IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

DAVID J. GERDES, *Petitioner/Appellee*,

v.

ANNE R. BRANSTRATOR, *Respondent/Appellant*.

No. 1 CA-CV 16-0707 FC
FILED 10-3-2017

Appeal from the Superior Court in Maricopa County
No. FC2014-054126
The Honorable Jennifer C. Ryan-Touhill, Judge

VACATED AND REMANDED

COUNSEL

Judy M. Miller PC, Phoenix
By Judy M. Miller

Law Office of John E. Herrick, Peoria
By John E. Herrick
Co-Counsel for Petitioner/Appellee

Martinez Law Offices, Phoenix
By Elizabeth J. Martinez
Counsel for Respondent/Appellant

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge James P. Beene and Judge Peter B. Swann joined.

C A T T A N I, Judge:

¶1 Anne R. Branstrator ("Mother") appeals from the superior court's order prohibiting her from having direct contact with her child's medical providers. Because the court failed to hold a hearing before granting Father's motion, we vacate the order and remand for further proceedings consistent with this decision.

FACTS AND PROCEDURAL BACKGROUND

¶2 Mother and David J. Gerdes ("Father") are not married but together have one child, who was born premature and requires ongoing medical care. In 2014, Father filed a petition to establish legal decision-making and parenting time. After trial, the superior court awarded joint legal decision-making but gave Father "presumptive decision making authority," meaning "the right to make a preliminary decision that he shall then communicate to Mother." The court denied Mother's request to relocate the child to Florida, where she resides, and instead awarded her parenting time every other weekend and for three weeks each summer.

¶3 Father initially asked the superior court to restrict Mother's contact with the child's doctors and service providers, claiming that such contact would "disrupt the smooth coordination and implementation of [the child's] medical care" and could result in the loss of a provider. The court denied Father's request finding "no credible evidence" to indicate that Mother's contact with the child's medical providers would cause the child to lose services. The court awarded Mother and Father "equal access" to the child's doctors while admonishing them both to refrain "from taking any action that would involve any of the providers in the parties' conflict and, resultantly, cause [the child] to lose that service provider."

¶4 Five months later, Father moved for an emergency order asking the superior court to prohibit Mother from having direct contact with the child's medical providers. He attached a letter from the Division of Endocrinology ("Division") at Phoenix Children's Medical Group

terminating the child's medical services effective thirty days later based on Mother's frequent abusive interactions with members of the Division's support staff. Mother responded to Father's motion and requested an evidentiary hearing.

¶5 Without holding a hearing, the superior court granted Father's motion and issued the following order:

> Mother herein . . . is hereby prohibited from having any direct contact, whether in person, by telephone or any written communication, with any medical providers and/or their support staff rendering medical services to the parties' minor child . . . effective immediately as of the date of this Order.

The order contained no findings.

¶6 Mother timely appealed, and we have jurisdiction under Arizona Revised Statutes ("A.R.S.") § 12-2101(A)(2).[1]

DISCUSSION

¶7 Mother argues that the superior court "did not have the legal authority or jurisdiction" to enter the order prohibiting her from contacting the child's medical providers.[2] We review the superior court's ruling on legal decision-making for an abuse of discretion. *See Nold v. Nold*, 232 Ariz. 270, 273, ¶ 11 (App. 2013). An abuse of discretion includes an error of law in the process of exercising discretion. *See Grant v. Ariz. Pub. Serv. Co.*, 133 Ariz. 434, 455–56 (1982).

¶8 The superior court has authority to modify legal decision-making and has broad discretion to determine whether a proposed modification serves the best interests of the child. *See* A.R.S. § 25-411; *Orezza v. Ramirez*, 19 Ariz. App. 405, 409 (App. 1973). Parents are generally entitled to have "equal access to prescription medication, documents and

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[1] Absent material revisions after the relevant date, we cite a statute's current version.

[2] Mother also claims that she was denied due process of law, but we need not address her due process claim in light of our resolution of the appeal. And although Mother also argues that the order "infringes on [her] basic Constitutional rights . . . including under the First Amendment," she failed to support her argument with relevant legal authorities, so we do not further consider it. *See* ARCAP 13(a)(7).

other information concerning the child's . . . physical, mental, moral and emotional health." *See* A.R.S. § 25-403.06(A). A court may restrict that access, however, when a parent's access to the information would seriously endanger the child's "physical, mental, moral or emotional health." A.R.S. § 25-408(K).

¶9 Parental access to medical information is necessary for legal decision-making. *See* A.R.S. § 25-401(3) (defining legal decision-making as "the legal right and responsibility to make all nonemergency legal decisions for a child including those regarding . . . health care"). Thus, before restricting a parent's access to medical information, the court must follow the statutory requirements necessary to modify legal decision-making:

> To modify any type of legal decision-making . . . order[,] a person shall submit an affidavit or verified petition setting forth detailed facts supporting the requested modification and shall give notice, together with a copy of the affidavit or verified petition, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion *unless it finds that adequate cause for hearing the motion is established by the pleadings, in which case it shall set a date for hearing on why the requested modification should not be granted*.

A.R.S. § 25-411(L) (emphasis added); *see also* Ariz. R. Fam. Law P. 91(D)(6) ("If the court determines that a legal decision-making hearing is warranted, the court shall schedule a Resolution Management Conference or evidentiary hearing."). This court has previously held that the superior court does not have authority to modify child custody without a hearing or the "aggrieved parent's consent." *See DePasquale v. Superior Court*, 181 Ariz. 333, 336 (App. 1995). This hearing requirement would have applied even if Father had only sought a temporary order without notice. *See* Ariz. R. Fam. Law P. 48(B) ("A hearing shall be set on the motion for temporary orders without notice within ten (10) days from entry of the order, unless extended by the court for good cause shown.").

¶10 In addition, the superior court must consider the statutory best interest factors before modifying legal decision-making. *See* A.R.S. §§ 25-403(A), -403.01(B). In contested cases, the court must make written findings on the record regarding all relevant factors, including the reasons underlying the best-interests determination. *See* A.R.S. § 25-403(B).

¶11 Here, the superior court's original legal decision-making order provided Father and Mother "equal access" to the child's medical

providers and specified that if a decision involved medical issues, the parties could "elect to seek input from treating physicians." Father's emergency motion sought to deny Mother access to the child's medical providers, which constituted a petition to modify the court's prior legal decision-making order. Thus, if the court found "adequate cause for hearing the motion," it was required to hold a hearing, *see* A.R.S. § 25-411(L), and to make written findings explaining why the modification was in the child's best interests. *See* A.R.S. § 25-403(B).

¶12 Because the superior court did not hold a hearing and did not make findings on the record, we vacate the order and remand for a hearing and appropriate findings. To the extent that Mother challenges the superior court's authority to limit her access to the child's medical providers, we note that § 25-408(K) authorizes the court to restrict access, provided that any such restriction is narrowly tailored to prohibit actions that would seriously endanger the child's "physical, mental, moral or emotional health," A.R.S. § 25-408(K), and takes into consideration Mother's potential need to access emergency medical care for the child while exercising her court-ordered parenting time.

CONCLUSION

¶13 For the foregoing reasons, we vacate the superior court's order prohibiting Mother from having any direct contact with child's medical providers and remand for a hearing and appropriate findings as necessary. In an exercise of our discretion, we deny Mother's request for attorney's fees on appeal under A.R.S. § 25-324, but award her costs upon compliance with ARCAP 21.

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