IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

WILLIAM CHARLES INGRAM, *Petitioner/Appellant*,

v.

DULCE NEREYDA HERNANDEZ, *Respondent/Appellee*.

No. 1 CA-CV 16-0543 FC
FILED 9-21-2017

Appeal from the Superior Court in Maricopa County
No. FC2010-053079
The Honorable Jay M. Polk, Judge

AFFIRMED

COUNSEL

William Charles Ingram, Coeur d'Alene, ID
Petitioner/Appellant

MEMORANDUM DECISION

Acting Presiding Judge Peter B. Swann delivered the decision of the court, in which Judge Maria Elena Cruz and Judge Margaret H. Downie joined.

S W A N N, Judge:

¶1 William Charles Ingram ("Father") appeals from an order denying his motion to modify a custody and legal decision-making order. For the reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 On July 26, 2011, the superior court awarded Dulce Nereyda Hernandez ("Mother") sole legal decision-making authority over the parents' minor child. The court ordered Father to complete a "batterer's intervention program" before it would grant him parenting time. Before completing a 16-week domestic violence counseling program, Father petitioned for parenting time and contact with the child. In May 2012, the court declined to make any modifications until after Father had completed 16 weeks of domestic violence counseling and resolution of his criminal charges.

¶3 Father failed to appear at a May 2013 review hearing regarding parenting time. After being advised that Father was "currently in custody on domestic violence charges," the court formally suspended Father's parenting time.

¶4 In June 2014, the court appointed a special advisor to "investigate Father's criminal history and any past domestic violence and [to] make recommendations regarding Father's parenting time." When Father refused to cooperate, the advisor issued a report without his input, which detailed repeated violations of orders of protection and Father's anger issues.

¶5 Later that year, the parties attended a settlement conference, where they entered an agreement under ARFLP ("Rule") 69 to gradually allow Father to see the child on a regular basis. The agreement required Father's visitations to be supervised at first, with Father to pay the costs for the supervision. The court accepted the agreement, and in January 2015 entered a detailed order effectuating the agreement, appointing an interventionist, and requiring Father to bear all costs.

¶6 The interventionist completed an intake interview with Mother in February 2015. The interventionist fee was a discounted rate of $110 an hour, which Father asserted he could not afford. In June 2015, the interventionist informed the court that no supervised visitations had occurred and that no further reports would be forthcoming unless Father funded the therapeutic intervention services.

¶7 In June 2016, Father filed a motion seeking to modify the Rule 69 agreement, alleging changed circumstances based on his move to Idaho. The court denied the motion. Father appeals.

DISCUSSION

¶8 The court may modify a parenting plan "whenever modification would serve the best interest of the child." A.R.S. § 25-411(J). We review denials of requests to modify parenting time for an abuse of discretion. *See Siegert v. Siegert*, 133 Ariz. 31, 33 (App. 1982).

¶9 On appeal, Father alleges that the court-appointed mediator threatened him to force his assent to the Rule 69 agreement, that the court's orders place an unfair financial burden on him, that the court has improperly increased his support obligations, that prohibiting his contact with the child is contrary to the child's best interests, and that he was denied due process when the court denied his motion to modify without his having received a copy of Mother's response. Mother did not file an answering brief.

¶10 Father never raised the coercion allegations in the superior court, and his arguments therefore are waived on appeal. *See Trantor v. Fredrikson*, 179 Ariz. 299, 300 (1994) ("[A]bsent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal."). The orders suspending Father's rights, imposing child support, and effectuating the Rule 69 agreement were not appealed, and we therefore lack jurisdiction to consider them. Even if they were before us, Father did not submit any transcripts of the relevant proceedings, and we are required to presume that the record would support the court's orders. *See Baker v. Baker*, 183 Ariz. 70, 73 (App. 1995); *see also* ARCAP 11(c).

¶11 Father's motion to modify the Rule 69 agreement was properly denied. The agreement requires that Father complete six to ten supervised visits before he may have any other contact with the child. That requirement is not contingent on where Father lives, and in view of the scant contact he has had with the child, his residential change is not a material change of circumstance. If Father wishes to re-establish a relationship with the child, he must complete the supervised visits.

¶12 Having been heard on his request to modify the agreement, Father received due process. *See Johns v. Ariz. Dep't of Econ. Sec.*, 169 Ariz. 75, 79 (App. 1991). Though Father contends he never received Mother's response to his motion, that motion facially failed to show changed

circumstances, and the court could properly have denied it without a response from Mother. *See* Rule 91(D)(6), (M).

CONCLUSION

¶13 For these reasons, we affirm.

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