IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

JOY LARISSA MALAVE, *Petitioner/Appellee*,

v.

CHRISTOPHER URIAH MALAVE, *Respondent/Appellant*.

No. 1 CA-CV 19-0305 FC
FILED 8-6-2020

Appeal from the Superior Court in Maricopa County
No. FC2015-093917
The Honorable Lori Horn Bustamante, Judge

AFFIRMED

COUNSEL

Joy Larissa Malave, Avondale
Petitioner/Appellee

Christopher Uriah Malave, Cashion
Respondent/Appellant

MEMORANDUM DECISION

Chief Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Samuel A. Thumma and Judge Randall M. Howe joined.

S W A N N, Chief Judge:

¶1 Christopher Uriah Malave ("Father") challenges an order awarding Joy Larissa Malave ("Mother") sole legal decision-making authority for the parties' middle child, C.M. Because Father has shown no legal error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 The parties' marriage was dissolved in April 2017. At that time, they agreed to share joint legal decision-making authority for their three minor children.

¶3 In April 2018, Mother petitioned on an emergency basis for sole legal decision-making authority for C.M., alleging that he had "special needs" and had credibly threatened self-harm but "Father unilaterally terminated both long-term and short-term treatment." The court entered temporary orders granting Mother's request. Father then responded to Mother's petition, asserting that she had "secretly arrang[ed] private psychiatric services for [C.M.]" in violation of their prior agreement to share legal decision-making authority.

¶4 After trial, the court found that Mother had "failed to inform Father of medical issues, medications, and appointments." It also found, however, that Father had withdrawn C.M. from a mental health facility against medical advice, "was reluctant to have [C.M.] on medication . . . and reluctant to engage in services" that had "helped [C.M.'s] behavioral issues," and had not been cooperative with Touchstone, one of C.M.'s service providers. Concluding that Father's actions "could have seriously endangered the mental well-being of his child," the court granted Mother sole legal decision-making authority for C.M. Father unsuccessfully moved for a new trial and now appeals.

DISCUSSION

¶5 Legal decision-making authority is determined in accordance with the child's best interests. A.R.S. § 25-403(A). In a contested case, the court must make specific findings regarding all relevant factors and the reasons its decision is in the child's best interests. A.R.S. § 25-403(B); *Hart v. Hart*, 220 Ariz. 183, 185–86, ¶ 9 (App. 2009). We review the superior court's findings for abuse of discretion.[1] *Engstrom v. McCarthy*, 243 Ariz. 469, 471, ¶ 4 (App. 2018). The court abuses its discretion if the record lacks competent evidence to support the decision. *Id.*

¶6 Father contends on appeal that Mother violated the parties' agreement by obtaining treatment for C.M. through Touchstone and by placing C.M. on medication without notifying Father. The superior court considered those contentions and found that Mother "failed to keep Father informed" and "ha[d] been reluctant to include Father in appointments and services." It also found, however, that "Touchstone providers have indicated that Father was not cooperative" based on evidence that Father had not responded to Touchstone's repeated contact attempts.

¶7 Father does not contest the superior court's finding that he was "antagonistic and refuse[d] to follow the advice of the professionals" regarding C.M.'s needs; he instead speculates that Mother was dishonest in reporting C.M.'s self-harm threats. The superior court had discretion to credit Mother's version of events. *See Vincent v. Nelson*, 238 Ariz. 150, 155, ¶ 18 (App. 2015) ("[T]he family court is in the best position to judge the credibility of witnesses and resolve conflicting evidence . . . .").

¶8 Father also contends that the decision to place C.M. on medication was inconsistent with a determination made by C.M.'s school. But the school's determination addressed only whether C.M. required specialized instruction—not medication. Further, it came after C.M. began taking medication.

¶9 Father contends that the decision to place C.M. on medication contradicted a 2016 Melmed Center diagnosis that he was "not yet a candidate for the use of psychopharmacological intervention" but

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[1] We decline to consider Mother's failure to file an answering brief as a confession of reversible error. Father still has the burden to demonstrate error, and a child's best interests are at stake. In our discretion, we address the merits of the appeal. *See In re Marriage of Diezsi*, 201 Ariz. 524, 525, ¶ 2 (App. 2002).

"medication could be considered in the future depending on [his] symptoms and level of impediment." But Mother testified that C.M.'s doctors later recommended medication and that Father rejected those recommendations. We recognize that psychopharmacological treatment of children is a serious matter that can reasonably be debated among experts, but we have not been presented with a record that permits us to resolve such a dispute independent of C.M.'s medical providers.

¶10 Father contends that "[t]he evidence . . . established that Mother beat [C.M.] with a metal object." In support of that contention, he cites statements made by the parties' children to the court-appointed advisor. The superior court expressly considered those statements in making its determination. We do not re-weigh evidence on appeal. *See Hurd v. Hurd*, 223 Ariz. 48, 52, ¶ 16 (App. 2009).

¶11 Father finally contends that the court-appointed advisor recommended the parties should retain joint legal decision-making authority for C.M. Father overstates the advisor's recommendation. The advisor recommended that "[w]ith regards to residence and decision-making both parents [be] involved with the children and shared parenting time [be] developed." Even assuming that the advisor's recommendation rose to the level of a recommendation for joint legal decision-making authority, the court was not obligated to accept that recommendation. *See Nold v. Nold*, 232 Ariz. 270, 274, ¶ 14 (App. 2013) ("The family court 'can neither delegate a judicial decision to an expert witness nor abdicate its responsibility to exercise independent judgment. The best interests of the child . . . are for the [family] court alone to decide.'" (citation omitted)).

CONCLUSION

¶12 We affirm the order granting Mother sole legal decision-making authority for C.M. Because Mother did not file an answering brief, we award no attorney's fees or costs on appeal.

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