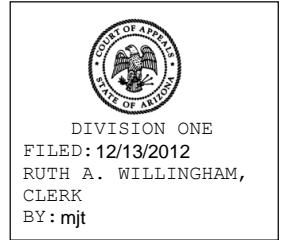


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



In re the Marriage of:) 1 CA-CV 12-0032
)
IGOR KRAVCHENKO,) DEPARTMENT C
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
)
v.) (Not for Publication -
) Rule 28, Arizona Rules of
TANYA KRAVCHENKO,) Civil Appellate Procedure)
)
Respondent/Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. FC2009-001713

The Honorable Daniel J. Kiley, Judge

AFFIRMED

J. Douglas McVay
Attorney for Respondent/Appellant

Phoenix

Igor Kravchenko
In Propria Persona

Scottsdale

T H U M M A, Judge

¶1 Tanya Kravchenko (Mother) appeals the denial of her request to relocate to Illinois with the parties' two minor children. Finding no abuse of discretion, the superior court's order denying Mother's request is affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 Pursuant to a January 2010 consent decree, the parties share joint legal custody of their two young children. Mother is the primary residential parent, with Igor Kravchenko (Father) having the children every Tuesday overnight and alternate weekends. In January 2011, Mother filed a post-decree petition to relocate with the children to Illinois where she had a job offer and where both sets of grandparents live. The superior court denied Mother's petition temporarily, pending a final relocation hearing.

¶3 At the subsequent evidentiary hearing, court-appointed evaluator David Weinstock, Ph.D testified regarding his "limited family assessment." Dr. Weinstock recommended allowing Mother and the children to relocate. Father called a psychiatrist who testified, in a general fashion, to the detrimental effect distance has on a parent-child relationship. In a detailed minute entry addressing all relevant statutory factors, the superior court found relocation would not be in the children's best interests.

¶14 Mother filed a timely notice of appeal. This court has jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101(A)(2).¹

DISCUSSION

¶15 On appeal, Mother takes issue with several of the superior court's factual findings and resulting conclusions. Specifically, Mother contends the court abused its discretion in finding she may interfere with Father's parenting time after relocation and in finding Father had no mental health issues. Mother also disputes the weight the court attributed to the finding that Mother would not support Father's relationship with the children if allowed to relocate and the importance of Father continuing to have regular weekly contact with the children.

¶16 The superior court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and make appropriate findings." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 280, ¶ 4, 53 P.3d at 203, 205 (App. 2002). It is not the province of this court to reweigh the evidence and witness credibility. *Hurd v. Hurd*, 223 Ariz. 48, 52, ¶ 16, 219 P.3d 258, 262 (App. 2009). "We review the trial court's decision regarding child custody for an abuse of discretion." *Owen v. Blackhawk*, 206 Ariz. 418, 420, ¶ 7, 79 P.3d

¹ Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

667, 669 (App. 2003). By definition, a relocation request is fact-intensive and the superior court has substantial discretion in weighing the facts and statutory factors when considering such a request. See *Hurd*, 223 Ariz. at 52, ¶ 16, 219 P.3d at 262. "An abuse of discretion exists when the record, viewed in the light most favorable to upholding the trial court's decision, is devoid of competent evidence to support the decision[, or] where there has been an error of law committed in the process of reaching [a] discretionary conclusion.'" *Id.* at ¶ 19 (second and third alterations in original) (citations omitted).

I. Likelihood Mother Would Comply With Parenting Time Orders

¶7 In determining whether relocation is in the children's best interests, among other things, the court must consider the "likelihood that the parent with whom the child[ren] will reside after the relocation will comply with parenting time orders." A.R.S. § 25-408(I)(4). The superior court found Mother could not be relied upon to comply with future parenting time orders. This conclusion was based on Mother violating an order to return the children to Arizona after she had taken them to Illinois without Father's knowledge or consent in March 2009. Mother's failure to return the children as ordered supports a finding that Mother may not comply with future parenting time orders.

¶18 On appeal, Mother relies on Dr. Weinstock's opinion that taking the children out of state in March 2009 was not unreasonable because Mother perceived that Father threatened her and the children. Although Dr. Weinstock testified that Mother acted reasonably in response to this perceived threat, he specifically emphasized that he did not conclude that Father actually made such a threat. Dr. Weinstock had no "current concern" that Mother would not comply with parenting time orders in the future and noted that Mother had not restricted Father's contact after this March 2009 incident.

¶19 Although noting this testimony, the superior court found Dr. Weinstock's conclusion was at odds with prior findings regarding Mother's failure to comply with court orders. After weighing the evidence and testimony received, in view of Mother's violation of an order to return the children to Arizona, the superior court was "not convinced that Mother can be relied upon to comply with parenting time orders in the future." As the finder of fact, the superior court was within its discretion to determine how much weight to attribute to Dr. Weinstock's opinion. See *Hurd*, 223 Ariz. at 52, ¶ 16, 219 P.3d at 262. From the record, there was no abuse of discretion by the superior court in considering the competing evidence.

¶10 Mother contends Father also was unlikely to comply with orders, pointing to Father being behind in his court-ordered child support payments despite his substantial income. Although Father had been behind in support payments, the payments were brought current prior to the evidentiary hearing, and there appears to be no subsequent child support payment issue. Moreover, late *child support payments* are not indicative of a likelihood to interfere with *parenting time orders*, the relevant inquiry here. See A.R.S. § 25-408(I).

¶11 Mother also argues the superior court applied an incorrect standard by stating it was "not convinced" Mother would comply with future parenting time orders. Reviewing the superior court's lengthy discussion of this factor shows that the court applied the correct legal standard; there was no abuse of discretion.

II. Father's Mental Health

¶12 The superior court must consider the mental health of all parties in determining the children's best interests. See A.R.S. § 25-403(A)(5). The court concluded that nothing in Dr. Weinstock's testimony or report suggested that Father had "a mental health condition that has any bearing on the issues before the Court." Mother contends the court overlooked Father's invalid results on three of the five tests Dr. Weinstock

administered, arguing Father invalidated his test results to mask mental health issues.

¶13 The superior court carefully detailed Dr. Weinstock's opinion regarding Father's mental health. Dr. Weinstock stated it was fairly common in custody situations for a parent to have invalid results. Although he was not opining that Father had a personality disorder or related traits, Dr. Weinstock testified that *if* Father had such a disorder, a valid test would reflect that fact. Dr. Weinstock opined that Father's invalid test results caused him to question Father's veracity generally. Dr. Weinstock further expressed concern that statements made by Father in an email to Mother prior to the divorce indicated controlling behavior. Absent any other indication of domestic violence, the court disagreed with Dr. Weinstock and concluded that the email failed to establish any domestic violence or mental health issues. There is sufficient record evidence supporting the findings and conclusion that Father had no mental health issues. Accordingly, the superior court did not abuse its discretion.

III. Weight Given to Finding That Mother Would Not Support Father's Relationship After Relocation

¶14 Whether Mother would support the children's relationship with Father is relevant in considering whether relocation is in the children's best interests. See A.R.S. § 25-

403(A)(6). The superior court discussed in detail the evidence suggesting Mother had not been supportive of the children's relationship with Father and how that would be detrimental in a long distance situation. Much of that evidence came from Mother's testimony, which Dr. Weinstock's report indicates he had not reviewed.

¶15 Mother testified that the only benefit the children receive from Father is financial. Mother does not communicate with Father about the children's activities, and does not talk to the children about Father. Mother could not testify to anything she did to encourage the children's relationship with Father, other than to answer the children's questions.

¶16 Mother argues the superior court failed to view this evidence in light of the relationship between Mother and Father. She contends Father's threat resulted in the distant relationship. Given the circumstances surrounding Father's threat and Father's subsequent remarriage, the superior court did not abuse its discretion in discounting the impact of the threat on Mother's behavior. Mother also points out that she has not interfered with Father's parenting time since the children were returned to Arizona. Mother, however, does not deny the testimony expressly relied upon by the superior court.

¶17 This court does not reweigh the evidence on appeal. See *Hurd*, 223 Ariz. at 52, ¶ 16, 219 P.3d at 262. There is sufficient evidence in the record to support the superior court's conclusion that Mother would not be supportive of the children's relationship with Father after relocation. Accordingly, there was no abuse of discretion.

IV. Weight Given to Children's Need for Regular Contact With Father

¶18 In determining whether relocation is in the children's best interests, the superior court must consider whether "relocation will allow a realistic opportunity for parenting time with each parent," and the extent to which the relocation will affect the children's stability and emotional or developmental needs. See A.R.S. § 25-408(I)(5), (6), (8). Mother argues the superior court abused its discretion by placing too much weight on Father maintaining weekly contact with the children.

¶19 The court concluded that even if Father could travel to Illinois every other weekend to visit the children as Mother suggested, "the loss of weekly contact provided by these Tuesday overnights would not be offset by extending Father's parenting time over the summer." The court also concluded, after the temporary hearing, that the children would suffer emotionally if they were unable to see Father on a regular basis.

¶20 Contrary to Mother's argument, the superior court did not err by focusing on the children's need to maintain regular contact with Father. The court did not focus *solely* on this issue without adequately balancing the other factors as in *Owen*, 206 Ariz. at 420-21, ¶¶ 8, 12, 79 P.3d at 669-70. Nor did the court fail to make specific findings regarding the applicable factors and reasons why its decision was in the children's best interests as in *Hurd*, 223 Ariz. at 54, ¶ 26, 219 P.3d at 264. The order discussed the relevant statutory factors in great detail and gave adequate consideration to *all* statutory factors, which is not an abuse of discretion.

¶21 The conclusion that maintaining weekly contact weighed against relocation is supported by the evidence. For example, according to Mother's proposed schedule, Father would bear the sole burden of frequent travel from Arizona to Illinois and Father has no residence in Illinois, meaning visits would occur in a hotel. As the court noted, this "would not engender in the Minor Children any sense of permanence or continuity." Father also disputed his ability to travel to and from Illinois every other weekend. The evidence further suggests Mother has minimized the importance of Father in the children's lives, thereby supporting the court's conclusion that Mother was not likely to "facilitate and encourage" telephonic or other contact

with Father. Particularly given the concerns about support from Mother in maintaining a relationship, the need for regular contact in a natural setting is important to the children's well-being. The superior court did not abuse its discretion in weighing and assessing the children's need for frequent and meaningful contact with Father.

ATTORNEYS' FEES AND COSTS ON APPEAL

¶22 Mother requests an award of attorneys' fees and costs on appeal pursuant to ARCAP 21. Because Mother is not the prevailing party, her request for costs on appeal is denied. See A.R.S. § 12-341. Because Mother failed to cite any authority supporting her request for attorneys' fees on appeal, her request is denied. See ARCAP 21(c)(1) ("All claims for attorneys' fees must specifically state the statute, rule, decisional law, contract, or other provision authorizing an award of attorneys' fees."); *In re Wilcox Revocable Trust*, 192 Ariz. 337, 341, ¶ 21, 965 P.2d 71, 75 (App. 1998) (court will not award attorneys' fees where no basis for award is cited).

CONCLUSION

¶23 Finding no abuse of discretion, the superior court's order denying Mother's petition to relocate is affirmed. As the prevailing party on appeal, Father is awarded costs upon compliance with ARCAP 21.

/s/ _____
SAMUEL A. THUMMA, Judge

CONCURRING:

/s/ _____
PHILIP HALL, Presiding Judge

/s/ _____
PETER B. SWANN, Judge