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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

FELICIA RACQUEL SIMMONS, *Petitioner/Appellant*,

v.

ROBBIE M. LUTOSTANSKI, *Respondent/Appellee*.

No. 1 CA-CV 15-0759 FC A
FILED 8-4-2016

Appeal from the Superior Court in Maricopa County
No. FC2014-094853
The Honorable Jeffrey A. Rueter, Judge

AFFIRMED

COUNSEL

Gillespie, Shields, Durrant & Goldfarb, Mesa
By Mark A. Shields
Counsel for Petitioner/Appellant

Law Offices of Brad Reinhart, LLC, Tempe
By Brad Reinhart
Counsel for Respondent/Appellee

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MEMORANDUM DECISION

Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Kenton D. Jones joined.

T H U M M A, Judge:

¶1 Felicia Racquel Simmons (Mother) appeals the superior court’s grant of equal parenting time to Robbie M. Lutostanski (Father) of their son B.L. This is an accelerated appeal pursuant to Ariz. R. Civ. App. P. 29 (2016).¹ Mother argues the court abused its discretion by failing to make findings regarding the reports of two experts and ordering equal parenting time under the specific facts of this case.

FACTS AND PROCEDUAL HISTORY

¶2 Mother and Father married in early 2011 and B.L. was born later that year. In August 2014, Mother filed a petition for dissolution. Although Mother requested that Father have very little time with B.L., the superior court issued temporary orders for joint legal decision-making and equal parenting time. To help address B.L.’s best interests at trial, the court ordered Richard Slatin to conduct a parenting conference to consider all relevant factors, including those found in Arizona Revised Statutes (A.R.S.) section 25-403, and then serve as an expert for the court.

¶3 Slatin conducted a parenting conference in November 2014 and addressed relevant factors, including those listed in A.R.S. § 25-403, without finding any factor that strongly favored one parent over the other. His more general assessment noted allegations of domestic violence and extra-marital affairs by Father. Slatin also opined that Father was much less “transparent” than Mother and that Father appeared to choose not to fulfill his family responsibilities. Slatin recommended the court order B.L. to live with Mother Monday through Friday with weekend parenting time alternating between Mother and Father, and that Father have one or two mid-week visits. Slatin’s report also suggested that Father’s motive for seeking equal parenting time may be to minimize child support payments.

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

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¶4 As a result of the parties' agreement, the court later appointed John Moran, Ph.D., to conduct a custody evaluation, taking into consideration all relevant factors in A.R.S. § 25-403. Moran's report stated that B.L. appeared attached to both parents and comfortable in each parent's home. The report did not identify any major parenting deficiencies in either parent. The report did, however, note that Father's personality, and how it impacts his relationships, was a cause for concern. Although B.L. demonstrated a bond with Father, Moran was concerned Father would not provide stability B.L. would need. Moran also noted Mother's allegations of domestic violence by Father. Moran recommended Father have parenting time from Thursday afternoon until Saturday afternoon every week, with Mother to have parenting time at all other times.

¶5 Before parenting time could be resolved at trial, Mother sought an emergency, temporary parenting time order. Mother alleged that, during a visit, Father struck B.L. in the face with a closed fist causing a black eye and a laceration. The superior court immediately suspended Father's parenting time and ordered that Father have supervised parenting time until further notice. The court held an evidentiary hearing on the matter less than two weeks later. After taking the matter under advisement, the court found there was not sufficient evidence to support the allegations because photos of B.L. showed only "minimal and faint discoloring and evidence was presented that the child had spent the weekend with as many as twenty (20) other children that involved rough-housing and the child falling to the ground." The court vacated the emergency orders, reinstated the prior temporary orders and ordered that Mother's allegations and supporting documentation be provided to Moran for his consideration.

¶6 At a September 2015 trial, both Mother and Father testified. After taking the matter under advisement, the superior court issued a 21-page decree, making written findings regarding A.R.S. § 25-403.01 as well as the required written findings for all factors listed in A.R.S. § 25-403. *See Nold v. Nold*, 232 Ariz. 270, 273-74 ¶¶ 11-15 (App. 2013). The court found B.L. was well adjusted in each parent's home and emotionally bonded to each parent. The court did not find that any factor weighed heavily in favor of either parent and found that neither parent posed any risks to B.L.'s mental, physical or emotional safety. The court considered the reports by Slatin and Moran and found that it would not be in B.L.'s best interest to alter the parenting plan then in place and ordered that Father and Mother share equal parenting time.

¶7 Mother timely appeals the superior court's order for equal parenting time. This court has jurisdiction pursuant to the Arizona

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Constitution, Article 6, Section 9, and A.R.S. §§ 12-120.21(A)(1) and - 2101(A)(1).

DISCUSSION

I. The Superior Court Did Not Abuse Its Discretion By Not Making Findings Regarding The Reports By Slatin And Moran.

¶8 Mother argues the superior court abused its discretion by failing to make specific findings on the record regarding the reports by Slatin and Moran. Arizona law requires the superior court to “consider all factors that are relevant to the child’s physical and emotional well-being,” including those listed by statute. A.R.S. § 25-403(A). In a contested custody case, “the court shall make specific findings on the record about all relevant factors and the reasons for which the decision is in the best interests of the child.” A.R.S. § 25-403(B). Failure to do so is error. *Nold*, 232 Ariz. at 274 ¶ 15.

¶9 Mother argues that because the reports were relevant and potentially helpful in determining B.L.’s best interests, it was an abuse of discretion to not make specific findings regarding their contents. Mother’s argument, however, equates relevant evidence to “relevant factors.” “Relevant factors” as used in A.R.S. § 25-403 are factors that bear on the child’s well-being such as family relationships, the safety of the home, and any history of domestic violence or abuse. *See* A.R.S. § 25-403(A)(1)-(11). Reports from professionals, although helpful and relevant to the court, are not “factors that are relevant to the child’s physical and emotional well-being.” A.R.S. § 25-403(A). Instead, the reports contain evidence relevant to the court’s assessment of the factors and assist the court to make the required findings. The court considered the reports as well as other evidence of factors relevant to B.L.’s well-being and made findings required by A.R.S. § 25-403 and *Nold*. Mother cites no law to support her assertion that the superior court must make specific findings regarding parenting-conference or custody-evaluation reports. Mother has not shown the superior court abused its discretion by failing to include findings regarding the reports.

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II. The Superior Court Did Not Abuse Its Discretion By Awarding Equal Parenting Time.

¶10 Mother argues that the superior court erred by awarding equal parenting time under the facts of this case. Specifically, Mother argues the court's finding that Father has no "mental or physical health issues preventing [him] from parenting the child" is "unequivocally wrong." To support her argument, Mother points to concerns raised by the two reports that Father exhibits "a poorly integrated conscience that inspires egocentric and self-indulgent acts," "immature and abrupt temper outbursts," "disregard for the impact of his behavior on others," that Father "would not provide a stable living situation and environment for [B.L.]" and "would not be fully responsive to [B.L.]'s emotional needs . . . [or] be a good role model." By statute, the superior court "shall determine . . . parenting time . . . in accordance with the best interests of the child." A.R.S. § 25-403(A). Given the factually-intensive nature of the inquiry, this court "will not disturb the family court's . . . parenting time orders absent an abuse of discretion." *Nold*, 232 Ariz. at 273 ¶ 11.

¶11 Although Mother points out concerns raised by the reports, neither report opined that Father suffered from mental conditions that prevented him from parenting. To the contrary, Moran's report notes that, "Father does not pose an eminent or specific risk to [B.L.]. Indeed, Father has many resources to offer [B.L.]" Moreover, contrary to Mother's argument on appeal, both reports recommended that Father have significant parenting time. Moran's report recommended that Father have parenting time two days per week and two weeks each summer. Slatin recommended that Father have parenting time alternating weekends and two evenings per week. Neither report recommended supervised parenting time or other limitations.

¶12 Mother also argues the superior court erred by finding there were "no allegations relating to sex offenders." From the record presented, however, no evidence relating to sex offenders was presented at trial. Moreover, on appeal, Mother does not point to any evidence that suggests Father is a sex offender.

¶13 The record shows the superior court considered both reports as well as all other relevant evidence. Notwithstanding any concerns expressed by Mother, no evidence suggested that Father is a danger to B.L. Moreover, the equal parenting time order does not drastically differ from Moran's recommendation that B.L. spend two days per week with Father.

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On this record, Mother has not shown the superior court abused its discretion by ordering equal parenting time.

CONCLUSION

¶14 Because Mother has shown no error, the superior court's order granting equal parenting time is affirmed.



Ruth A. Willingham · Clerk of the Court
FILED : AA