NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

KRYSTAL ANDERSON, *Petitioner/Appellant*,

v.

NATHAN KILBURG, *Respondent/Appellee*.

No. 1 CA-CV 16-0537 FC
FILED 8-3-2017

Appeal from the Superior Court in Navajo County
No. S0900DO201100545
The Honorable Dale P. Nielson, Judge

AFFIRMED

COUNSEL

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Counsel for Petitioner/Appellant

Law Office of Michael R. Shumway, P.L.C., Winslow
By Michael R. Shumway
Counsel for Respondent/Appellee

MEMORANDUM DECISION

Presiding Judge Paul J. McMurdie delivered the decision of the Court, in which Judge Margaret H. Downie and Judge Maria Elena Cruz joined.

M c M U R D I E, Presiding Judge:

¶1 Appellant Krystal Anderson ("Mother") challenges the superior court's denial of her request to relocate with her two minor children to Washington. We affirm for the reasons set forth below.

FACTS AND PROCEDURAL BACKGROUND

¶2 Mother and Appellee Nathan Kilburg ("Father") have two minor children. Mother petitioned the superior court for sole legal-decision making for the children in 2011. The parties agreed to a parenting plan under which they would have joint legal-decision making. Mother would be the primary caregiver and Father would receive substantial parenting time throughout the year.

¶3 Eventually, Mother notified Father of her intent to relocate with the children to Washington. Father petitioned the court to prevent the relocation arguing, among other things, that the relocation would substantially reduce his parenting time. Following an evidentiary hearing at which both parents testified and the court conducted *in-camera* interviews of the two children, the court reviewed the relocation factors of Arizona Revised Statutes ("A.R.S.") section 25-408(I) and denied Mother's request. Mother timely appealed the court's order and we have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).[1]

DISCUSSION

¶4 The superior court must consider the children's best interests in deciding whether to allow a contested relocation. A.R.S. § 25-408(G); *Munari v. Hotham*, 217 Ariz. 599, 602, ¶ 15 (App. 2008). The court must evaluate the children's best interests using the factors listed in A.R.S. § 25-408(I), although not all of the factors may apply or weigh equally. *Owen v. Blackhawk*, 206 Ariz. 418, 420−21, ¶¶ 8−12 (App. 2003).

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[1] We cite to the current version of applicable statutes or rules when no revision material to this case has occurred.

¶5 The superior court's ruling reflects its consideration of those factors, without undue focus on any one factor to the exclusion of others. *See Pollock v. Pollock*, 181 Ariz. 275, 278 (App. 1995) (the best interests factors "should be weighed collectively" and "no single factor is controlling"). We thus review the record for an abuse of discretion. *Murray v. Murray*, 239 Ariz. 174, 176, ¶ 5 (App. 2016). We view the evidence in the light most favorable to sustaining the court's findings and will affirm those findings if any reasonable evidence supports them. *Johnson v. Johnson*, 131 Ariz. 38, 44 (1981). Mother bears the burden of proof as the parent seeking relocation. *See* A.R.S. § 25-408(G); *Pollock*, 181 Ariz. at 277.

¶6 Mother challenges the court's findings on several statutory factors. We consider each of her challenges below.

I. A.R.S. § 25-408(I)(3): The Prospective Advantage of Relocation for the Custodial Parent or the Children.

¶7 Mother first contends the superior court did not properly consider the advantages relocation would afford her and the children. *See* A.R.S. § 25-408(I)(3). The superior court determined this factor favored relocation, finding that Mother's husband had received a substantial inheritance and a new home in Washington that was larger than Mother's Arizona home. The court also cited Mother's testimony that the inheritance allowed them to open a new business and "the schools in the community [in Washington] would perhaps be better academically for the children."

¶8 Mother also cites her testimony that her new business is "in more demand in Washington than it is in Winslow, Arizona." But she admitted the business had acquired only one contract in Washington so far and it might not be successful over time. It does not appear the superior court gave Mother's uncertain business prospects unreasonable weight.

II. A.R.S. § 25-408(I)(5): Whether Relocation Would Allow a Realistic Opportunity for Parenting Time with Each Parent.

¶9 Mother next contends the superior court ignored evidence showing that Father would have had realistic opportunities to exercise parenting time following relocation. *See* A.R.S. § 25-408(I)(5). The court found both parents would have had realistic opportunities to exercise adequate parenting time following relocation. Nonetheless, we note Mother's admission that her proposed relocation would negatively impact Father's parenting time.

¶10 Mother also contends the ruling will substantially reduce her parenting time. But she testified that she would agree to no longer be the primary caregiver and that she did not plan to move back to Arizona if the court denied relocation. Moreover, to the extent Mother intends to challenge the court's modification of the parenting time schedule, she points to no evidence that would suggest an abuse of discretion. *See Baker v. Meyer*, 237 Ariz. 112, 116, ¶ 10 (App. 2015) ("We review an order modifying parenting time for an abuse of discretion."); *Vincent v. Nelson*, 238 Ariz. 150, 155, ¶ 17 (App. 2015) ("We view the evidence in the light most favorable to sustaining the family court's findings, and we also determine whether evidence in the record reasonably supports the family court's findings.").

III. A.R.S. § 25-408(I)(6): The Effects of Relocation on the Children's Emotional, Physical, or Developmental Needs.

¶11 Mother next contends the superior court did not properly consider the positive effects relocation would have on the children's emotional, physical, and developmental needs, arguing that she was their "stability" as their primary caregiver. *See* A.R.S. § 25-408(I)(6). The record reasonably supports the court's finding that relocation "would have a significant effect upon them emotionally." Father testified that the children did not want to relocate to Washington and that it would be difficult for them to "start over from scratch in a place where they know nobody." Moreover, to the extent the court relied on its *in-camera* interviews of the children, we presume those interviews supported the court's findings. *See Kohler v. Kohler*, 211 Ariz. 106, 108, ¶ 8, n.1 (App. 2005) ("In the absence of a transcript, an appellate court will presume that the record supports the trial court's rulings.").

IV. A.R.S. § 25-403(A) Factors.

¶12 Finally, Mother contends the superior court did not properly consider several factors under § 25-403(A), citing her testimony that she was the children's primary caregiver, she "took great care to make sure the . . . Washington community and schools were safe for the children," and the children were excited to move to Washington. *See* A.R.S. § 25-408(I)(1) (incorporating the § 25-403(A) factors into the best interests analysis). The record contains conflicting evidence suggesting that Father had served as the children's primary caregiver in the past, the children were well-adjusted to their Arizona home and schools, and the children did not want to move to Washington. We defer to the court's determinations regarding how to

weigh conflicting evidence. *Gutierrez v. Gutierrez,* 193 Ariz. 343, 347, ¶ 13 (App. 1998).

¶13 For these reasons, we conclude the superior court did not abuse its discretion by denying Mother's relocation request. *See Hurd,* 223 Ariz. at 52, ¶ 19 (an abuse of discretion occurs only "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").

V. Attorney's Fees on Appeal.

¶14 Father requests his attorney's fees incurred on appeal pursuant to A.R.S. § 25-324(A), under which we must consider "the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings." *Id*. Neither parent took unreasonable positions in this appeal. As such, having considered the relevant financial evidence in the record, we decline to award attorney's fees. We do, however, award Father his costs incurred on appeal contingent upon his compliance with Arizona Rule of Civil Appellate Procedure 21.

CONCLUSION

¶15 We affirm the superior court's order denying relocation.

AMY M. WOOD • Clerk of the Court
FILED: AA