FILED BY CLERK
APR 19 2011
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re the Marriage of: GRACE M. KELLEY, Petitioner/Appellant, and MARTIN D. FLOERCHINGER, Respondent/Appellee.	2 CA-CV 2010-0163 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. D20040962

Honorable David R. Ostapuk, Judge Pro Tempore

AFFIRMED

Dan Montgomery
Tucson
Attorney for Petitioner/Appellant

West, Christoffel & Zickerman, PLLC
By Dean Christoffel
Tucson
Attorneys for Respondent/Appellee

V Á S Q U E Z, Presiding Judge.

¶1 In this appeal arising from post-dissolution, domestic relations proceedings, appellant Grace Kelley challenges the trial court's school placement order concerning the

parties' minor child. Kelley argues the court abused its discretion by "improperly appl[ying] the best interests of the child standard when ruling on [the child]'s school placement." For the reasons stated below, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the trial court's ruling. *See In re Marriage of Yuro*, 192 Ariz. 568, ¶ 3, 968 P.2d 1053, 1055 (App. 1998). In the 2005 decree that dissolved the parties' marriage, the court had awarded Kelley and appellee Martin Floerchinger joint legal and physical custody of their daughter Emma, who was then five years old. Pursuant to the court-approved Joint Parenting Plan, the parties periodically were required to discuss and mutually decide on an appropriate school for Emma to attend. From 2007 through 2010, Emma was enrolled at Tanque Verde Elementary School. For the 2010/2011 school year, the parties were to meet to decide on an appropriate middle school, and if unable to agree, they were to utilize the services of a Parent Coordinator.

¶3 In January 2010 Kelley filed a Petition for Order to Appear Re: Contempt, claiming Floerchinger had attempted to enroll Emma at Basis Middle School without Kelley's consent. Floerchinger responded that he had not officially enrolled Emma, but had begun the necessary registration process to place Emma in the school's admission lottery. Floerchinger maintained, however, that because Basis Middle School was recognized as one of the best middle schools in the United States, it was better for Emma than her current school—both in terms of meeting her intellectual needs and preparing her academically for future education. He argued that although Emma was performing

well academically and socially at Tanque Verde Elementary, she was not being challenged sufficiently from an academic standpoint. Kelley insisted Emma should remain in the Tanque Verde School District because she was well adjusted there, had developed significant relationships with her peers and school staff, and was performing well academically.

¶4 Following an evidentiary hearing on the issue of Emma's school placement, the trial court issued a detailed, under-advisement order finding it was in Emma's best interest "that she be enrolled at Basis Middle School commencing in August 2010." This appeal followed.

Discussion

¶5 Kelley argues the trial court abused its discretion when it improperly applied the best-interest-of-the-child standard by basing its entire ruling on the secondary, "best school" factors outlined in *Jordan v. Rea*, 221 Ariz. 581, 212 P.3d 919 (App. 2009). She claims that because there was sufficient evidence that it was in Emma's best interest to remain at her current school, the court did not need to address what she describes as the nine secondary, permissive factors set forth in *Jordan*.

¶6 In a child custody dispute, "[i]f the parents are unable to agree on any element to be included in a parenting plan, the court shall determine that element." A.R.S. § 25-403.02(B). In making that determination, § 25-403(A) requires the court to determine custody "in accordance with the best interests of the child" and provides the court "shall consider all relevant factors," including those enumerated in that section. Issues regarding school placement are among the kinds of issues typically addressed in a

parenting plan, but if parties cannot reach an agreement, the issues must be decided by the trial court. *Jordan*, 221 Ariz. 581, ¶ 19, 212 P.3d at 926-27. We review the court's school placement order for an abuse of discretion, *Owen v. Blackhawk*, 206 Ariz. 418, ¶ 7, 79 P.3d 667, 669 (App. 2003), and will not disturb the court's ruling unless the court clearly has mistaken or ignored the evidence, *Armer v. Armer*, 105 Ariz. 284, 289, 463 P.2d 818, 823 (1970).

¶7 In *Jordan*, this court adopted the factors set forth in § 25-403 for determining custody issues in the context of school placement disputes. 221 Ariz. 581, ¶ 23, 212 P.3d at 928. Thus, we identified the following four factors trial courts should consider in resolving such disputes:

> 1) the wishes of the child's parent or parents as to [school placement]
>
> 2) the wishes of the child as to [school placement]
>
> 3) the interaction and interrelationship of the child with [persons at the school] who may significantly affect the child's best interests, and
>
> 4) the child's adjustment to [any present school placement].

Id.

¶8 The list, however, is not exclusive, and the trial court is required to consider "all relevant factors for guidance." *Id.* In *Jordan*, we noted that family courts in other jurisdictions consider additional factors, including the following: (1) the child's educational needs; (2) the qualifications of the teachers at each school; (3) the curriculum used and method of teaching at each school; (4) the child's performance in each school;

(5) whether the proposed or current school situation complies with state law; (6) whether one school is more suitable given the child's medical condition or other special needs; (7) whether one school would allow the child to maintain ties to a nonresidential parent's religious beliefs; (8) whether requiring the child to leave the child's current school would aggravate the difficulties of the divorce; and (9) whether continuing in a particular school would be essential or beneficial to the child's welfare. *Id.* ¶ 24.

¶9 Kelley contends these additional factors represent a "best school" standard, which she asserts is an inappropriate alternative to Arizona's "best interest" standard in making decisions about school placement. *Jordan* does not support her argument. The additional nine factors identified in *Jordan*, together with the four factors set forth in § 25-403(A), can all be considered in determining the best interest of the child. And no part of our reasoning in *Jordan* specifically states that any factor carries more weight than the other. *Jordan*, 221 Ariz. 581, ¶ 24, 212 P.3d at 928.

¶10 We therefore reject Kelley's contention that the additional factors outlined in *Jordan* are secondary factors for trial courts to consider. Although noting that the issue whether any of the nine additional factors applies depends on the circumstances of each case, we made clear that trial courts "should consider them" along with the four factors under § 25-403. *Jordan*, 221 Ariz. 581, ¶ 24, 212 P.3d at 928. And, it is for the trial court to determine within the exercise of its discretion which of the thirteen factors are applicable to and dispositive of the school placement issue. *See Porter v. Porter*, 21 Ariz. App. 300, 302, 518 P.2d 1017, 1019 (1974) (in deciding child custody issues, "[t]he

trial court is given broad discretion in determining what will be the most beneficial for the child[], . . . and it is in the best position to determine what is in the child[]'s interest").

¶11 Thus, even if the initial four factors favored Emma remaining in the Tanque Verde School District, the trial court did not abuse its discretion in giving equal consideration to the nine additional factors set forth in *Jordan*. The record supports the court's findings that the initial four factors alone were not dispositive of the issue and that some of the factors did not apply at all. In its detailed, fifteen-page minute entry, the court plainly considered all thirteen factors and appropriately determined that it was in Emma's best interest to be enrolled at Basis Middle School. *See Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004) (trial court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts"). We find no abuse of discretion in the court's ruling.

Disposition

¶12 We affirm the trial court's order. We also grant Floerchinger's request for an award of attorney fees and costs on appeal pursuant to A.R.S. § 25-324, pending his compliance with Rule 21(c), Ariz. R. Civ. App. P.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge