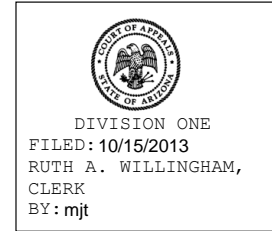


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



In re the Matter of: ) 1 CA-CV 12-0835  
)  
JENNIFER S. MEDLIN, ) DEPARTMENT B  
)  
Petitioner/Appellant, ) **MEMORANDUM DECISION**  
)  
v. ) (Not for Publication -  
) Rule 28, Arizona Rules of  
WILLIAM G. WRIGHT, ) Civil Appellate Procedure)  
)  
Intervenor/Appellee. )  
)

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Appeal from the Superior Court in Maricopa

Cause No. FC2006-092591

The Honorable Bethany G. Hicks, Judge

**AFFIRMED**

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Law Office of John E. Herrick Phoenix  
By John E. Herrick  
Attorneys for Petitioner/Appellant

Clifford Levenson, Attorney at Law Phoenix  
By Clifford I. Levenson  
Attorney for Intervenor/Appellee

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J O H N S E N, Judge

¶1 Jennifer S. Medlin ("Mother") appeals the superior court's order granting her father, William G. Wright ("Grandfather"), visitation with her child. We hold the court did not abuse its discretion and affirm the order.

#### **FACTS AND PROCEDURAL HISTORY**

¶2 Mother and her former husband, Dennis M. Medlin ("Father"), have one child, born in 2005. Mother has had sole decision-making authority over the child since the parties' 2006 consent decree. Mother and the child lived with Grandfather for approximately five years, until May 2011, when Mother and the child relocated to North Dakota for Mother's work. Mother remarried and continues to live in North Dakota.

¶3 In 2012, the superior court held a one-hour hearing to make temporary orders on Father's request for modified parenting time. At the conclusion of the hearing, the court awarded Father two weeks of parenting time under Grandfather's supervision. The court directed that child was to stay at Grandfather's house during the two-week period. Later the day of the hearing, Mother obtained an order of protection against Grandfather by filing a petition in another judicial division alleging that he sent harassing communications and threatened to make false police reports. After a hearing two weeks later, the court amended the order of protection to omit the child.

¶14 In the meantime, Grandfather filed a petition to establish grandparent visitation. Mother argued her denial of visitation to Grandfather was reasonable in light of the order of protection. After an evidentiary hearing, the court awarded Grandfather one week of visitation each year. We have jurisdiction of Mother's timely appeal pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(2) (2013).<sup>1</sup>

#### DISCUSSION

¶15 Arizona courts may award visitation to the grandparent of a child whose parents have been divorced more than three months if the court finds that visitation is in the child's best interests. See A.R.S. § 25-409(A) (2012). We review the grant of grandparent visitation for an abuse of discretion. *McGovern v. McGovern*, 201 Ariz. 172, 175, ¶ 6, 33 P.3d 506, 509 (App. 2001).

¶16 In determining whether grandparent visitation is in the child's best interests, § 25-409(C) directs the court, in relevant part, to:

consider all relevant factors, including:

1. The historical relationship, if any, between the child and person seeking visitation.

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<sup>1</sup> Absent material revision after the relevant date, we cite a statute's current version.

2. The motivation of the requesting party in seeking visitation.

3. The motivation of the person denying visitation.

4. The quantity of visitation time requested and the potential adverse impact that visitation will have on the child's customary activities.

¶7 A parent has a constitutionally protected right to make decisions on behalf of his or her child. See *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Graville v. Dodge*, 195 Ariz. 119, 123, ¶ 19, 985 P.2d 604, 608 (App. 1999). To protect this right, Arizona courts must apply certain "constitutionally based principles" in determining grandparent visitation. *McGovern*, 201 Ariz. at 177-78, ¶¶ 17-18, 33 P.3d at 511-12.

¶8 Specifically, courts "apply a presumption that a fit parent acts in his or her child's best interest in decisions concerning the child's care, custody, and control, including decisions concerning grandparent visitation." *Id.* at ¶ 17 (citing *Troxel*, 530 U.S. at 68-69). That presumption is rebuttable. *Id.* In deciding grandparent visitation, the "trial court must consider and give 'some special weight' to a fit parent's determination of whether visitation is in the child's best interest and give 'significant weight' to a parent's voluntary agreement to some visitation, albeit not as much visitation as the grandparent desires." *McGovern*, 201 Ariz. at

177-78, ¶ 18, 33 P.3d at 511-12 (citing *Troxel*, 530 U.S. at 70-72).

¶9 Mother argues the superior court applied § 25-409 unconstitutionally by giving equal weight to Grandfather's desire for visitation and her decision that he should not be allowed visitation. She also argues insufficient evidence supported the court's conclusion that Grandfather rebutted the presumption that her decision was in the child's best interests.

¶10 The superior court applied the proper constitutional standards in making its order. It clearly stated it was aware of the deference and weight it was required to give Mother's decision regarding grandparent visitation. After noting the presumption that Mother's decision was in the child's best interests, the court found Grandfather's evidence rebutted that presumption. Specifically, but without limitation, the court referred to the factors in § 25-409(C), including the close care-giver/child relationship Grandfather and child had shared for nearly all the child's life, Grandfather's desire to maintain that close relationship and his willingness to have visitation only during school breaks. The court also noted that it was not until Mother married her current husband that she first objected to Grandfather spending time with the child, and observed that Mother's objection stemmed from her view that

Grandfather indulged the child "and not from any fear for the child's safety or welfare."

¶11 Evidence in the record supports each of these findings. In addition, Grandfather testified that Mother rejected his request for visitation in part because she was angry at him for disclosing to Father her whereabouts in North Dakota and because he encouraged Father to contest Mother's relocation with the child to that state. He also testified that Mother was angry because he wrote her a letter "disowning" her after she married her current husband. Moreover, as in *Graville*, Grandfather had played a significant role throughout the child's life and, as the child's psychologist testified, a child needs to maintain these relationships. See 195 Ariz. at 129, ¶ 45, 985 P.2d at 614. The fact that Mother relied on Grandfather to help her co-parent the child for most of the child's life suggests that her decision to deny Grandfather visitation may have been motivated by something other than the child's best interests.

¶12 Nevertheless, Mother argues visitation was not in the child's best interests, citing testimony that the child acted out after returning from his two-week visit with Grandfather and Father. The child's psychologist also testified the child reported that Father and Grandfather told him that he did not

have to listen to Mother. There also was evidence, however, that the child had behavior problems before his Arizona visit. And the psychologist testified that a child might become angry and act out if he was "inexplicably separated" from the grandparent he lived with for many years. The psychologist did not advocate that Grandfather's request for visitation be denied altogether, but only noted that in his opinion, such visitation should be supervised.

¶13 Mother also argues the superior court erred by failing to make any findings on the record regarding her assertion that Grandfather smoked marijuana. She also argues the court failed to make any finding with respect to trial testimony that during an argument that occurred while Grandfather was visiting them in North Dakota the year before, Grandfather shook the child and struck Mother. Mother contends the court's failure to consider these allegations constitutes an abuse of discretion.

¶14 The statute, however, does not require the superior court to make specific findings on the record about each relevant factor. See A.R.S. § 25-409(C) (court must consider all relevant factors). In granting grandparent visitation, the superior court only is required to find that visitation is in the child's best interests. *Id.* On appeal, we presume the court made any findings necessary to support its decision and

will affirm its order if reasonable evidence supports it. *Neal v. Neal*, 116 Ariz. 590, 592, 570 P.2d 758, 760 (1977).

¶15 As for the evidence that Grandfather once shook the child and struck Mother, although evidence of domestic violence shall be considered contrary to a child's best interests, A.R.S. § 25-403.03(B) (2012), the court may allow parenting time if the offender demonstrates "to the court's satisfaction that parenting time will not endanger the child or significantly impair the child's emotional development." A.R.S. § 25-403.03(F).<sup>2</sup>

¶16 In sum, the superior court specifically noted the deference and special weight carried by Mother's decision to deny visitation, but acted within its discretion in considering the significant evidence in the record suggesting that, nonetheless, Mother's decision was contrary to the child's best interests.

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<sup>2</sup> We assume without deciding that A.R.S. § 25-403.03 applies to grandparent visitation as well as orders involving a child's parents. Although the court may not grant legal decision-making to a parent upon a finding of "significant domestic violence," A.R.S. § 25-403.03(A), Mother does not argue that provision applies here.



CONCLUSION

¶17 We affirm the court's award of grandparent visitation.

\_\_\_\_\_/S/\_\_\_\_\_  
DIANE M. JOHNSEN, CHIEF JUDGE

CONCURRING:

\_\_\_\_\_/S/\_\_\_\_\_  
PETER B. SWANN, PRESIDING JUDGE

\_\_\_\_\_/S/\_\_\_\_\_  
PATRICIA K. NORRIS, JUDGE