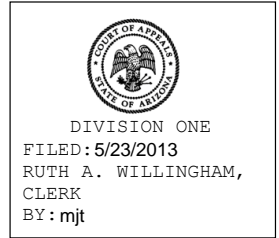


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:) No. 1 CA-CV 12-0683
)
NEREYDA PADILLA,) DEPARTMENT D
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
ANTONIO GODINEZ,)
)
Respondent/Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FN2010-071120

The Honorable Eileen S. Willett, Judge

AFFIRMED

Gerardo Ivan Hannel, PLLC
Attorney for Respondent/Appellant

Phoenix

Nereyda Padilla
Petitioner/Appellee *In Propria Persona*

Goodyear

D O W N I E, Judge

¶1 Antonio Godinez appeals the termination of his *in loco parentis* visitation rights. Finding no error, we affirm the superior court's order.

FACTS AND PROCEDURAL HISTORY

¶12 Nereyda Padilla and Godinez married in 2004. Godinez became "Daddy" to Padilla's daughter, M.L., who was born in August 2001, and whom Godinez had known for two years.

¶13 On September 20, 2010, Godinez called police and asked an officer to take his handgun because he was not "in a right frame of mind" following an argument with Padilla ("2010 incident"). Godinez told an officer he had threatened to hurt Padilla, but did so "out of anger" and "would never hurt her." The officer impounded Godinez's handgun, but no charges were filed.

¶14 Two days later, Padilla filed a dissolution petition. She also requested an order of protection, alleging Godinez had threatened to kill her in front of M.L., locked her out of the home, and taken her car keys. The court issued an order prohibiting Godinez from contacting Padilla or M.L. Godinez requested a hearing on the order, which was held. Concluding that Godinez had committed or would commit an act of domestic violence, the court affirmed the order of protection.

¶15 In the divorce proceedings, Godinez alleged that he stood *in loco parentis* to M.L. and requested joint custody and visitation.¹ Padilla opposed his requests. After a trial, the

¹ "'In loco parentis' means a person who has been treated as a parent by the child and who has formed a meaningful parental

court agreed that Godinez had an *in loco parentis* relationship with M.L. and determined it was in M.L.'s best interests for that relationship to continue. The court granted Godinez visitation with M.L. on the first Sunday of every month for eight hours and telephonic contact every other Sunday and every Wednesday. The order of protection was amended to allow Godinez "contact and curbside pickup as necessary" to exercise his visitation.

¶16 Godinez moved to California but visited and phoned M.L. as the court order allowed. On March 3, 2012, he returned M.L. to Padilla and, in the presence of M.L. and Padilla's six-month-old baby, yelled, cursed, and tried to fight with Padilla's boyfriend ("2012 incident"). Two days later, Padilla petitioned to terminate Godinez's visitation. She referenced his "constant threatening behavior, mental abuse, misleading conversations w/[M.L.] about future plans and custody," and the 2012 incident. She further alleged that continuing contact was not in M.L.'s best interests because Godinez "misleads her and demonstrate[s] acts of violence in front of her with no consideration of the effects it leaves."

relationship with the child for a substantial period of time." Ariz. Rev. Stat. ("A.R.S.") § 25-415(G)(1). "'Visitation' means a schedule of time that occurs with a child by someone other than a legal parent." A.R.S. § 25-401(7).

¶17 Padilla also sought temporary orders without notice, alleging Godinez "aggressively confronted" her and her family, threatened to use a gun to kill her and her family, and constantly threatened to hurt her boyfriend. She referenced a police report about a call Godinez made to her boyfriend, J.R., in which Godinez stated he had a bullet with J.R.'s "name on it." At Padilla's request, the court issued a new order of protection, providing that Godinez could only contact Padilla through text and email about M.L. and setting a neutral location for child exchanges.

¶18 On March 13, Godinez filed his own modification petition, seeking increased contact with M.L. Padilla opposed the request, stating it was not in her daughter's best interests due to Godinez's "domestic violence, aggressive behavior, and emotional and mental manipulation."

¶19 The court appointed Richard Slatin to hold a parenting conference with Padilla and Godinez, to interview M.L. if appropriate, and to submit a written report. M.L. told Slatin she wanted to see Godinez more often and referred to him as her "Dad." Padilla advised Slatin that Godinez had pushed her and hit M.L. during the marriage. She also claimed Godinez told M.L. negative things about her, alienating her daughter against her. Slatin, though, opined that the mother-daughter relationship "may be the result of other factors, such as the

child's own thoughts and feelings in response to [Padilla's] treatment of the child's relationship with [Godinez]." Slatin suggested Padilla had not acted in M.L.'s best interests in attempting to end the relationship with Godinez and that Godinez had appropriately focused on M.L.'s best interests. Slatin suggested the court consider awarding joint legal custody and increased visitation to Godinez.

¶10 Padilla, J.R., and Godinez testified at the evidentiary hearing on the modification petitions. Padilla told the court Godinez was physically abusive during the marriage, including spanking M.L. to the point of bruising, physically removing her from the apartment, and locking the door when she tried to "stand up for" M.L. She also testified Godinez was emotionally abusive and required M.L. to stay next to him during social events rather than play with other children. Padilla stated she and M.L. were afraid of Godinez because he was very strict and required that "everything always . . . be in place;" otherwise, he would yell at them. She testified that visitation with Godinez would further harm her relationship with her daughter and suggested M.L.'s stated desire for more contact was because Godinez bought her gifts, whereas Padilla was "the one with the rules." Padilla also described post-separation phone calls Godinez made to J.R. threatening to kill him and saying, "Let's meet at this place. I'm going to kick your ass."

¶11 J.R. testified that during the 2012 incident, Godinez got out of his car to drop off M.L., got back in his car, and then got out again. Godinez approached J.R. with "fists clenched and shouting obscenities." M.L. "looked very afraid," and J.R. walked down the driveway to meet Godinez so they would be away from the children. Godinez challenged J.R. to "see what you got" and suggested they "go down the street and . . . take care of it there," but J.R. instead told Godinez to leave.

¶12 Godinez testified he wanted joint custody so he could be more involved in M.L.'s life, stating he was "a good example," and she recognized him as her father. He admitted, though, that he and Padilla did not get along well enough to make joint decisions. Godinez also conceded Padilla was "a good mother."² He did not refute the testimony by Padilla and J.R. about the 2012 incident.

¶13 The court found "credible" Padilla's testimony that Godinez was emotionally abusive, overly strict and threatening, and detrimental to her relationship with M.L. The court further found:

[I]t remains in the child's best interest for [Padilla] to have sole legal custody of the child. [Godinez] is not entitled to custody of the child as a matter of law. He is not her legal parent. [Padilla] shall

² Godinez does not challenge the portion of the family court's order denying him joint custody.

remain primary residential parent. Any access to the child by [Godinez] shall be at [Padilla's] sole discretion. Petitioner is a fit and proper parent. This Court gives great weight to all decisions she makes on her daughter's behalf. Due to an act of significant domestic violence by [Godinez], an Order of Protection was obtained against him by [Padilla] in March, 2012. This aggressive, violent behavior exhibited by [Godinez] in the presence of the child is a significant change in circumstances from the time of the divorce decree which granted [Godinez] limited *in loco parentis* access rights. . . . [Godinez] has failed to provide clear and convincing evidence to rebut the presumption of sole legal custody and decision making remaining with the child's mother.

. . . .

It is in the child's best interests to discontinue [Godinez's] *in loco parentis* access rights, both as to in person visits and telephone contact. Any access to the child by [Godinez] shall be at [Padilla's] sole discretion.

¶14 The court granted Padilla's modification petition and denied Godinez's. Godinez timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) and -2101(A)(3).

DISCUSSION

¶15 The family court has "considerable discretion in shaping a visitation order based on *in loco parentis*." *Egan v. Fridlund-Horne*, 221 Ariz. 229, 241, ¶ 43, 211 P.3d 1213, 1225 (App. 2009). "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." *State ex rel. Dep't of Econ. Sec. v. Burton*, 205 Ariz. 27, 30, ¶ 14, 66 P.3d 70, 73 (App. 2003). Family court judges are "in the most favorable position to determine what is best for the children." *Armer v. Armer*, 105 Ariz. 284, 289, 463 P.2d 818, 823 (1970). We will not disturb such rulings "[u]nless it clearly appears that the trial judge has mistaken or ignored the evidence." *Id.*

¶16 Courts are required to "consider evidence of domestic violence as being contrary to the best interests of the child." A.R.S. § 25-403(B). Although Godinez avowed in his modification petition that no significant domestic violence had occurred, the family court found otherwise based on the evidence presented. The record amply supports that finding. The family court must also take into account "a perpetrator's history of causing or threatening to cause physical harm to another person." *Id.* As such, pre-decree episodes of domestic violence were relevant, as well as the 2012 incident.

¶17 A rebuttable presumption exists that a fit parent's decision to deny or limit *in loco parentis* visitation was made in the child's best interests. *Egan*, 221 Ariz. at 240, ¶ 41, 211 P.3d at 1224. It is undisputed that Padilla is a fit parent. The authorities Godinez cites do not require the family

court to make specific findings on the record about each factor discussed in *Egan*.³ See A.R.S. § 25-409(C) (court must “consider all relevant factors”) (emphasis added). The legislature knows how to mandate specific findings on the record in family court proceedings when it wishes to require them. See, e.g., A.R.S. § 25-403(B) (requiring “specific findings on the record about all relevant factors and the reasons for which the decision is in the best interests of the child” in contested custody cases). The only required finding was that the ultimate decision be in M.L.’s best interests -- a finding the court expressly made. See A.R.S. § 25-415(C) (court may grant *in loco parentis* visitation “on a finding that the visitation is in the child’s best interests”).

¶18 In terms of the other factors discussed in *Egan*, absent proof to the contrary, we presume that the family court knows the law, applies it correctly, and considers the evidence before it. See *State v. Trostle*, 191 Ariz. 4, 22, 951 P.2d 869, 887 (1997) (trial judges are presumed to know the law and to apply it correctly in making their decisions); *Fuentes v. Fuentes*, 209 Ariz. 51, 55-56, ¶ 18, 97 P.3d 876, 880-81 (App. 2004) (appellate court presumes trial court considered evidence

³ Throughout this decision, we cite and apply the version of statutes in effect at the time of the court’s decision. Effective January 1, 2013, A.R.S. § 25-409 was modified in some significant respects.

presented before making a decision); *cf. In re William L.*, 211 Ariz. 236, 238, ¶ 7, 119 P.3d 1039, 1041 (App. 2005) (trial court not required to expressly state applicable burden of proof, as appellate court will assume court used proper standard). Godinez's petition addressed his historical relationship with M.L., and the court had before it the dissolution decree, which also discussed that relationship. The parenting conference report offered additional details about Godinez's past involvement in M.L.'s life, and Godinez and Padilla also testified about such matters.

¶19 Godinez alleges certain findings were not supported by the record. Specifically, he contends: (1) the ruling did not establish how the 2012 incident affected M.L.'s well-being; (2) the court erroneously considered abuse occurring during the marriage; and (3) the record did not provide specific "words or conduct" demonstrating that Godinez was "unreasonably stringent"; or (4) the cause of alienation between M.L. and her mother.

¶20 As a threshold matter, to the extent Godinez suggests the evidence could have supported a different outcome, the family court was "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 203, 205 (App. 2002). We

do not reweigh evidence on appeal. *Id.* at 282, ¶ 12, 53 P.3d at 207. There was uncontradicted testimony that M.L. witnessed the 2012 incident and was "very afraid at the time." Acts of physical and verbal aggression committed in the presence of young children are obviously detrimental to their well-being. And as we explained *supra*, prior incidents of domestic violence were relevant to the court's decision. See A.R.S. § 25-403(B). Finally, the court was not required to recite specific "words or conduct" to support its finding that Godinez was unreasonably controlling and a negative influence on the mother-daughter relationship. Labeling Padilla's testimony on these topics "credible" was sufficient. Padilla provided specific examples of controlling, abusive behavior toward her and M.L. during the marriage and voiced a belief that such behaviors were ongoing "to this current day."

CONCLUSION

¶21 For the reasons stated, we affirm the family court's order terminating Godinez's *in loco parentis* rights.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
ANDREW W. GOULD, Presiding Judge

/s/
PATRICIA A. OROZCO, Judge