoming evidentiary hearing. In her supplemental report, the CAA relayed the following:

> When asked how things were going at his homes, [the son] states they are fine as usual with [M]other and that the last two weeks have actually been fine with [Father] but previous to that the same things were bothering him to include that [Father] does not value or listen to what he says and seems to disregard his feelings. [The son] reports that there ha[ve] been multiple times [Father] has called him a liar and in the same sentence will say he loves him and then go back to saying he is lying and one time even said he did not consider him family based on this. [The son] reports that it is never just relaxing, and he is always waiting for what is going to happen next.

The CAA further noted, "[The son] reports that while things have been okay lately, he is worried that things will go back to the way they were once there is no court involvement" and "does not want to go back to the halftime schedule."

¶28 Father filed a notice of strict compliance with the rules of evidence. Mother then filed a list of witnesses and exhibits for the upcoming modification petition hearing, again listing the son as an intended witness. Father objected, moving the trial court *in limine* to preclude the son from testifying at the hearing. He argued that the child had "already expressed his desires to the CAA," who would "be addressing the minor child's needs, desires and what is in the best interest of the minor child at the time of trial."

¶29 Mother responded, explaining that Father's invocation of strict compliance with the rules of evidence had necessitated the son appearing "to lay foundation for photographs, text messages, and recordings that [the son] made, and to testify regarding events that Father claims [the son] is lying about." She also stated that the child was listed as a witness "in part because the CAA's reports do not expressly address the specific allegations [the child] has made about Father's treatment of him and because Father has said that [the son] is lying." As an alternative to the child testifying live in open court, Mother moved the trial court to interview him in chambers "to ascertain [his] wishes as to [his] custodian and parenting time," pursuant to A.R.S. § 25-405 and Rule 12, Ariz. R. Fam. Law

P., which she argued allows the court to do so "at any stage of the proceeding."

August 2022: Evidentiary Hearing

¶30 The evidentiary hearing occurred before the new trial judge on August 16. He first addressed Father's motion *in limine*, agreeing with the prior judge's reasoning and precluding the son from testifying. He then denied Mother's request for an in chambers interview on the ground that it was "simply too late in the process for that to occur." Both parties then presented witnesses and documentary evidence.

¶31 The CAA testified first. Her three reports were admitted as evidence and discussed. She stated that there were "some significant issues with Father" and that the son had reported verbal abuse. She also confirmed that, in the child's opinion, Father's "anger and inability to control his temper had become more pronounced since COVID and mask mandates went into effect." She further testified that the child had reported that Father would "often slap him or hit his shoulder when angry," and that "he had been telling [M]other that he didn't feel safe, and he had felt that way for over a year." The CAA also noted that the child had reported that Father "calls him a liar."

¶32 The CAA again discussed the lengthy audio recording she found "very concerning." She described Father's conduct as "very angry," "on a different level," and "just very inappropriate." She also explained her opinion that, in this case, "it was very important" to look at what the child's coaches had to say, given his focus on baseball and their significant exposure to him. She testified that, based on their letters, more than one of the coaches "were pretty concerned about Father," and "their experience[s] with Father were similar to what the child . . . was saying about Father."

¶33 The CAA then testified that Father's rules and home life appear to be "isolating" for the son. She stated that the child "does not want an equal parenting time schedule" and that, in her opinion, an equal parenting time schedule is not in the child's best interests "at the current time." She further testified that the schedule under the temporary orders—with Father having time every other weekend and every Wednesday overnight—is "actually even more parenting time than [the son] prefers to spend with . . . Father." And she confirmed that the son has stated a concern that, after these court proceedings are concluded, Father will "revert back to the same problematic behavior that led [the child] to reach out to [M]other and ask her to do something to protect him." Finally, the CAA

testified that she believes the son had been sincere each time he was interviewed and that, at times, he is genuinely afraid of Father.

¶34 Mother then testified. Her testimony included a detailed discussion of a collection of text messages between her and the son regarding the events alleged in the petition for modification and since the issuance of the temporary orders. The trial court admitted the texts between Mother and son—over Father's hearsay and other objections—as relevant for establishing the son's state of mind when sending the messages. They include multiple examples of the son reporting feeling afraid while with Father, his statement that Father's home is "a very toxic environment," and repeated texts emphasizing that he does not want to continue spending time there.

¶35 The trial court then heard testimony from Father, the child's paternal grandfather, and Father's pastor. During his testimony, Father denied the allegations of mistreatment and stated his belief that the son had "fabricated or made things up that led to this litigation." He testified that, in the year leading up to the order of protection, he had noticed a shift in the son's demeanor and attitude toward him, with the child giving Father "more distance" and behaving "somewhat calcitrant, defiant." Father attributed these changes to the son "going through his teenage years" and the fact that Father imposes stricter "standards of appropriateness and guidance" than Mother, including regarding technology and social media. However, Father testified that the son had never told him "I don't want to be here" and that their relationship was "on the upswing." He rejected as "ludicrous" the suggestion that the son "feels isolated and neglected" when with Father.

¶36 The paternal grandfather likewise rejected that "any of the [allegations in the order of protection] were true," testifying that both he and Father were blindsided and shocked by them. He stated that, although Father is "authoritative," he "has never done anything but be attentive to the boy" and "tried to keep him on the straight and narrow."

¶37 The pastor testified that, during his significant exposure to Father and son, he had not observed anything "abnormal" between them. He stated that the son had never approached him to express any concern about his physical safety with Father. He characterized Father as "a good dad" and testified that the allegations in the order of protection were fully inconsistent with what he had observed between Father and son over the prior decade.

¶38 Throughout the hearing, Father argued for joint legal decision-making and equal parenting time. He expressly urged the trial court to "revert to the standard protocol of 50/50," contending that "50/50 parenting time and joint legal decision-making is required by law." The court followed up, noting that reverting to the May 2016 stipulated order would not lead to evenly split parenting time. Father agreed, but stated as follows: "[L]et me make clear for the record. We only ask for 50/50. The reversion would actually be of ten-four in Father's favor. That's not in the child's best interest." The court took the matter under advisement.

October 2022: The Ruling

¶39 On October 17, the trial court filed an unsigned, under-advisement ruling vacating the temporary orders entered in February 2022, denying Mother's petition for modification, affirming the stipulated order entered in May 2016, recalculating child support, and awarding Father attorney fees and costs. In so doing, the court first rejected Mother's claim that the parties had entered into a binding Rule 69 agreement because, "even assuming the parties reached agreement on terms, the agreement was not signed by the parties, and it was not approved by the Court." The court then concluded that Mother had failed to establish the requisite change of circumstances to allow for modification of legal decision-making and parenting time. It found her allegations of abuse by Father, and of the son's fear of and discontent about living with Father, to be unsupported by the evidence. It further found that "what the evidence makes plain is that Mother and Father have distinctly different parenting styles"—differences that "generate conflict between the parties, but that conflict has existed since the outset of this matter, and is not a material change of circumstances that warrants modification of either legal decision-making or parenting time." Although the court acknowledged that "the parties appear to agree that joint legal decision-making is appropriate, and that Father believes a week on, week off parenting time plan is in [the child]'s best interests," it nonetheless reverted to the 2016 arrangement of Father as sole legal decision-maker and primary residential parent, with Mother exercising parenting time only every other Wednesday to Sunday. Finally, the court awarded Father his fees and costs after finding a financial disparity between the parties and that Mother's behavior in litigation had been "objectively unreasonable."

November 2022-April 2023: Mother's Rule 83 Motion, Final Judgments, & Appeal

¶40 In November 2022, Mother timely filed a motion to alter or amend the trial court's October ruling under Rule 83(a)(1), Ariz. R. Fam. Law P. In April 2023, the court entered final judgments denying Mother's motion and awarding Father nearly $12,350 in attorney fees and costs. This appeal followed. With the exception of Mother's claims regarding the quashing of the order of protection, we have jurisdiction, pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

II. PRETRIAL RULINGS

¶41 Mother contends the trial court erred by refusing her requests to allow the parties' son to testify at both the hearing in February 2022 regarding the order of protection and petition for temporary orders and the final August 2022 evidentiary hearing. She argues that, "based on [the child]'s age, maturity, and the nature of the allegations . . . the trial court abused its discretion by not allowing [him] to testify because that decision denied Mother due process and deprived the trial court of crucial, relevant evidence about [the child]'s best interest." Mother also contends the court erred in denying her June 2022 motion to appoint a best-interest attorney or an attorney for the minor child.

Refusal to Allow Minor Child to Testify

¶42 In the family court setting, a presumption exists against minors attending—much less testifying at—proceedings that affect them. *See* Ariz. R. Fam. Law P. 11(b). This rule "is consistent with the current custom and practice of the family law court, which generally discourages the attendance of minor children at court proceedings in which they are involved." 13 Mark W. Armstrong et al., *Arizona Practice: Family Law Rules Handbook*, R. 11 cmt. 1 (2023 update). Although the trial court "should ensure that a child's voice is heard, particularly in a contested legal decision-making proceeding," this can be accomplished "through the use of a child's attorney, best interests attorney or court-appointed advisor," among other options. *Id.*

¶43 That is precisely what the trial court did in this case, selecting the option of appointing a CAA. Indeed, this choice followed Mother's own requests for such appointment in both her motion for temporary orders and petition for modification, as well as her suggestions at the January 2022 hearing that appointing a CAA to interview the child and prepare a report

to the court would be "one prophylactic way of preventing [the child] from testifying while still obtaining the information regarding the allegations."[5]

¶44 Nevertheless, Mother contends on appeal that, in this case, the CAA's interviews, reports, and testimony were not a reasonable substitute for the child's testimony because he "was never asked about the statements that were attributed to him in the Petition for Order of Protection and Modification Petition relating to abuse and maltreatment." Mother argues that "the CAA did not carry out [the trial court]'s directive to interview [the child] about the abuse allegations" because she "failed to inquire into the specific allegations of abuse."

¶45 At the evidentiary hearing in August 2022, the CAA conceded that, during her interviews with the child, she did not go through each allegation in the petition for the order of protection. She testified that "it was more of a basic child interview" in which she "let him talk." She explained that she "didn't want to lead him through anything" because she wanted him to "freely speak." As Father points out, these techniques conform to guidance published by Court Appointed Special Advocates (CASA) of Arizona, a program of the Dependent Children's Services Division of the Administrative Office of the Courts, regarding the interviewing of children. That guidance states: "It is more effective to use open-ended or indirect questions. Research shows that children provide more accurate information when they are freely narrating, rather than when they are being asked direct questions."[6] With regard to the statement in her April 2022 report that she "does not have evidence that all or even some of the allegations in the [order of protection] truly occurred," the CAA clarified at the August 2022 hearing that she "did not have hard evidence that these occurred or didn't occur, whether he says they did or not." She

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[5]Mother's own arguments before the trial court conflict with her claim on appeal that "an interview by a third party, even a court-appointed third party, cannot be a 'reasonable substitute' for relevant testimony from the only witness having personal knowledge about the allegations at issue if the witness is competent."

[6] CASA of Arizona, *Interviewing Children Training Course, Pg. 5: Appropriate Questions*, https://www.azcourts.gov/casa/Training/Training-Courses/Interviewing-Children-pg-5 (last visited April 17, 2024).

further explained that any allegations not mentioned in her report "would probably be because [she] didn't ask [the child] specifically about that."[7]

¶46 Mother argues the trial court "inappropriately delegated its obligation to make independent findings regarding [the child]'s best interest to the CAA." In support of this argument, she cites cases in which trial courts fully adopted the recommendations of third parties without conducting independent analysis. *See DePasquale v. Superior Court*, 181 Ariz. 333, 335-36 (App. 1995) (finding impermissible delegation to psychologist where trial court declared its intent to "order whatever interim custody the psychologist might recommend" and then adopted interim recommendation without weighing evidence to determine best interests of child); *Gish v. Greyson*, 253 Ariz. 437, ¶¶ 46-47, 49 (App. 2022) (improper delegation where, rather than merely seeking behavioral professional's advice, court fully "abdicat[ed] its responsibility to independently determine" appropriate parenting time).[8]

¶47 Nothing of the sort occurred in this case. Here, the trial court's ruling lacks any reference to the CAA's reports or testimony. Indeed, rather than uncritically accepting the CAA's findings and recommendations, the court's ruling departs from them significantly without explanation. The court appears to have relied instead on its own review of the evidence in declining to make any best interests assessment on the ground that no qualifying change in circumstances had occurred to allow for modification. We fail to see how such a ruling could have resulted from a delegation of its fact-finding obligation to the CAA, who recommended a very different outcome.

¶48 Finally, Mother contends the trial court denied her due process by not allowing the son to testify.[9] But "[d]ue process requires

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[7] These clarifications from the CAA during her testimony belie Father's suggestion in his answering brief that the CAA provided in her reports and testimony a "professional opinion that Father had not abused [the child]."

[8] Mother also cites a number of rules governing protective order procedure. As noted above, claims regarding the trial court's review and quashing of the order of protection are not properly before us.

[9] In support of her due process argument, Mother relies primarily on *Department of Child Safety v. Beene*, 235 Ariz. 300 (App. 2014). However, she has not explained why the due process analysis provided in that case—

'notice and an opportunity to be heard at a meaningful time and in a meaningful manner.'" *Gish*, 253 Ariz. 437, ¶ 48 (quoting *Curtis v. Richardson*, 212 Ariz. 308, ¶ 16 (App. 2006)). It also requires that a party be permitted to "offer evidence and confront adverse witnesses." *Curtis*, 212 Ariz. 308, ¶ 16.

¶49 Mother was not denied due process. The CAA interviewed the son in person three times, personally interviewed Mother and Father separately, reviewed documents provided by the parties, and issued three reports, including providing recommendations as required by Rule 10.1(d)(5), Ariz. R. Fam. Law P. Mother called the CAA to the stand at the evidentiary hearing in August 2022, questioned her extensively, and presented all three of the CAA's reports as exhibits. Mother then testified herself. Over Father's objection, the trial court permitted her to testify concerning statements the son had made to her, and text messages he had sent to her, regarding his concerns and wishes. And it admitted those text messages as evidence. To the extent Mother was unable to cross-examine Father and his witnesses—an issue she has not raised on appeal—this was due to pre-established time constraints and her choices regarding how to spend her allotted time during the hearing. *See Volk v. Brame*, 235 Ariz. 462, ¶ 20 (App. 2014) (family courts enjoy "broad discretion" to impose reasonable time limits on proceedings and limit time to scheduled time); *see also* Ariz. R. Fam. Law P. 22(a).

¶50 For all these reasons, we reject Mother's challenges to the trial court's denial of her requests that the minor child be permitted to testify. The court repeatedly concluded that doing so would not be in the child's best interests and that an alternative approach—one that Mother herself had repeatedly suggested—would be preferable. We have no basis to

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which involved the state seeking the termination of parental rights and thus focused in part on the "interests of the state," *id.* ¶¶ 1, 10-13—is relevant in this action between parents. As *Beene* itself emphasizes, due process requirements vary depending on the nature of the proceedings. *Id.* ¶¶ 11-12. Even if relevant, *Beene* establishes that "the best interests of the children (including the potential harm to the children if required to testify at trial) properly may be considered" in the weighing and balancing necessary to determine whether parents in a particular case have "a due process right to call their children as witnesses to confront and cross-examine them about the children's prior statements admitted in evidence." *Id.* ¶ 19. As noted above, the trial court repeatedly did so here.

second-guess those determinations. *Cf. Armer v. Armer*, 105 Ariz. 284, 289 (1970) (trial court's discretion stems from unrivaled position for determining what is best for child, and reviewing court will not disturb lower court's decision "[u]nless it clearly appears that the trial judge has mistaken or ignored the evidence").

Denial of Mother's Motion for Appointment of Independent Counsel

¶51 The rules regarding the representation of a child in family court proceedings make clear that the appointment of a best-interests attorney or child's attorney is an issue left to the discretion of the trial court. *See* Ariz. R. Fam. Law P. 10(b) ("court may appoint" such attorneys "for any reason the court deems appropriate"); *see also* § 25-321; *J.A.R. v. Superior Court*, 179 Ariz. 267, 273, 277 (App. 1994) (appointment of counsel for children in domestic relations cases under § 25-321 explicitly discretionary, and "trial court has discretion, on a case-by-case basis, to make independent counsel determinations based on the specific facts before it"). In this case, Mother's motion requesting appointment of such counsel suggested, in the alternative, that the CAA already involved in the case be ordered to file a supplemental report based on her review of intervening events and a third interview of the child. We find no abuse of the court's discretion in its selection of that alternative rather than the appointment of separate counsel.

III. DENIAL OF MOTHER'S PETITION FOR MODIFICATION

¶52 Mother challenges a number of aspects of the trial court's October 2022 ruling: (a) its finding of no material change of circumstances affecting the welfare of the child; (b) its decision to revert to a parenting plan both parties and the CAA agree is not in the child's best interests; (c) its finding of no binding Rule 69 agreement between the parties; and (d) its award of attorney fees and costs to Father. We now turn to these claims.

No Material Change of Circumstances

¶53 As noted above, the trial court denied Mother's petition for modification on the ground that she had failed to establish a material change of circumstances. On that basis, the court vacated the February 2022 temporary orders and reverted to the orders regarding legal decision-making and parenting time established by the May 2016 stipulated order.

¶54 In Arizona, "a court may modify a parenting plan only if it first finds a material change of the circumstances affecting the child's welfare since the last court order." *Backstrand v. Backstrand*, 250 Ariz. 339, ¶ 1 (App. 2020). If it finds such a change, the court then proceeds to "determine whether a change in the parenting plan will be in the child's best interests." *Id.*[10] The party seeking modification bears the burden of establishing that the "conditions and circumstances have so changed after the original decree as to justify the modification." *Id.* ¶ 14 (quoting *Burk v. Burk*, 68 Ariz. 305, 308 (1949)).

¶55 "The superior court is vested with broad discretion to decide whether a change of circumstances has occurred." *Id.* We will not reverse such a decision absent a clear abuse of that discretion, such as "a clear absence of evidence to support [the trial court's] actions." *Id.* (quoting *Pridgeon v. Superior Court*, 134 Ariz. 177, 179 (1982)). Mother contends this case presents such an abuse of discretion. Having reviewed the extensive trial court record in detail, we agree.

¶56 At the evidentiary hearing in August 2022 that led to the ruling in question here, Father argued that "there is no change of circumstance"—"no substantial and continuing change" to allow for modification—without the now-quashed order of protection "fabricated by Mother."[11] On appeal, he continues to treat the presence or absence of child

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[10] Mother emphasizes A.R.S. § 25-411(J), which states that a court "may modify an order granting or denying parenting time rights whenever modification would serve the best interest of the child." But, as we have explained, this statutory language is "inconsistent" with our supreme court's longstanding jurisprudence requiring the aforementioned two-stage inquiry—precedent that is binding on this court. *Backstrand*, 250 Ariz. 339, n.1. Regardless, because we conclude that the trial court abused its discretion in finding no material change of circumstances and refusing to reach the question of the child's best interests, we need not address this issue.

[11] This characterization before a new trial judge contradicted the prior judge's clarification at the April 2022 status conference that it was "incorrect [for Father] to say that the reason we're here is because of Mother's false allegations." As the earlier judge explained, "the child himself reported abuse by Father," and—as discussed above—that judge clarified that he had quashed the order of protection "fairly reluctantly" after "a very contested hearing" he "found to be very close on the

abuse as the operative question: whether the evidence demonstrated that he had "inexplicably, gone from a peaceful, caring father to a violent, domestic abuser." While certainly relevant if proven, child abuse is not a prerequisite for the finding of a change in circumstances sufficient to allow for the modification of a parenting plan. Indeed, we have expressly rejected the contention that modification is only permissible when the party seeking modification has proven a change that is "detrimental" to a child's welfare. *Id.* ¶ 1. Whether alleged changes "are ultimately positive or negative is immaterial to the change-of-circumstances inquiry." *Id.* ¶ 16. Any change of circumstances affecting the child's welfare can justify departure from the underlying parenting plan. *Id.*

¶57 Such changes are apparent and undisputed on the record before us. By the time of the trial court's ruling in October 2022, over 6.5 years had passed since the entry of the May 2016 stipulated order, with the parties' son having aged from eight to fourteen (now sixteen). Indeed, an earlier trial judge in this case had ordered modifications in February 2011 based only on the parties' agreement that the child's aging itself qualified as "a substantial and continuing change." By February 2022, still another judge had found that the relationship between Father and son had deteriorated, such that the now-teenaged son "doesn't want to spend time" with Father—something Father was "going to have to figure out and work on," probably through parenting classes. In April 2022, after Father had completed ten hours of court-ordered classes aimed at improving his communication with the son and addressing discipline-related concerns, the judge who had ordered those classes stated that the child still had "concerns about spending time with Father." The judge concluded that the father-son relationship still needed to be "rebuil[t]" with the help of therapy. These, alone, are material changes in circumstances, found by the trial court as relevant to the child's welfare, sufficient to allow the subsequent trial judge to weigh whether changes from the parenting plan established in May 2016—under which Father exercised sole legal decision-making, primary residential custody, and the great majority of parenting time—would be in the child's best interests. *See id.* ¶ 1; *Ward v. Ward*, 88 Ariz. 130, 135-36 (1960) (trial court erred in finding no change of

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evidence." Indeed, he directly admonished Father not to view the quashing of the protective order as a "vindication of his position or determination that Mother . . . and son were being false." The judge emphasized that he had made no such finding, advising Father not to "have any false impressions about that."

circumstances where, *inter alia*, child had aged from six to eleven and "expressed a desire" to visit other parent more frequently).

¶58 Perhaps even more importantly, the impetus for the May 2016 arrangement was an allegation of child abuse perpetrated by Mother's then-boyfriend, which Mother did not intervene to stop or report. The parties appear to agree that the offending boyfriend was, by the time of Mother's petition and the trial court's ruling, no longer a part of Mother's life. *Cf. Black v. Black*, 114 Ariz. 282, 284 (1977) (qualifying changes of circumstance included that petitioning parent had remarried). And, insofar as the court entered and Mother agreed to the 2016 order because of Mother's failure to stop or report abuse by her then-boyfriend, any concern regarding her fitness to parent had wholly disappeared by the time of the ruling. At the August 2022 evidentiary hearing, Father's own counsel asserted that the child in question here has two "very fit parents." *Cf. Anderson v. Anderson*, 14 Ariz. App. 195, 199 (1971) (upholding trial court's modification despite mother's prior conduct because "her life became stable" after original decree, rendering both parents fit).

¶59 In 2016, Father had originally argued that it was in the child's best interests for Father to have sole legal decision-making authority and primary physical custody. The trial court had ordered that arrangement after Mother agreed to it, awarding her parenting time only every other Wednesday to Sunday—four nights to Father's ten. Not long after, Father demonstrated through his behavior that his opinion of Mother's fitness had changed. He informally allowed Mother significantly more parenting time than contemplated by the stipulated order. In December 2021, he informed the court that, for approximately three years, he and Mother had been alternating parenting time on an eight/six schedule. Thus, the 2016 arrangement—which allotted Mother parenting time only eight nights per month—has not been the parents' practice since at least 2018.

¶60 By August 2022, Father was expressly arguing that the 2016 parenting schedule "of ten-four in Father's favor" is now "not in the child's best interest." Rather, he argued for "50/50 parenting time," as well as joint legal decision-making—essentially a restoration of the arrangement that had been in place from early 2011 until Father sought modification in early 2016. The trial court itself acknowledged this change in Father's opinion in its October 2022 ruling, noting that Father now agrees that "joint legal decision-making is appropriate" and that "a week on, week off parenting time plan is in [the child]'s best interests."

¶61 In short, by a long course of conduct and his statements on the record before the trial court, Father implicitly acknowledged that circumstances regarding the child's welfare had markedly changed since the 2016 order. By 2022, neither of the parties, nor the court, nor any witness, expressed any of the concerns about Mother's parenting that had formed the basis for that earlier order.

¶62 These undisputed changes, "taken together," had "sufficient impact to require a reconsideration" of the parenting arrangement established by the May 2016 stipulated order. *Ward*, 88 Ariz. at 136. Indeed, the order requested by Father in 2022—restoring joint legal decision-making and equal parenting time under an alternating weekly schedule—demonstrates his own concession that some modification from 2016 was appropriate based on changed circumstances. For this reason, the trial court's conclusion that no material change of circumstances had occurred finds no support in the record and was therefore an abuse of discretion. *See Backstrand*, 250 Ariz. 339, ¶ 14. Instead, the court should have proceeded to determine whether "the child's welfare would be advanced" by modification. *Ward*, 88 Ariz. at 136. It must do so on remand, considering the requirements of A.R.S. §§ 25-103, 25-403, 25-403.01, and 25-403.02.

¶63 In so ordering, we note that the trial court must, at minimum, consider the wishes of the child. *See* § 25-403(A)(4) (on petition for modification, trial court must consider wishes of child "of suitable age and maturity" regarding legal decision-making and parenting time). In this case, Father himself has conceded that the minor in question "is of suitable age and maturity to tell the Court his wishes and has done so through the CAA's . . . report and recommendation." Father has further argued that there is no need for the child to testify because he has "already expressed his desires to the CAA," who "address[ed] the minor child's needs, desires and what is in the best interest of the minor child at the time of trial."

¶64 Notably, the CAA's April 2022 report and August 2022 testimony refer to a lengthy audiotape that provides an unsettling first-hand glimpse of Father's parenting style. In that report and testimony, the CAA—a neutral advisor appointed by the trial court to advocate for the child's best interests—specifically recommends against reversion to the May 2016 parenting plan or even to a fifty-fifty arrangement. *See* Ariz. R. Fam. Law P. 10.1(d)(5) (requiring CAAs to submit reports stating recommendations regarding children's best interests and basis for such recommendations). To comply with § 25-403(A) on remand, the trial court

must consider the CAA's reports, testimony, and recommendations as part of the assessment of the current best interests of the child. Such consideration must occur even if the court ultimately chooses to reject those recommendations in light of the totality of the other evidence.

No Binding Rule 69 Agreement

¶65 As noted above, the trial court concluded as a preliminary matter that "no binding agreement exists between the parties under Rule 69." It based this ruling on its finding that, "even assuming the parties reached agreement on terms, the agreement was not signed by the parties, and it was not approved by the Court." This ruling contains two errors of law.

¶66 First, the signatures of the parties themselves are not required for the formation of a Rule 69 agreement. Under Rule 69(a), "An agreement between the parties is valid and binding on the parties if . . . the agreement is in writing and signed by the parties personally *or by counsel on a party's behalf*." (Emphasis added.) Mother argued that an agreement had been reached between the parties' counsel, as evidenced in their email communications sent from May 20 to May 27, 2022. Those emails all included electronic signatures, followed by signature blocks. Under A.R.S. § 44-7007(B), "[a] contract formed by an electronic record cannot be denied legal effect and enforceability solely because an electronic record was used in its formation." In particular, electronic records "satisf[y] any law that requires a record to be in writing," § 44-7007(C), and electronic signatures "satisfy[y] any law that requires a signature," § 44-7007(D). Thus, if the content of the attorney emails was sufficient to establish an agreement under Rule 69, a valid and binding agreement may well exist between Mother and Father. *See, e.g.*, *Ertl v. Ertl*, 252 Ariz. 308, ¶¶ 6-8, 11, 14 (App. 2021) (parties entered enforceable agreement created by signed attorney emails expressing agreement on terms, including one party's acceptance of offer in signed email stating "she would begin drafting the formal agreement").

¶67 Second, the trial court erred in relying on the lack of court approval. Such approval is necessary for an agreement to be "binding on the court." Ariz. R. Fam. Law P. 69(b). The court was therefore not obligated to view the agreement as binding on itself or its determination. *See Engstrom v. McCarthy*, 243 Ariz. 469, ¶ 9 (App. 2018) ("[C]ourts can, in the first instance, reject a Rule 69 agreement."). But a written agreement signed by counsel on behalf of the parties is still "valid and binding on the parties" under Rule 69(a). *See Meek v. Meek*, ___ Ariz. ___, ¶ 22, 539 P.3d

920, 925 (App. 2023) (Rule 69 agreement not binding on court until submitted to and approved by court, but agreement may still be valid and binding on parties even before court approval). The court thus erred in finding, based on the lack of court approval, that "no binding agreement exists between the parties."

¶68 Our statutes require courts determining legal decision-making and parenting time arrangements to consider, *inter alia*, whether the parties have reached agreement on material issues. *See* §§ 25-403.01(B), 25-403.02(A), (D). As explained above, the trial court in this case abused its discretion in refusing to reach the question of the child's best interests. On remand, the court may revisit whether a binding agreement exists between the parties under Rule 69, based on the emails exchanged between their counsel in May 2022. *See Buckholtz v. Buckholtz*, 246 Ariz. 126, ¶ 16 (App. 2019). In so doing, the court may also consider the information the parties provided during their trial and deposition[12] testimony regarding what they knew and intended vis-à-vis the settlement discussions undertaken by their respective counsel in May 2022, and any other relevant evidence.[13] This determination must depend on whether the

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[12] Mother designated certain portions of Father's deposition transcript to be offered against him during the August 2022 evidentiary hearing, pursuant to Rule 59, Ariz. R. Fam. Law P. At that hearing, when Mother asked for clarification regarding how to ensure the transcript would be considered as evidence, the trial court instructed her to "file the deposition transcript in"—to "file it in with the clerk." Mother's opening brief states that the deposition transcript was provided to the court at the August 2022 hearing, as the hearing transcript indicates. Father does not appear to have raised any objection regarding the deposition transcript, whether in the parties' joint pretrial statement, Father's separately filed objection to Mother's witnesses and exhibits, at the hearing when Mother discussed the deposition transcript with the court, or otherwise. Mother argued at the evidentiary hearing that the court's review of the designated deposition testimony would raise doubts regarding the testimony Father had provided during that hearing. Nevertheless, the deposition testimony was apparently not placed in the trial court's record.

[13] This evidence may include Exhibit D to Father's affidavit in support of attorney fees and costs, which reflects communications that purportedly occurred between Father and his then-counsel prior to and during that attorney's May 2022 communications with Mother's counsel regarding possible resolution of this matter.

parties, through their counsel, evidenced mutual assent based on "objective evidence includ[ing] both written and spoken words, as well as acts"—not based on "the hidden intent of the parties." *Id.* ¶ 11.

Attorney Fees and Costs

¶69 The trial court awarded Father his attorney fees and costs under A.R.S. § 25-324. It found that a financial disparity exists because "Mother earns significantly more than Father." It further found that, although Mother may "strenuously disagree" with Father's parenting choices, "it was objectively unreasonable for her to force [him] to defend against that disagreement when she was unable to establish that such choices materially affect [the son]'s welfare." The court characterized Mother's petition as "coming back to court to relitigate settled custody issues."

¶70 Mother challenges this ruling on appeal. We review an award of attorney fees under § 25-324 for an abuse of discretion. *Lehn v. Al-Thanayyan*, 246 Ariz. 277, ¶ 29 (App. 2019).

¶71 Based on the record before us, Mother's petition cannot be accurately characterized as relitigating settled issues. Moreover, the earlier trial judge in this case made clear that its quashing of the order of protection should not be viewed as a vindication of Father's position. He did not conclude that Mother had taken an unreasonable position when she sought a modification of the custody orders based on the son's claims of abuse by Father. To the contrary, that judge temporarily modified the May 2016 order based on the evidence before him. He also made a number of findings regarding significant changes in the father-son relationship, including the son's desire not to live or spend time with Father, the need for Father to attend parenting classes, and the importance of the child receiving therapy.

¶72 Furthermore, the trial court appointed the CAA to interview the son, otherwise investigate the case, and make recommendations to the court regarding the child's best interests—not something courts do in response to facially unreasonable petitions. As discussed, the resulting reports and testimony also suggested that Mother's petition was grounded at least in part in reasonable concerns for her son's welfare. Ultimately, the CAA expressly supported the thrust of the modifications sought by Mother, recommending that neither the parenting plan established by the May 2016 stipulated order nor a fifty-fifty arrangement be put back into place. And, Father himself has acknowledged, both through his behavior and his

express arguments during this litigation, that he no longer deems the long-abandoned 2016 arrangement to be in the best interests of his son.

¶73 In this context, the trial court abused its discretion in finding that Mother's pursuit of modification was "objectively unreasonable." Indeed, Father's own counsel argued during the August 2022 hearing that Mother "did what any mom would do if a 14-year-old child reported what [the son] allegedly reported in this case. She rallied to protect her kid." Furthermore, the record of text exchanges between Mother and son demonstrated that the claims of abuse authentically originated with the son and were not the product of coaching or fabrication by Mother. Even if Mother failed to prove child abuse or domestic violence, she established various changes materially affecting the son's welfare. In light of the many changes that have arisen since the entry of the May 2016 stipulated order—including the parties' informal agreement to depart significantly from its parenting schedule, as well as even Father's position that its terms are no longer in the son's best interests—this was simply not a case of one parent "coming back to court to relitigate settled custody issues."

¶74 We also note Father's admission during his deposition that he told the son that he had "employed a r[]use or strategy" in having his former counsel contact Mother's attorney in May 2022 to initiate conversations regarding Father "relinquishing [his] parenting rights and sett[l]ing this case." Father testified that he did this out of frustration, was aware of what his attorney proposed and discussed with Mother's counsel, but then "changed [his] mind." This testimony is consistent with the billing statements Father submitted with his affidavit in support of attorney fees and costs, which—like his former attorney's emails—indicate that Father was involved in, and aware of, the negotiations his then-counsel undertook with Mother's, which he later denied having authorized. Father nonetheless indicated to Mother that he was fully unaware of the proposed resolution discussed by counsel—a position he continues to argue on appeal. He also testified at the August 2022 evidentiary hearing that he does not plan to accept any agreement in this case. On remand, the trial court should consider these facts in evaluating the reasonableness of Father's behavior during litigation.

¶75 For all of these reasons, we conclude the trial court's rationale for awarding attorney fees and costs to Father under § 25-324 was an abuse of discretion.

Conclusion

¶76 In sum, the findings underlying the trial court's October 2022 ruling cannot be harmonized with undisputed parts of the record before us. Those findings, and the court's errors of law regarding Rule 69 agreements, constitute abuses of the court's discretion. *See DeLuna v. Petitto*, 247 Ariz. 420, ¶ 9 (App. 2019) (abuse of discretion when court commits error of law or record does not support court's decision); *see also Stevenson v. Stevenson*, 132 Ariz. 44, 46 (1982) (appellate court's inquiry is whether "any reasonable construction of the evidence justifies the decision"). Mother challenged these errors in her Rule 83 motion to alter or amend the judgment. We agree with her that the court abused its discretion in denying that motion and entering final judgment in Father's favor, including in awarding him attorney fees.

IV. DISPOSITION

¶77 We lack jurisdiction to address Mother's challenges to the trial court's February 2022 quashing of the order of protection. We also reject her challenges to other pre-trial rulings. However, for the reasons discussed above, we vacate the court's April 2023 judgments and remand for further proceedings consistent with this decision. Both parties have requested their attorney fees and costs on appeal, pursuant to § 25-324. In our discretion, we deny those requests.