IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

In re the Matter of:

CANDACE JANEASE WRIGHT, *Petitioner/Appellant*,

v.

TIMOTHY JOHN FARRIS, *Respondent/Appellee*.

No. 1 CA-CV 24-0348 FC
FILED 01-09-2025

Appeal from the Superior Court in Maricopa County
No. FC2020-95313
The Honorable Keith Miller, Judge

VACATED AND REMANDED

COUNSEL

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By Thomas P. Alongi, Sarah Hansen, & Elizabeth Alongi
Counsel for Petitioner/Appellant

Kenna Law Center PLLC, Phoenix
By Keo'vonne Wilson
Counsel for Respondent/Appellee

OPINION

Judge Andrew M. Jacobs delivered the opinion of the Court, in which Presiding Judge Maria Elena Cruz and Judge Samuel A. Thumma joined.

J A C O B S, Judge:

¶1 Candace Janease Wright ("Mother") appeals the superior court's order designating Timothy John Farris ("Father") the primary residential parent of their now six-year-old child, V.F. The court found each of the best interests factors in A.R.S. § 25-403(A) favored neither parent and provided no basis for making Father V.F.'s primary residential parent. But A.R.S. § 25-403(B) requires the court to provide the reasons why making Father the primary residential parent was in V.F.'s best interests. Declaring a tie in the findings of fact does not do this. We thus vacate the court's order designating Father the primary residential parent and remand for the superior court to provide reasons as to why Father should be V.F.'s primary residential parent under A.R.S. § 25-403(B).

FACTUAL AND PROCEDURAL HISTORY

A. Mother and Father Divorce and Mother Moves to Michigan.

¶2 In May 2021, Mother and Father divorced after moving to Arizona from Michigan. V.F. was two years old at the time. The dissolution decree awarded Mother and Father joint legal decision-making authority and equal parenting time. Because Mother was contemplating moving back to Michigan for work and to be with family, the court ordered the parties to exercise a two weeks on/two weeks off parenting time schedule should she move to Michigan. Under that schedule, Mother and Father would split equally the cost of airfare with each parent responsible for getting V.F. to the other for their parenting time. Mother later moved to Michigan, triggering this schedule, with which Mother and Father mostly complied.

B. Mother Moves to Modify Parenting Time.

¶3 In August 2022, Mother filed a petition to modify parenting time ("Petition to Modify"). In her Petition to Modify, Mother was concerned for V.F.'s well-being under the two weeks on/two weeks off schedule and explained that attending school and extracurriculars was impossible under it. Before the trial, Mother filed a pre-trial statement

suggesting a parenting plan with Mother as the primary residential parent, allowing Father parenting time with V.F. at any time in Michigan, with sufficient advance notice, and during some school breaks. Father disagreed and submitted a pre-trial statement with a parenting plan that designated him as the primary residential parent in Arizona, gave Mother parenting time with V.F. during school breaks, and waived child support.

C. The Trial on the Petition to Modify

¶4 In February 2023, the court held a trial on the Petition to Modify. Mother, Father, and Father's wife testified. Mother testified about her income, the cost of the current parenting schedule, and a time when Father did not have V.F. available for her to pick up from Phoenix. Mother testified V.F. was then four years old and would likely attend kindergarten in the next academic year, which would be incompatible with the current schedule. She was concerned about V.F.'s ability to have a consistent routine.

¶5 Mother testified that she and V.F. have a good relationship, most of V.F.'s family is in Michigan, including cousins her age, V.F. is well-adjusted to her life in Michigan, she and Father are fit to parent, and she and Father have complied with the schedule. Mother then testified she wanted V.F. to spend most of her time in Michigan because the current plan is "not conducive to her development," she was not trying to frustrate the current plan and is willing to cooperate with Father, and that Michigan was a more suitable location because it is where V.F. has the most family and Mother lived in a good school district.

¶6 Father testified and agreed changed circumstances warranted a modification to their parenting time. Father testified he should be the primary residential parent and that V.F. was happy in Arizona. Father testified he has family in Arizona and only some family in or near Michigan. Father admitted he previously had court mandated supervised visitation with V.F. Father also stated he voluntarily took anger management courses and attended Alcoholics Anonymous meetings because Mother had concerns about him unsupervised time with V.F.

D. The Court Names Father the Primary Residential Parent.

¶7 In March 2023, the court modified the parenting plan and made Father V.F.'s primary residential parent ("Order"). As amended, the Order made findings of fact under A.R.S. § 25-403(A). The court found Mother and Father equal under each of these best interests factors. The court also noted that the matter could be viewed as a relocation case, though

no petition for relocation was filed. Although finding the best interests factors equally balanced, the court did not state why Father prevailed as the primary residential parent.

¶8 Mother timely moved to (1) amend the Order to explain why the best interests factors favored Father, (2) reopen the evidence so the parties could present evidence related to the relocation factors in A.R.S. § 25-408(I), and (3) analyze the child relocation factors. Father argued that reopening evidence was unnecessary and that, if relocation had occurred, the court should amend the Order to include the relocation factors without changing Father's designation as primary residential parent.

¶9 The court followed Father's suggested approach. It amended the Order to include statutory findings on A.R.S. § 25-408(I)'s relocation factors ("Amended Order"). But it did not take more evidence or provide further explanation as to how it weighed the best interest factors. The court explained that both parents bore an equal burden on the issue of relocation. The court again found the factors to be equal. The court found "both parents . . . settled in their respective states and thus there [was] no 'prospective advantage' of a new move for the [c]ourt to analyze." *See* A.R.S. § 25-408(I)(3). Moreover, the court found that whether relocation would permit a realistic opportunity for parenting time "figure[d] equally for each parent," A.R.S. § 25-408(I)(5), and that both parents had valid motives, A.R.S. § 25-408(I)(7).

¶10 Mother timely appealed. We have jurisdiction. *See* Ariz. Const., art. 6, § 9; A.R.S. §§ 12-120.21(A)(1), -2101(A)(1).

DISCUSSION

¶11 Mother argues the Amended Order failed to (1) explain why the factors in A.R.S. §§ 25-403(A) and -408(I) justified making Father the primary residential parent, (2) adequately consider Father's behavior and history, and (3) incorrectly found A.R.S. § 25-408(I)(3) irrelevant to this case. Failing to comply with a statute's mandate is legal error. *See Owen v. Blackhawk*, 206 Ariz. 418, 421-22 ¶ 12 (App. 2003). Because the court did not state the reasons Father prevailed, as A.R.S. § 25-403(B) requires of parenting time decisions, we vacate and remand.

The Superior Court Did Not Comply with A.R.S. § 25-403(B).

¶12 Mother argues that, when analyzing V.F.'s best interests under A.R.S. § 25-403(A) and A.R.S. § 25-408(I), the court did not provide

reasons, as A.R.S. § 25-403(B) requires, for deciding that Father would be V.F.'s primary residential parent. We agree.

¶13 The court addressed each of the eleven factors in A.R.S. § 25-403(A) that govern legal decision-making and parenting time. But A.R.S. § 25-403(B) requires more. It also directs the court to state "the reasons for which the decision is in the best interests of the child." A.R.S. § 25-403(B). By finding Mother and Father equal under all applicable factors, and providing no basis to find either parent preferable to the other, the court necessarily omitted to provide reasons as to why making Father the primary residential parent was in V.F.'s best interests.

¶14 This legal error begat another. The court was also required to consider the relocation factors of A.R.S. § 25-408(I), which include the factors in A.R.S. § 25-403(A) when (as here) physical custody is contested. *Owen*, 206 Ariz. at 421 ¶ 9 (applying earlier version of A.R.S. § 25-408). Physical custody is contested when a parenting time decision requires the court to name a party as the primary residential parent. *See id.* By awarding Father physical custody without explaining why Mother or Father would be a better potential physical custodian of V.F., the court failed to provide a reasoned justification for relocating V.F. to live primarily with Father. This was error. *Id*. at 421 ¶ 8, 422 ¶ 12 (finding error for court to "not elaborate or explain how it weighed any factor"); *Reid v. Reid*, 222 Ariz. 204, 207 ¶ 13, 210 ¶ 20 (App. 2009) (remanding because we could not "ascertain from the court's orders and ruling how [it] weighed the statutory factors to arrive at its conclusion").

¶15 Father's argument that the court did not err because it was Mother's burden to prove that relocation was in V.F.'s best interests fails. While A.R.S. § 25-408(G) places that burden on the parent seeking relocation, the court found that Mother and Father bore this burden equally because the modification was to equal parenting time in two different states. Mother did not fail to carry a burden.

¶16 Father also asks us to affirm on the alternative basis that Mother's initial move to Michigan, after the dissolution decree, was an unlawful relocation. Mother's alleged conduct was evidence the superior court could have considered when analyzing the relocation factors. *See* A.R.S. § 25-408(I)(2) (court should consider if relocation is being made in good faith); A.R.S. § 25-408(I)(4) (court should consider the likelihood a parent will comply with parenting time orders); A.R.S. § 25-408(I)(7) (court should consider the motives of the parents and validity of reasons for moving). But the court did not find an improper relocation or weigh the

evidence in that fashion. And it is not for us to reweigh the evidence on appeal. *Hurd v. Hurd*, 223 Ariz. 48, 52 ¶ 16 (App. 2009).

¶17 We thus vacate the Amended Order and remand for the superior court to provide reasons, as A.R.S. § 25-403(B) requires, for its decision that flows from its findings under A.R.S. §§ 25-403(A) and -408(I). These statutes do not allow the court to declare a tie among Mother and Father, and then to decide primary physical custody and physical relocation for Father without a reasoned justification grounded in findings under the statutory factors. The court must explain why Father is preferable with reference to findings under A.R.S. §§ 25-403(A) and -408(I).

¶18 We do not reach Mother's remaining arguments, which challenge the court's analysis of the factors within A.R.S. §§ 25-403(A) and -408(I).

CONCLUSION

¶19 We vacate the superior court's order naming Father the primary residential parent and relocating V.F. We remand for the superior court to provide reasons as to why Father should be V.F.'s primary residential parent under A.R.S. § 25-403(B). In our discretion, we grant Mother's request for attorneys' fees and costs under A.R.S. §§ 25-324 and -403.08, subject to her compliance with ARCAP 21.

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