

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



DIVISION ONE
FILED: 10/31/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:) 1 CA-CV 12-0524
)
WHITNEY L. SORRELL,) DEPARTMENT A
)
Petitioner/Appellant,)
) **MEMORANDUM DECISION**
v.) (Not for Publication -
) Rule 28, Arizona Rules of
JOAN COLETTE SORRELL,) Civil Appellate Procedure)
)
Respondent/Appellee.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FC2008-050040

The Honorable Stephen J.P. Kupiszewski, Judge Pro Tempore

AFFIRMED

Yearin Law Group
by Donald Yearin
Attorney for Petitioner/Appellant

Scottsdale

P O R T L E Y, Judge

¶1 Whitney L. Sorrell ("Father") appeals the order granting Joan Colette Sorrell ("Mother") sole custody of their three minor children and modifying his parenting time. Father contends that the family court erred by (1) denying his motion

to continue and (2) limiting the duration of his testimony. For the following reasons, we affirm.

FACTS

¶12 Father and Mother were divorced in September 2008, and were appointed joint legal custodians of their children. Some two years later, Mother filed a petition to become the sole custodian of the children, to modify Father's parenting time and his child support obligation.

¶13 Both parties testified at the 2012 hearing. After the hearing, the family court found that the children loved their parents; the parents were unable to co-parent; and Father had a more significant inability to co-parent than Mother. As a result, the court granted Mother's petition, made her the sole legal custodian of the children and modified Father's parenting time. Father then filed this appeal.¹

DISCUSSION

I. Denial of Motion to Continue

¶14 Father first contends that the family court erred by denying his motion to continue the hearing until the co-parenting counseling had been completed. He suggests that if

¹ Mother did not file a brief on appeal. In the exercise of our discretion, we decline to treat her failure to file an answering brief as a confession of error. See *Gonzales v. Gonzales*, 134 Ariz. 437, 437, 657 P.2d 425, 425 (App. 1982) ("Although we may regard [the] failure to respond as a confession of reversible error, we are not required to do so.").

the counseling had been allowed to be completed the ruling may have been different.

¶15 We review the denial of a motion to continue for an abuse of discretion. *Nordale v. Fisher*, 93 Ariz. 342, 345, 380 P.2d 1003, 1005 (1963); *State v. Barr*, 217 Ariz. 445, 447, ¶ 6, 175 P.3d 694, 696 (App. 2008). An abuse of discretion exists "if a decision is manifestly unreasonable or is based on untenable grounds or if its discretion is exercised for untenable reasons." *Schwartz v. Superior Court*, 186 Ariz. 617, 619, 925 P.2d 1068, 1070 (App. 1996).

¶16 Mother filed her petition to modify custody on July 1, 2010. The parties resolved some of the issues by agreement in September 2010 and the hearing was set for January 2011 to resolve the custody issue. Because of a judicial reassignment, the hearing was reset to June 2011. Father moved to continue the hearing and it was reset for October 2011. A month before the October 31 hearing, Father filed his unsuccessful motion to continue.

¶17 Father moved to continue the hearing for a minimum of sixty days to allow the parents the opportunity to complete the joint co-parenting counseling sessions that they had just started. His motion, however, failed to state when the counseling would be completed, but suggested that "[t]he co-

parenting issues will hopefully be resolved by effective co-parenting counseling.”

¶18 At the time Father filed his motion to continue, Mother’s modification petition had been pending for more than a year. Mother responded and argued that other than the co-parenting sessions, the various professionals that had been hired were ready to testify. The court then considered the pleadings and denied the motion. On this record, we cannot find that the family court abused its discretion by denying Father’s motion.

II. Time Limitation on Father’s Testimony

¶19 Father next contends that the family court erred by limiting the duration of his testimony. We review the imposition of time limitations for an abuse of discretion. *Gamboa v. Metzler*, 223 Ariz. 399, 402, ¶ 13, 224 P.3d 215, 218 (App. 2010) (citing *Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, 91, ¶ 30, 977 P.2d 807, 813 (App. 1998)). “The [family] court may impose reasonable time limits on the trial proceedings” and it has broad discretion in the manner it chooses to manage a trial. Ariz. R. Fam. L.P. 77(B)(1); see also Ariz. R. Evid. 611 (stating that the court shall exercise reasonable control over witness interrogation and the presentation of evidence); *Gamboa*, 223 Ariz. at 402, ¶ 13, 224 P.3d at 218.

¶10 Father, who was represented by counsel, did not seek additional time to complete his testimony or present additional evidence before the close of the hearing.² The family court, as a result, did not have the opportunity to address the issue. Generally, issues raised for the first time on appeal are considered waived. *Cullum v. Cullum*, 215 Ariz. 352, 355 n.5, ¶14, 160 P.3d 231, 234 (App. 2007). Because counsel did not seek additional time during the hearing, the issue has been waived. *See id.*

CONCLUSION

¶11 Based on the foregoing, we affirm the rulings and the family court's custody order.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Judge

/s/

KENT E. CATTANI, Judge

²The family court had set five hours for the hearing but subsequently extended the hearing to nearly seven hours. At the time the hearing concluded, neither party requested additional time to present any additional evidence.