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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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STATE OF ARIZONA, ex rel., DES DEANA RYNETTE  
HOLLINGSWORTH, *Petitioners/Appellees*,

*v.*

KEVIN FERRILL, *Respondent/Appellant*.

No. 1 CA-CV 19-0373 FC

FILED 5-12-2020

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Appeal from the Superior Court in Maricopa County  
No. FC2010-071455  
The Honorable Brian S. Rees, Judge *Pro Tempore*

**AFFIRMED**

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COUNSEL

Kevin Ferrill, Peoria  
*Respondent/Appellant*

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By JoAnn Falgout  
*Counsel for Petitioners/Appellees State of Arizona, Arizona Department of  
Economic Security*

Moorhead Law PLC, Phoenix  
By Alexander E. Moorhead  
*Counsel for Petitioner/Appellee Deana Rynette Hollingsworth*

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**MEMORANDUM DECISION**

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

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**H O W E**, Judge:

¶1 Kevin Ferrill (“Father”) appeals the family court’s final order restricting his parenting time to supervised visitation and the family court’s temporary order requiring him to complete a mental health evaluation.<sup>1</sup> For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 Father and Deana Hollingsworth (“Mother”) had one child, E.F., in November 2008. Father and Mother married in December 2009 and divorced in May 2011. Mother unsuccessfully sought to modify legal decision-making and parenting time in 2013. That same year, Mother started taking E.F. to see a family counselor, Amy King. In October 2014, Mother again petitioned to modify legal decision-making and parenting time. Mother was awarded sole legal decision-making authority and primary custody of E.F. The court also set an unsupervised parenting plan in place for Father.

¶3 In December 2015, Mother petitioned to modify legal decision-making and parenting time because Father continued to drink while E.F. was in his custody. The family court ordered Father to undergo random alcohol testing through TASC. Mother and Father stipulated to an order modifying Father’s parenting time to start with two supervised visits and then two unsupervised visits. If Father tested negative for alcohol, his visitation would be restored to the original parenting plan. The order also

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<sup>1</sup> We do not consider Father’s argument that the family court erred by ordering him to undergo a mental health evaluation in its temporary order because temporary orders issued by the family court are preparatory and not appealable. See *Villares v. Pineda*, 217 Ariz. 623, 624–25 ¶¶ 10–11 (App. 2008).

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required Father to continue random alcohol testing and stated that E.F. would continue seeing his family counselor.

¶4 In February 2018, Mother filed an emergency motion and moved for temporary orders because E.F., now age 9, was afraid of Father and made self-harm statements. Mother requested, among other things, that Father's parenting time be temporarily limited to supervised visits, that Father's random alcohol testing increase to twice per week, and that Father undergo a mental health evaluation. Following an evidentiary hearing, the family court ordered that Father's parenting time be supervised, that Father continue to perform random alcohol tests, and that Father undergo a mental health evaluation. The court also appointed a court-appointed advisor ("CAA") to submit recommendations about E.F.'s best interests. Father petitioned this Court for special action, challenging the temporary order restricting his parenting time and ordering his mental health evaluation. This Court declined jurisdiction.

¶5 In June 2018, Mother petitioned the family court to modify parenting time to "avoid imminent harm to [E.F.]" In October 2018, the court held a hearing where Mother testified that in February 2018, E.F. reported to his school that he was having self-harm thoughts and that he did not want to go back to Father's home because Father drinks and sleeps during the day while he starves. The school contacted a crisis team to assess E.F. The crisis team's report confirmed E.F.'s statements, as did Ms. King, who reported additional concerns.

¶6 The CAA who interviewed E.F., confirmed these concerns. The CAA recommended, among other things, that Father's parenting time be supervised, that Father attend counseling with E.F., and that Father complete a psychological evaluation. During the hearing, the CAA testified that Father did not follow her recommendation to go to counseling with E.F. and that until Father completes counseling, supervised visitation was in E.F.'s best interests.

¶7 The family court ordered that Mother continue to have sole legal decision-making authority for E.F.<sup>2</sup> and restricted Father's parenting time to supervised visits and two, 15-minute phone calls per week. The court further ordered that Father could not petition to modify parenting time until he completes one year of counseling with E.F., one year of

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<sup>2</sup> Father does not appeal the family court's award of sole legal decision-making authority to Mother.

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supervised visits, a mental health evaluation, and attend mediation with Mother. Father timely appealed.

DISCUSSION

¶8 Father challenges the family court's order restricting his parenting time. Father appears to argue that no evidence supported the family court's finding that parenting time would endanger E.F.'s "physical, mental, moral or emotional health" under A.R.S. § 25-411(J). We review a family court's parenting time order for an abuse of discretion. *Nold v. Nold*, 232 Ariz. 270, 273 ¶ 11 (App. 2013).

¶9 "When considering a petition for change of custody, the court must first determine whether there has been a change in circumstances materially affecting the child's welfare." *Christopher K. v. Markaa S.*, 233 Ariz. 297, 300 ¶ 15 (App. 2013). A court may modify an order "denying parenting time rights whenever modification would serve the best interest of the child, but the court shall not restrict a parent's parenting time rights unless it finds that the parenting time would endanger seriously the child's physical, mental, moral or emotional health." A.R.S. § 25-411(J).

¶10 The record supports the family court's restriction of Father's parenting time to supervised visits to protect E.F.'s physical, mental, moral, and emotional health. The evidence summarized above, including reports to that were confirmed by E.F.'s school, Ms. King, and the CAA, established that E.F. was having self-harm thoughts and that Father's behavior was the cause. E.F. also told Ms. King that he was afraid he would start having self-harm thoughts again if he had to return to Father's home. Additionally, E.F. told the CAA that "Father keeps hurting his feeling[s] and telling lies about his Mother" and that he did not want to go back to Father's home because "he is afraid about what's going to happen at Father['s] home." This evidence supports the family court's finding that unsupervised parenting time with Father would seriously endanger E.F.'s physical, mental, moral, or emotional health. As a result, the family court did not abuse its discretion by restricting Father's parenting time to supervised visits.

¶11 Father also appears to argue that because he entered into an agreement with Mother under Arizona Rule of Family Procedure ("Rule") 69 in 2015, she could not petition the court to modify parenting time if the same issues are involved. Section 25-411(J), however, allows the court to modify parenting time if it serves the child's best interests and allows the court to restrict parenting rights if parenting time would endanger the child's physical, mental or emotional health. Father cites no authority to

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support his argument that once parties enter into Rule 69 agreement, such an agreement cannot later be modified. Additionally, the petition resolved by the Rule 69 agreement did not raise the concerns addressed in the later petitions and motions addressed here, which supports the court's finding that a significant change in circumstances warranted a restriction of Father's parenting time. As a result, Father's argument fails.

¶12 Father argues last that he should not be forced to see Ms. King to participate in counseling with E.F. The family court's final order, however, does not require him to complete counseling with Ms. King. The order merely states that Father must complete "[o]ne year of counseling with [E.F.] (a minimum of 12 sessions over a one year period of time)." Thus, because the factual basis for his argument (that counseling must be with Ms. King) is missing, this argument fails.

**CONCLUSION**

¶13 For the foregoing reasons, we affirm. As the prevailing party, Mother is awarded her costs upon compliance with ARCAP 21.



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