

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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In re the Matter of:

CHRISTOPHER B. LEVERENZ, SR.,  
*Petitioner/Appellee,*

*v.*

ASHLEY PETERSON,  
*Respondent/Appellant.*

No. 1 CA-CV 20-0113 FC

FILED 10-29-2020

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Appeal from the Superior Court in Maricopa County  
No. FC2019-050054  
The Honorable Dawn M. Bergin, Judge

**AFFIRMED**

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COUNSEL

Ashley Peterson, Phoenix  
*Respondent/Appellant*

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**MEMORANDUM DECISION**

Judge David D. Weinzwieg delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge D. Steven Williams joined.

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**WEINZWEIG**, Judge:

¶1 Ashley Peterson (“Mother”) appeals the superior court’s parenting plan and attorney fee award. We affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Mother and Christopher Leverenz (“Father”) share a minor child, born in late 2018. In March 2019, Father petitioned the superior court to award him joint legal decision-making authority and parenting time on Mondays, Tuesdays and alternating weekends. Mother requested sole legal decision-making authority and parenting time five days each week. A partial settlement agreement was reached under which Father would exercise supervised parenting time on Saturday and Sunday mornings. The superior court ordered Father to undergo random drug testing three times a week.

¶3 Around four months later, Father moved the superior court to modify his drug testing protocol because he had “an issue peeing around people.” With trial approaching fast, the court granted Father’s motion, emphasizing it was “important to obtain regular testing results prior to trial.” The court invited Mother, however, to move for reconsideration. Mother unsuccessfully moved for reconsideration, arguing that Father never had problems urinating in front of people and calling his motion “a convenient and deliberate attempt to avoid orders and the responsibility of remaining alcohol-free.”

¶4 After trial, the court entered temporary orders and then a final order granting Mother and Father joint legal decision-making authority and equal parenting time on a 5-2-2-5 schedule. The court also awarded Father part of his attorney fees under A.R.S. § 25-324(A), finding that Mother had acted unreasonably by changing her position. Mother timely appealed

from the final order. Father filed no answering brief.<sup>1</sup> We have jurisdiction under A.R.S. § 12-2101(A)(1).

## DISCUSSION

### A. Parenting Time

¶5 Mother contends the superior court's parenting time order was not in the child's best interest. We review the court's parenting time order for an abuse of discretion. *Engstrom v. McCarthy*, 243 Ariz. 469, 471, ¶ 4 (App. 2018). Mother has not shown error.

¶6 Mother did not provide a trial transcript on appeal. "A party is responsible for making certain the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised on appeal. When a party fails to include necessary items, we assume they would support the court's findings and conclusions." *Baker v. Baker*, 183 Ariz. 70, 73 (App. 1995) (citations omitted); accord ARCAP 11(c)(1)(B). We therefore presume the record contains reasonable evidence to support the parenting plan and affirm. See *Kohler v. Kohler*, 211 Ariz. 106, 108, ¶ 8, n.1 (App. 2005) ("In the absence of a transcript, an appellate court will presume that the record supports the trial court's rulings.").

### B. Attorney Fees

¶7 Mother argues that the superior court erroneously awarded attorney fees to Husband because she did not "unreasonable positions in the litigation" and the court said so during trial, Husband took an unreasonable position in the litigation when he sought unobserved urinalysis testing and Mother was not heard on urinalysis test protocol. We review the award for an abuse of discretion. *Lehn v. Al-Thanyyan*, 246 Ariz. 277, 286, ¶ 29 (App. 2019).

¶8 Mother has not shown error. The court's fee award focused on Mother's pretrial conduct. Moreover, absent a transcript, we must assume the record supported the court's determination that Mother's late position change was unreasonable. *Kohler*, 211 Ariz. at 108, ¶ 8, n.1. And while the court modified Husband's urinalysis protocol, the court invited and considered Mother's motion to reconsider. On this record, we cannot

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<sup>1</sup> Although this court may treat Father's silence as a concession of error, we endeavor to address the merits in our discretion because a child's best interest is at issue, *Bugh v. Bugh*, 125 Ariz. 190, 191 (App. 1980).

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say that Father's request was unreasonable or Mother was not heard on the issue.

**CONCLUSION**

¶9 We affirm. Given Mother's positions on appeal and the relevant financial evidence in the record, we decline to award attorney fees or costs under A.R.S. § 25-324(A). We also decline Mother's request for legal document preparation fees under A.R.S. § 12-341.02 because she is not the prevailing party in this appeal.



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