

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

GRIFFIN ANDREW LAYNE, *Petitioner*

v.

THE HONORABLE MARGARET LABIANCA, Judge of the SUPERIOR
COURT OF THE STATE OF ARIZONA, in and for the County of
MARICOPA, *Respondent Judge,*

ARZICE BIANCA LAYNE,
Real Party in Interest.

No. 1 CA-SA 20-0032

FILED 6-23-2020

Petition for Special Action from the Superior Court in Maricopa County

No. FC2019-010122

The Honorable Margaret LaBianca, Judge

JURISDICTION ACCEPTED; RELIEF GRANTED

COUNSEL

Law Office of Jose De La Luz Martinez, PLLC, Phoenix

By Jose De La Luz Martinez

Counsel for Petitioner

Stewart Law Group, Phoenix

By Kareen O'Brien

Counsel for Real Party in Interest

OPINION

Judge Jennifer M. Perkins delivered the opinion of the Court, in which Presiding Judge David D. Weinzweig and Judge James B. Morse Jr. joined.

PERKINS, Judge:

¶1 Griffin Layne (“Father”) seeks special action relief from the superior court’s temporary orders granting Arizice Layne (“Mother”) sole legal decision-making authority over their child and allowing Mother to relocate the child to Ohio. We previously issued an order accepting jurisdiction, granting relief, and stating a written decision would follow. This is that decision. We hold that the superior court must consider the factors in Arizona’s relocation statute, A.R.S. § 25-408(I), before issuing temporary orders allowing relocation of a child but need not make written findings concerning each of those factors at the temporary orders stage.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Father and Mother were married July 2018 and moved to Arizona three days after their wedding. They have one child, born July 2019. On December 2, 2019, Mother went to Ohio with the child to visit family. Father and Mother agreed that Mother would return on December 10. Mother did not board her return flight, telling Father she needed more time with her family. Six days later, Father filed an emergency motion for temporary orders arguing that the child would suffer irreparable injury unless the superior court granted him sole legal decision-making authority and designated him as the primary residential parent. Father also petitioned for dissolution. The superior court granted the emergency motion that same day and issued temporary orders granting Father sole legal decision-making authority and designating him the primary residential parent. It also scheduled a hearing for December 30, at which time the temporary orders would expire.

¶3 Mother then returned to Arizona with the child. At the December 30 hearing, the parties reached a temporary agreement pursuant to Arizona Rule of Family Law Procedure 69. They agreed to equally divide parenting time and joint decision-making until February 14, 2019 – the date of the next hearing. On January 10, Mother petitioned to relocate the child

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to Ohio, and the superior court added an evidentiary hearing to the February 14 hearing on temporary orders.

¶4 At the hearing, Father testified that Mother was mentally unstable and had physically abused the child. Mother denied these allegations. After the hearing, the superior court issued temporary orders granting Mother’s petition to relocate. The temporary orders designated Mother as the primary residential parent, authorized her to relocate to Ohio, granted her sole legal decision-making authority, and granted Father up to three days of parenting time in Ohio per week. The court also found that Father made material misrepresentations in his emergency motion for temporary orders and presented no credible evidence that Mother was mentally unstable or physically abusive. In its temporary orders, the court considered A.R.S. § 25-403 but did not make detailed findings about each factor in the statute. The court did not mention or expressly consider the factors in A.R.S. § 25-408(I).

DISCUSSION

¶5 We review the superior court’s legal decision-making, parenting time, and relocation orders for an abuse of discretion. *DeLuna v. Petitto*, 247 Ariz. 420, 423, ¶ 9 (App. 2019) (legal decision-making and parenting time); *Murray v. Murray*, 239 Ariz. 174, 176, ¶ 5 (App. 2016) (relocation). “An error of law constitutes an abuse of discretion.” *State v. Bernstein*, 237 Ariz. 226, 228, ¶ 9 (2015). The superior court commits an error of law when it fails to consider applicable statutory factors. *Hurd v. Hurd*, 223 Ariz. 48, 54, ¶ 26 (App. 2009).

¶6 Section 25-403(A) requires a court to consider eleven factors “relevant to the child’s physical and emotional well-being” when evaluating the child’s best interests for purposes of legal decision-making and parenting time. The relocation statute, A.R.S. § 25-408, requires a court to consider the § 25-403 factors as well as seven additional factors specific to whether relocation is in the child’s best interests. A.R.S. § 25-408(I).

¶7 Father argues the superior court abused its discretion when it allowed Mother to relocate the child to Ohio without considering the additional factors in the relocation statute. We hold the superior court must consider the factors set forth in A.R.S. § 25-408(I) whenever it authorizes a child’s relocation to another state. *Woyton v. Ward*, 247 Ariz. 529, 533, ¶¶ 11-12 (App. 2019). Here, the superior court designated Mother as the primary residential parent and explicitly allowed her to relocate to Ohio

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with the child. The court was therefore required to consider the relocation factors under A.R.S. § 25-408(I).

¶8 Given the nature and sheer volume of temporary orders on which the family division of the superior court rules, however, the court need not issue detailed written findings for each factor when it addresses relocation in temporary orders. *Gutierrez v. Fox*, 242 Ariz. 259, 267–68, ¶ 34 (App. 2017) (“Given the extraordinary number of motions for temporary orders handled by the superior courts, and the minimal utility of detailed findings in such orders, we decline to mandate that § 25-403 findings be made in every temporary order.”). Although *Gutierrez* did not result in a relocation order, its reasoning applies with equal force to temporary orders that allow relocation of a child. In sum, a superior court issuing temporary orders resulting in a child’s relocation must consider the statutory factors under A.R.S. § 25-408(I), but need not issue detailed written findings for each factor.

¶9 Father also argues that the superior court abused its discretion by modifying the parties’ Rule 69 temporary agreement without first finding a change in circumstances. Ariz. R. Fam. Law P. 69; *Engstrom v. McCarthy*, 243 Ariz. 469, 472–73, ¶ 11 (App. 2018); see A.R.S. § 25-411(A). We disagree. When the parties entered their Rule 69 agreement, they agreed it would expire on February 14, 2020, the date of the hearing, meaning the court was writing on a clean slate when it ruled after that hearing. The superior court therefore had nothing to modify and did not abuse its discretion by issuing new temporary orders without first finding a change in circumstances.

CONCLUSION

¶10 We accept jurisdiction of this special action. Because the record does not reflect that the superior court considered each of the factors in § 25-408 before it issued its temporary orders allowing Mother to relocate the child, we vacate and remand the temporary orders, noting that Mother has the burden of proof to show that relocation is in the child’s best interests. A.R.S. § 25-408(G). We decline to grant either party’s request for attorney’s fees. A.R.S. § 25-324.

