IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

GIA CHAPMAN, *Petitioner*,

v.

THE HONORABLE STEPHEN M. HOPKINS, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA, *Respondent Judge,*

RONALD PRITCHARD and CLAUDIA PRITCHARD,
Real Parties in Interest.

No. 1 CA-SA 17-0115
FILED 10-12-2017
AMENDED PER ORDER FILED 10-16-2017

Petition for Special Action from the Superior Court in Maricopa County
No. FC 2017-090244
The Honorable Stephen M. Hopkins, Judge

JURISDICTION ACCEPTED AND RELIEF DENIED

COUNSEL

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OPINION

Presiding Judge Randall M. Howe delivered the opinion of the Court, in which Judge Peter B. Swann and Judge Michael J. Brown joined.

H O W E, Judge:

¶1 In this special action proceeding, Gia Chapman ("Mother") challenges the family court's ruling affirming ex-parte temporary orders giving her parents ("Grandparents") sole legal decision-making authority and sole parenting time for Mother's minor children. Mother argues that the court lacked jurisdiction to enter the ruling and that it incorrectly applied a best interests standard.

¶2 We previously issued an order accepting jurisdiction. Because the temporary orders are merely preparatory to a later trial, Mother does not have an "equally plain, speedy and adequate remedy by appeal." Ariz. R. Spec. Act. 1(a); *Villares v. Pineda*, 217 Ariz. 623, 624–25 ¶ 10 (App. 2008). Moreover, the circumstances under which the family court may award a third party legal decision-making authority and parenting time and the standard used to make that determination are issues of first impression and statewide importance. In our order, we also denied relief with an opinion to follow. This is that opinion.

FACTS AND PROCEDURAL HISTORY

¶3 Mother, who became a widow in 2015, has six children: three minor daughters, two minor sons, and one 18-year-old son. In 2016, Mother met Yves LaJoie through an online dating site. LaJoie, who lived in California, came to Arizona to meet Mother and Grandparents in person in early September of that year. From the outset, Mother's father and LaJoie had significant disagreements. The most significant disagreement was about religion and their respective religious beliefs. LaJoie did not believe in established religions or entering church buildings, while Grandparents—and Mother before meeting LaJoie—were members of a Christian church.

¶4 In October, Mother traveled with her three young daughters to California to visit LaJoie for a week. LaJoie returned to Arizona with them and moved into Mother's home with her six children and LaJoie's own teenage son. Mother and LaJoie considered themselves to be married

in the "eyes of God," which was the only form of marriage important to them because they "don't do world's traditions." Instead, LaJoie and Mother participated in and hosted a "home church" and implemented "rules" in Mother's household consistent with their beliefs. These rules included prohibiting the family from celebrating holidays or birthdays and requiring the family to end relationships with other family members and friends.

¶5 Soon after their return, between 20 and 30 of Mother's friends and family, including Grandparents and Mother's three sons, held an "intervention" concerning Mother's new religious practices. Mother, LaJoie, LaJoie's friend Rob Ogden, and the children were present. The group questioned Mother about her new beliefs and relationship, and called her "demon-possessed." They also commented that she was vulnerable and that LaJoie had brainwashed and controlled her. They asked her to "listen to [her] sons," who did not like the decisions Mother was making for her life and for the household. Mother told her sons that if they did not approve of her choices, did not want to follow her rules, and thought they would be happier living with Grandparents, then they "had decisions to make" because she "wasn't going to allow any more chaos."

¶6 The following day, Mother's three sons went to live with Grandparents. After leaving the house, Mother and her sons did not have much of a relationship and any conversations they did have grew increasingly hostile. LaJoie prohibited the oldest son from speaking with Mother unless LaJoie was present. Another son told her that he would "absolutely never come home" as long as LaJoie lived there.

¶7 Although Mother's sons now lived with Grandparents, Mother's three daughters still lived with her and were not allowed to see Grandparents often. In January 2017, Grandparents petitioned for visitation rights to the three daughters under A.R.S. § 25–409(C). In their petition, Grandparents alleged that they had a healthy relationship with the children and had helped raise them since their births. They further stated that they planned to use their visitation time to "just love them as we always have," do activities together or just spend time together because the time Mother permitted them to see the daughters "isn't much time."

¶8 In February 2017, while that petition was pending, one of the daughters went to school with a red mark under her eye. Fearing that the daughter had been the victim of sexual abuse, the school called police to investigate. The daughter told the police officer that she received the mark from LaJoie's friend Ogden while playing a wrestling game. The daughter

said that while they were wrestling, Ogden placed his mouth over her eye and "sucked" on it. The daughter also stated that Ogden had pinched her sister on the buttocks. The sister subsequently denied that she had been pinched, but during an interview with the officer, changed her descriptions of the event and seemed "uncomfortable" with talking about it. The officer was unable to reach Mother but spoke with LaJoie, who represented himself as the girls' father. LaJoie denied the allegations, stating that he knew of the injury and that she had received it while playing with his friend. He then told the officer that he was certain the daughters were not in danger and further investigation was not required. The officer then closed the case as a non-crime.

¶9 That same month, Mother, who had been in remission from breast cancer, relapsed. Her cancer was diagnosed as terminal. Soon after Mother's diagnosis, Mother and LaJoie legally married. The couple then traveled to Mexico so that Mother could receive treatment. Mother left her three daughters with LaJoie's son, a nanny, and family friends.

¶10 While Mother and LaJoie were in Mexico, Grandparents amended their petition to ask for temporary sole legal decision-making authority and sole parenting time of the children. They attached to the amended petition the oldest son's affidavit, which stated that he had "grown increasingly concerned about [Mother's] mental stability as it relates to her ability to safeguard the well-being of" his three young sisters. He also stated that when he tried to tell Mother about his concerns in LaJoie's and Ogden's presence, Mother told him to leave the house. The son also avowed that he had recently talked to one of his sisters, who said that Ogden had inappropriately touched her and that she and her sister did not want to remain in Mother's home but wanted to live with Grandparents. Grandparents also filed an ex-parte motion for emergency temporary orders for sole legal decision-making and sole parenting time, which the family court granted.

¶11 At the subsequent evidentiary hearing on the temporary orders, Mother denied that any of her daughters had been sexually abused or that either LaJoie or Ogden presented any danger to her daughters' well-being. She also denied that she was part of a "cult," as Grandparents and her oldest son had described in the pleadings. Mother stated that she believed that Grandparents' actions were driven by the fear that LaJoie insisted on marrying her upon her diagnosis to put himself in a position to obtain her considerable assets if she were to die. Mother's close friend testified that she had known all of Mother's children since their births and that they "always had a good relationship with the grandparents." She also

stated that Mother had changed after her initial cancer diagnosis in September 2013 and was no longer of sound mind. She recalled times when Mother told her that God would wake her in the middle of the night and "download information to her" and that the government was controlling everything.

¶12 Mother's oldest son testified that he and his siblings were doing well at Grandparents' house and that his brothers did not want to return to live with Mother. He stated that he had tried to talk to Mother after her relapse diagnosis, but could not do so without LaJoie present. The son also stated that Mother frequently commented about the "illuminati" and removed all mirrors from the home because they were "portals for demons." In addition, Grandparents offered a summary of an interview each child had with a psychologist, in which each child individually stated that they did not like the new household rules, did not believe Mother was making good decisions, and believed LaJoie was controlling Mother. All the children also stated that they did not want to return to Mother's home as long as LaJoie was there and that they were unhappy and anxious while living there.

¶13 After taking the matter under advisement, the family court affirmed its previous ex-parte temporary orders. The court considered several best interests factors outlined in A.R.S. § 25–403(A) and concluded that granting Grandparents legal decision-making authority and parenting time was in the children's best interests. The court ruled, however, that Mother could have supervised parenting time with her children so long as neither LaJoie nor Ogden had contact with them. Mother then petitioned this court for special action review.

DISCUSSION

¶14 Mother argues that the family court lacked subject-matter jurisdiction to enter the temporary orders granting Grandparents legal decision-making authority and parenting time because Grandparents failed to present sufficient evidence at the hearing—and the family court failed to make specific factual findings—that they stood *in loco parentis* and that allowing the children to remain in Mother's care would be significantly detrimental to them under A.R.S. § 25–409(A). Mother argues further that, even if the family court had jurisdiction to issue temporary orders, it erroneously applied a lower "best interests" standard instead of the higher "significantly detrimental" standard. We review the family court's interpretation and application of A.R.S. § 25–409 de novo. *Thomas v. Thomas*,

203 Ariz. 34, 36 ¶ 7 (App. 2002). Neither of Mother's arguments warrants relief.

1. The Statutory Scheme Relating to a Third Party's Ability to Petition for Legal Decision-Making and Parenting Time

¶15 The Arizona Legislature has granted the family court jurisdiction to conduct proceedings concerning legal decision-making and parenting time brought by "a person other than a parent." A.R.S. § 25–402. To exercise this jurisdiction, the family court must first confirm its authority to do so to the exclusion of another state or entity. A.R.S. § 25–402(A). A person seeking legal decision-making or parenting time must do so "by filing a petition for third party rights under [A.R.S.] § 25–409 in the county in which the child permanently resides." A.R.S. § 25–402(B)(2).

¶16 Upon receiving such a third-party-rights petition—assuming the jurisdictional requirements are met—the family court *must* summarily deny the petition unless it finds that the initial pleading establishes that: (1) the petitioners stand *in loco parentis* to the child, (2) allowing the child to remain in the care of legal parent who wishes to keep decision-making authority would be significantly detrimental to the child, (3) no court of competent jurisdiction has entered orders of legal decision-making or parenting time within the preceding year, and as relevant here, (4) one of the legal parents is deceased. A.R.S. § 25–409(A). A person stands *in loco parentis* if the child has treated that person as a parent and has formed a meaningful parental relationship with the child for a substantial period of time. A.R.S. § 25–401(1). The petition must be supported by an affidavit containing detailed facts supporting the specific claims. A.R.S. § 25–409(D).

¶17 Once the family court determines that the petition sufficiently establishes these factors and therefore does not summarily deny the petition, the court then examines the petition's merits. In doing so, A.R.S. § 25–409(B) imposes a rebuttable presumption that "awarding legal decision-making to a legal parent serves the child's best interests." A.R.S. § 25–409(B); *see also Downs v. Scheffler*, 206 Ariz. 496, 500 ¶ 11 (App. 2003) ("Once the court decides the pleadings are sufficient and proceeds to examine the merits of the custody petition, however, § 25–415(B)[1] imposes

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1 Renumbered as A.R.S. § 25–409 in 2012. *See* Laws 2012, Ch. 309, § 20. We note that although *Downs* addressed the previous version of what is now A.R.S. § 25–409(A), the language of both versions as relevant to the disposition of this special action are similar. Therefore, we apply the same reasoning.

a statutory presumption 'that it is in the child's best interests to award custody to a legal parent . . . .'"). In other words, notwithstanding the A.R.S. § 25–409(A) allegations established by the petition, a presumption exists that a parent's retention of legal decision-making authority and parenting time is in a child's best interests. Also, although best interests considerations under A.R.S. § 25–403(A) normally require proof by a preponderance of the evidence, the burden to overcome A.R.S. § 25–409(B)'s presumption is elevated: only clear and convincing evidence that awarding legal decision-making to a legal parent is inconsistent with the child's best interests can overcome this presumption. A.R.S. § 25–409(B).

¶18 In determining whether clear and convincing evidence rebuts the presumption, the family court should consider all factors relating to the child's physical and emotional well-being. These factors include the relevant best interests factors enumerated in A.R.S. § 25–403(A). *See Downs*, 206 Ariz. at 500 ¶¶ 12–14 (concluding that although not all factors outlined in A.R.S. § 25–403(A) are applicable to non-parent custody disputes, those factors should be considered in making a best interests evaluation under A.R.S. § 25–409). This determination does not allow the family court to enter orders that it considers to be in the child's best interests, but rather to use the child's best interests to determine who should make decisions for the child. *See* A.R.S. § 25–409(B) ("A third party may rebut this presumption only with proof showing . . . that awarding legal decision-making to a legal parent is not consistent with the child's best interests."); *cf. Goodman v. Forsen*, 239 Ariz. 110, 114 ¶ 14 (App. 2016) ("The court's role is not to engineer what it perceives to be the optimal situation for the child, but to determine whether compelling circumstances warrant state interference with a fit parent's decisions."). Although the family court must make specific findings on the record when making a final custody order, A.R.S. § 25–403(B), specific findings on the record are not required when the family court makes a temporary order, *see Gutierrez v. Fox*, 242 Ariz. 259, 264–65 ¶¶ 34–35 (App. 2017).

2. The Family Court Properly Applied the Statutory Scheme

2a. The Court Had Subject Matter Jurisdiction

¶19 Mother first argues that the family court erred by entering its temporary order because it lacked subject matter jurisdiction to do so. Specifically, she argues that the court did not have jurisdiction to enter an order under A.R.S. § 25–409 because Grandparents failed to prove at the evidentiary hearing that they stood *in loco parentis* to the children and that allowing the children to stay with Mother would be significantly

detrimental to them. But "subject matter jurisdiction" refers to a court's statutory or constitutional authority to hear a certain type of case. *Sheets v. Mead*, 238 Ariz. 55, 57 ¶ 9 (App. 2015). "[T]he court's power to conduct . . . parenting time proceedings is provided by A.R.S. § 25–402." *Id.* Here, the family court had the authority to conduct the proceeding to the exclusion of any other entity as A.R.S. § 25–402(A) requires. Additionally, Grandparents filed their petition in Maricopa County—the county in which the children permanently reside—as A.R.S. § 25–402(B) requires. Thus, the court had jurisdiction pursuant to A.R.S. § 25–402, and so stated in its order.

¶20 Contrary to Mother's argument, "§ 25–409 simply sets forth the substantive criteria that govern [parenting time] petitions." *See Sheets*, 238 Ariz. at 57 ¶ 9. In other words, the criteria in A.R.S. § 25–409(A) are not jurisdictional requirements, but instead substantive elements that need to be pled to prevent summary dismissal. Thus, the statute requires only that Grandparents' initial petition, despite any contest that Mother may have alleged in her response, establish on its face *in loco parentis* standing and significant detriment to the children.

2b. The Petition Established *In Loco Parentis* and Significant Detriment

¶21 Here, Grandparents pled the requisite facts in their petition for visitation and amended petition for legal decision-making and parenting time. Grandparents' petition was supported by an affidavit from the oldest son containing detailed facts on the specific claims. The family court later found that the petition established that Grandparents stood *in loco parentis* to the children and that allowing the children to stay in Mother's care would be significantly detrimental to them.[2] Consequently, the family court did not summarily deny Grandparents' petition as the

[2] Though the statute uses the term "establish," we interpret that term to require sufficient *allegations* be made in the petition that the statutory elements exist, not proof of those elements. Were we to interpret the term "establish" to mean "prove" at the pleading stage, we would do violence to the legislative presumption in favor of parents' rights. The statute contemplates that a petition that "establishes" the necessary elements under A.R.S. § 25–409(A) still must eventually be supported by adequate proof necessary to overcome the presumption in § 25–409(B). Logically, then, a petition sufficient to avoid summary dismissal cannot be treated as one that has already proved its merit.

statute would have required it to if it did not find each of the four criteria met. The record here supports this decision.

¶22 First, Grandparents' petition, which included the adult son's supporting affidavit, established that Grandparents stood *in loco parentis* to all the minor children. Their amended petition alleged that they stood *in loco parentis* and that both are retired and spend their time caring for the children—a statement that Mother admitted in her response. Additionally, Grandparents alleged that Mother's sons were currently living with them and that the daughters had expressed a desire to move in with them as well. The petition also alleged that Grandparents had provided "what amounted to almost daily care" of all the children even before the sons moved in with them in October 2016. This shows that the children looked to Grandparents to help provide for their basic needs when they felt that Mother could not. Further, the petition alleged that Grandparents maintained a healthy relationship with the children and had helped raise them from the time of their births. This information sufficiently alleges that Grandparents formed a meaningful relationship with the children over a substantial period of time. The record thus supports the court's finding that the pleadings sufficiently establish that Grandparents stood *in loco parentis*.

¶23 Second, the petition alleged that allowing the children to remain in Mother's care would be significantly detrimental to them. Grandparents alleged that Mother allowed LaJoie's friend Ogden into the home despite allegations that he had inappropriately touched two of her daughters, including that he "sucked" on one daughter's eye. The petition also stated that Mother had isolated the daughters by moving them to a different school and not allowing them to see their friends. Mother also had allegedly left the daughters in the care of LaJoie's teenage son, who was only recently introduced to the family. The petition additionally raised concerns about Mother's mental health and decision-making ability due to her cancer diagnosis and resulting vulnerability. Mother's oldest son's affidavit supported these allegations. He also testified to Mother's mental instability and inability to protect the daughters.

¶24 Mother argues that the statements in Grandparents' petition were conclusory and could not sufficiently satisfy A.R.S. § 25–409(A)'s requirements. She also argues that she affirmatively denied most of the allegations in Grandparents' petition. But the allegations in the petition were not merely conclusory; they were supported by facts both in the petition and in the oldest son's affidavit. Section 25–409(A) does not require that the initial petition contain uncontroverted evidence of significant detriment for the court to consider a third party's petition for legal

decision-making. *Cf. Coleman v. City of Mesa*, 230 Ariz. 352, 356 ¶ 9 (2012) (stating that in considering a motion made under Arizona Rule of Civil Procedure 12(b)(6), the courts look at the complaint itself when considering whether factual allegations are well-pled and assumes the truth of those facts). Thus, the petition sufficiently established that allowing the children to remain in Mother's care would be significantly detrimental to them.

¶25 Additionally, to the extent that Mother argues that the court failed to make any of the above findings on the record before entering temporary orders, her argument fails. Nothing in A.R.S. § 25–409(A) requires the court to do so. *Compare, e.g.*, A.R.S. § 25–403(B) (specifically requiring that when making a best interests finding in a contested legal decision-making case, "the court shall 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") *with* A.R.S. § 25–409(A) (having no such requirement). "Such summary dismissal does not require the detailed factual findings, made on the record, that accompany a decision in which a custody award is made after consideration of the evidence." *Cf. Downs*, 206 Ariz. at 500 ¶ 10. Thus, the family court fulfilled its duty under A.R.S. § 25–409(A) by not summarily denying Grandparents' petition and instead allowing it to proceed to a consideration of the merits.[3]

2c. The Court Correctly Applied the Best Interests Standard in Entering Its Temporary Orders

¶26 Mother argues next that the family court erroneously considered only "best interests" factors under A.R.S. § 25–403(A) to justify its ruling, when it should have determined whether allowing the children to stay in Mother's care would be significantly detrimental to them. This misunderstands the effect of A.R.S. § 25–409(A). The court must consider whether significant detriment is established only when determining whether to summarily dismiss a petition for legal decision-making and parenting time by a non-parent or to allow it to proceed for consideration on the merits. *See* A.R.S. § 25–409(A); *supra* ¶¶ 15–16. Once the court finds that this threshold is met and allows the litigation to proceed, the petitioning party bears the burden of rebutting, by clear and convincing

[3] Although Mother does not challenge the family court's findings that another court of competent jurisdiction has not entered or approved an order regarding legal decision-making or parenting time or that the children's other parent is deceased, we note that Grandparents' petition also established those elements. Accordingly, the petitions sufficiently established each of the four required criteria under A.R.S. § 25–409(A).

evidence, the presumption that awarding legal decision-making to the legal parent "serves the child's best interests because of the physical, psychological and emotional needs of the child to be reared by a legal parent." A.R.S. § 25–409(B). Grandparents will continue to bear that burden at the trial on the merits of their petition.

¶27 Here, the family court found that A.R.S. § 25–409(A)'s threshold was met and therefore moved on to consider the petition's merits and determine whether Grandparents could present clear and convincing evidence to overcome A.R.S. § 25–409(B)'s presumption. The record here supports the family court's determination that they could. Although the court did not make specific factual findings in its temporary order, it identified the factors from A.R.S. § 25–403(A) that it took into consideration in making its ruling. *See Downs*, 206 Ariz. at 500 ¶ 14 (concluding that a best interests finding under A.R.S. § 25–409(B) requires an evaluation of the child's bests interests in harmony with the requirements of § 25–403(A) and (J)); *see also Gutierrez*, 242 Ariz. at 264–65 ¶¶ 34–35 (holding that the family court is not required to make the specific factual findings on the record when making temporary orders even though it would be required to do so otherwise under A.R.S. § 25–403). The court considered that the parent-child relationship between Mother and her sons was strained, and that the sons hardly spoke with Mother. The court also considered the interactions between the children and "any other person who may significantly affect the child's best interests." Additionally, the court gave great weight to the children's interviews, during which each child stated that LaJoie controlled Mother, their quality of life had declined since he appeared in their lives, and they believed that Mother was not of sound mind or capable of making good decisions. The court also gave weight to the allegations of abuse by Ogden and LaJoie's false representation that he was the girls' father. On this record, reasonable evidence supports the court's temporary order.

¶28 Mother argues finally that the family court violated her fundamental right to parent by restricting her parenting time. *See Troxel v. Granville*, 530 U.S. 57, 65 (2000) (holding that a parent's right to care, custody, and control of a child is a fundamental liberty interest); *see also Goodman*, 239 Ariz. at 114 ¶ 13 (holding that "special weight" must be afforded to a fit parent's decisions regarding a child's best interests consistent with the constitutional right to parent). Relying on *Troxel* and *Goodman*, Mother contends that the family court failed to afford "special weight" to her determination of her children's best interests concerning visitation rights. *See Troxel*, 530 U.S. at 70; *Goodman*, 239 Ariz. at 113–14 ¶¶ 13–14. But Mother's reliance on those cases is misplaced; they did not

involve a parent whose parental fitness was at issue. In the former case, the legal parent was still a fit parent. Thus, if the family court were to order that a third party receive the right to visit the fit parent's child, it "can place a substantial burden on the traditional parent-child relationship." *Troxel*, 530 U.S. at 64. Similarly, a fit parent's decision to not allow the child to have visitation with a third party is given special weight because that decision falls within the right to care and control the child. Indeed, Arizona law requires only that "the court shall give special weight to the legal parents' opinion of what serves their child's best interests" when deciding whether to grant *visitation* to a third party. A.R.S. § 25–409(E). In other words, the standard for acquiring or retaining parental rights—as with A.R.S. § 25–409(A)—is best interests, while the test for interfering with the exercise of those rights—as with A.R.S. § 25–409(C) and (E)—is "robust deference" to the fit parent's opinions on their child's best interests, *Goodman,* 239 Ariz. at 113 ¶ 13.

¶29 Here, although Grandparents initially petitioned only for visitation, they later amended their petition to seek legal decision-making and parenting time. As part of their petition, they alleged that Mother was not a fit parent—evidenced by their contentions that placing the children with Mother would be significantly detrimental to them. Thus, deferring to Mother's wishes when her fitness has been challenged would run against the children's best interests. Accordingly, in issuing these temporary orders, the family court did not err by failing to afford special weight to Mother's desire and did not violate her right to parent.

CONCLUSION

¶30 For the foregoing reasons, we accept special action jurisdiction but deny relief.

AMY M. WOOD • Clerk of the Court
FILED: JT