

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

---

KELSEY ANN PRUETT, *Petitioner/Appellee*,

*v.*

JOSHUA RYAN BELETZ, *Respondent/Appellant*.

No. 1 CA-CV 16-0744 FC  
FILED 10-19-2017

---

Appeal from the Superior Court in Maricopa County  
No. FC2011-006520  
The Honorable Michael J. Herrod, Judge

**VACATED AND REMANDED**

---

COUNSEL

Holly L. Marshall, Attorney at Law, Phoenix  
By Holly L. Marshall  
*Counsel for Petitioner/Appellee*

Joshua Ryan Beletz, Surprise  
*Respondent/Appellant*

PRUETT v. BELETZ  
Decision of the Court

---

**MEMORANDUM DECISION**

Presiding Judge James P. Beene delivered the decision of the Court, in which Judge Randall H. Howe and Judge Kent E. Cattani joined.

---

**B E E N E**, Judge:

¶1 Joshua Ryan Beletz (“Father”) appeals the superior court’s order prohibiting him from using medical marijuana during his parenting time. For the following reasons, we vacate the order and remand for the court to make specific findings on the record.

**FACTS AND PROCEDURAL HISTORY**

¶2 Father and Kelsey Ann Pruett (“Mother”) are the biological parents of a daughter born in 2010. In 2012, the superior court issued initial orders as follows: Mother and Father would share joint legal custody with Mother having the final decision-making authority, and Mother was designated as the primary residential parent with Father receiving parenting time. In August 2015, Father petitioned to modify parenting time and legal decision-making. Mother responded arguing, among other things, that Father used illicit drugs, including marijuana.

¶3 During the evidentiary hearing in April 2016, Mother and Father resolved most of the issues and entered into a binding agreement under Arizona Rule of Family Law Procedure 69. The superior court took two matters under advisement. In its subsequent ruling, in pertinent part, the court ordered that Father was prohibited from using medical marijuana at any time while his daughter was in his physical custody. In October 2016, the court issued its final order incorporating the parties’ agreements reached at the evidentiary hearing and its under advisement ruling.

¶4 Father timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (“A.R.S.”) § 12-120.21(A)(1).

## DISCUSSION

¶5 Father argues the superior court erred in prohibiting him from using medical marijuana at any time while his daughter is in his care.<sup>1</sup> We review parenting time determinations for an abuse of discretion. *Hurd v. Hurd*, 223 Ariz. 48, 51, ¶ 11 (App. 2009). A court abuses its discretion if the record lacks competent evidence supporting the trial court’s decision, *Little v. Little*, 193 Ariz. 518, 520, ¶ 5 (1999), or the trial court made “an error of law in the process of exercising its discretion,” *Kohler v. Kohler*, 211 Ariz. 106, 107, ¶ 2 (App. 2005).

¶6 When making or modifying a parenting time determination, the trial court must consider all of the best interests factors relating to the child’s physical and emotional well-being enumerated in A.R.S. § 25-403(A). If the case is contested, as this one was, the court must 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.” See A.R.S. § 25-403(B); *Hurd*, 223 Ariz. at 51, ¶ 11. It is well established that it is an abuse of discretion for the trial court to fail to make requisite best interests findings pursuant to A.R.S. § 25-403. See *Owen v. Blackhawk*, 206 Ariz. 418, 421-22, ¶ 12 (App. 2003) (holding that court abused its discretion by modifying custody without making findings on the record); *Hurd*, 223 Ariz. at 51, ¶ 11 (same).

¶7 As a threshold matter, we note that Father failed to supply us with the transcript of the evidentiary hearing held in April 2016. See ARCAP 11(C) (imposing duty on appellant to ensure record contains all documents deemed necessary for proper consideration of issues on appeal). While we typically presume the transcript supports the superior court’s ruling, see *Kline v. Kline*, 221 Ariz. 564, 572, ¶ 33 (App. 2009), the orders here fail to make the requisite specific findings.

¶8 In its order, the court found “that it is not appropriate for Father to use medical marijuana at any time while the child is in his physical custody . . . use of medical marijuana while the child is in Father’s physical custody would be detrimental to the child’s best interests.” The court cited A.R.S. § 36-894 which prohibits the use of medical marijuana at a child care

---

<sup>1</sup> Father also requests a modification of his parenting time, seeking his weekends be “switched” because his fiancé works the weekends he has parenting time with his daughter. Because Father failed to raise this argument with the superior court, we deem it waived and do not address it. See *Maher v. Urman*, 211 Ariz. 543, 548, ¶ 13 (App. 2005).

PRUETT v. BELETZ  
Decision of the Court

facility, and reasoned that “the use of medical marijuana while the child is in Father’s care is equivalent.” Thus, the court seems to have been aware of both the existence of the best interests factors and the need to consider best interests. Nevertheless, it did not articulate the specific factors considered or explain its reasoning in imposing a blanket prohibition of the use of medical marijuana during Father’s parenting time, as opposed to a restriction on a particular type of marijuana use in the child’s presence, and how this would serve the child’s best interests. The omission of statutorily mandated findings requires us to remand this matter for appropriate findings and analysis regarding parenting time, in compliance with A.R.S. § 25-403(B).

CONCLUSION

¶9 Based on the foregoing, we vacate the superior court’s order and remand for entry of specific findings on the record. We leave to the court’s discretion whether additional evidence must be taken to comply with this decision.



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