DIVISION ONE
FILED: 5/23/2013
RUTH A. WILLINGHAM, CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:	)	1 CA-CV 12-0764
	)	
MICHAEL MARTIN HUEGE,	)	DEPARTMENT D
	)	
Petitioner/Appellant,	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
v.	)	Rule 28, Arizona Rules
	)	of Civil Appellate
HEATHER MARIE HUEGE,	)	Procedure)
	)	
Respondent/Appellee.	)	
	)	
_____	)	

Appeal from the Superior Court in Yavapai County

Cause No. P1300DO201200094

The Honorable Joseph P. Goldstein, Commissioner

AFFIRMED

Davis Miles McGuire Gardner, PLLC — Gilbert
By Douglas C. Gardner
And Karl T. Scholes
Attorneys for Petitioner/Appellant

Heather Marie Huege
Respondent/Appellee *in propria persona* — Twin Falls, ID

O R O Z C O, Judge

¶1 Michael Martin Huege (Father) appeals the family

court's order granting a motion for change of jurisdiction filed by Heather Marie Huege (Mother). For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Father and Mother were married in Idaho in October 2007 and moved to Arizona in October 2009. In September 2010, Mother gave birth to T.H.

¶3 During the marriage, there were numerous incidents of domestic violence, including two incidents that involved T.H. The first incident occurred less than three weeks after T.H. was born, when Father was arrested after he punched Mother in the face and neck numerous times while she was feeding T.H.

¶4 Father was also arrested in October 2011 after he grabbed Mother by her neck and then fell on T.H. while Mother was struggling to get away from him. Additionally, Father refused to cooperate when the police arrived and assaulted a police officer. Father pled guilty to aggravated assault per domestic violence and attempted aggravated assault on a police officer for the October 2011 incident. As a term of his probation, Father agreed not to have any contact with Mother for three years.

¶5 Three days after Father's October 2011 arrest, Mother returned to Idaho with T.H. She testified that she left Arizona to escape the domestic abuse and returned to Idaho because her

father and other members of her extended family lived there.

¶6 In January 2012, Father filed a petition for dissolution of marriage in Arizona. Mother filed her own divorce complaint in Idaho one month later, as well as a motion for change of jurisdiction in Arizona. In her motion, she requested that the Arizona family court decline child custody jurisdiction because Arizona is an inconvenient forum and because of Father's unjustifiable conduct.

¶7 After holding an evidentiary hearing, the family court in Arizona granted Mother's motion. In its ruling, the court stated that although Arizona was T.H.'s home state,[1] it was an inconvenient forum under A.R.S. § 25-1037 (2007) and Idaho was a more appropriate forum to handle the child custody matter.

¶8 Father timely appealed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21.A.1 (2003) and -2101 (Supp. 2012).

DISCUSSION

¶9 Father contends that the family court erred in declining to exercise jurisdiction after it determined that Arizona is an inconvenient forum under the Uniform Child Custody

[1] Home state is defined as "[t]he state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding." Arizona Revised Statutes (A.R.S.) section 25-1002.7(a) (Supp. 2012) (We cite to the current version of applicable statutes when no revisions material to this decision have occurred.).

Jurisdiction and Enforcement Act (UCCJEA).[2] He alleges that in making this determination, the family court abused its discretion by (1) declining jurisdiction even though Arizona is T.H.'s home state, (2) improperly applying one factor and ignoring the other seven factors of A.R.S. § 25-1037.B., and (3) allowing Mother to forum shop.

¶10 We review a family court's ruling on the issue of inconvenient forum for an abuse of discretion. *Tiscornia v. Tiscornia*, 154 Ariz. 376, 377, 742 P.2d 1362, 1363 (App. 1987). Abuse of discretion occurs when "the reasons given by the court for its action are clearly untenable, legally incorrect, or amount to a denial of justice." *State v. Chapple*, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983).

A. Home State

¶11 Father asserts that Arizona, as T.H.'s home state, should have jurisdiction. He argues that pursuant to the UCCJEA, priority should be given to a finding of home state jurisdiction over any other jurisdictional provisions.

¶12 Both parties agree that the trial court properly found that Arizona is T.H.'s home state. However, pursuant to A.R.S. § 25-1037.A, a court that has jurisdiction to make a child

[2] Arizona adopted the UCCJEA in 2001. *Welch-Doden v. Roberts*, 202 Ariz. 201, 208, ¶ 29, 42 P.3d 1166, 1173 (App. 2002).

custody determination "may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum." Because we agree with the family court, as discussed below, that Arizona is an inconvenient forum, Father's argument is without merit.

B. Inconvenient Forum

¶13 Arizona Revised Statutes § 25-1037.B states that before a family court makes its determination regarding "whether it is appropriate for a court of another state to exercise jurisdiction," it must "consider all relevant factors," including the eight enumerated in the statute.[3] Father argues that the family court only focused on the first factor regarding whether domestic violence occurred between the parties. He also contends that the court erred in applying this factor because it failed to recognize that Arizona is the state that could best

[3] The eight enumerated factors are (1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child; (2) the length of time the child has resided outside Arizona; (3) the distance between the court in Arizona and the court in the state that would assume jurisdiction; (4) the relative financial circumstances of the parties; (5) whether there is any agreement of the parties as to which state should assume jurisdiction; (6) the location and nature of the evidence required to resolve the pending litigation, including testimony of the child; (7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and (8) the familiarity of the court of each state with the facts and issues in the pending litigation. A.R.S. § 25-1037.B.

protect Mother and T.H. and merely focused on the fact that Mother had family support in Idaho. We disagree.

¶14 Father argues Arizona can best protect Mother and T.H. because police in Arizona responded in a timely manner to the reports of domestic violence and Arizona issued a no contact order between Father and Mother. However, despite the efforts of the courts and law enforcement in Arizona to protect Mother, she continued to remain at risk while living in Arizona. The police arrested Father in September 2010, yet Father again engaged in domestic violence against Mother and T.H. and was arrested in October 2011. Moreover, "[o]rders of protection have proven inadequate to guard women and children from further abuse." *See Stoneman v. Drollinger*, 314 Mont. 139, 148, ¶ 25, 64 P.3d 997, 1002 (2003) (citing a two-year study in which almost half of 663 male batterers against whom an order of protection had been filed assaulted their victims again during the study period).

¶15 During the evidentiary hearing, Mother testified that if she had to return to Arizona for a hearing, she did not have a safe place to stay because she did not know anyone in Arizona. She also stated that she feared for her and T.H.'s safety. Although Father believes that the family court should not have considered Mother's family in Idaho, we believe that a finding that Mother and T.H. have family support in Idaho is relevant in

determining which state could best protect them. Therefore, we find that the family court properly weighed the first enumerated factor.

¶16 Additionally, Father is incorrect that the family court ignored the seven remaining factors. Pursuant to A.R.S. 25-1037.B, a family court is only required to "*consider* all relevant factors." (Emphasis added). In this case, the court held an evidentiary hearing on Mother's motion for change of jurisdiction and before issuing its ruling, it "considered the evidence, testimony and arguments of counsel." The family court also made findings as to each of the factors enumerated in A.R.S. § 25-1037.B. Therefore, we find the court complied with the statute's requirements.

¶17 Father concedes that the majority of the factors are neutral, yet he believes that at least two of the factors weigh in favor of Arizona retaining jurisdiction. Assuming, without deciding, that Father's analysis of the factors is correct, we do not find that the family court erred in declining jurisdiction. The family court determined that there was "a continuing and escalating pattern of domestic violence by Father" and that Idaho could best protect Mother. The family court properly gave more weight to this factor. *See Stoneman*, 314 Mont. at 148-49, ¶ 26, 64 P.3d at 1002 (urging "courts to give priority to the safety of victims of domestic violence when

considering jurisdictional issues under the UCCJEA").

¶18 Although Father may disagree with the court's application of the factors, there is nothing in the statute that requires the family court to apply the enumerated factors mechanically. Accordingly, we find that the family court did not abuse its discretion in declining jurisdiction under A.R.S. 25-1037.

C. Forum Shopping

¶19 Father asserts that the trial's ruling allowed Mother to forum shop, contrary to well-established Arizona and United States law. Because we determined above that the family court properly declined jurisdiction under A.R.S. § 25-1037 because Arizona is an inconvenient forum, we need not address this argument.

D. Attorney Fees

¶20 Finally, Father requests his attorney fees and costs on appeal pursuant to A.R.S. § 25-324 (Supp. 2012). We deny his request. Mother, however, is entitled to her costs upon her compliance with Arizona Rule of Civil Appellate Procedure 21.

CONCLUSION

¶21 For the foregoing reasons, we affirm.

/S/

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

ANDREW W. GOULD, Presiding Judge

/S/

MARGARET H. DOWNIE, Judge