IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

ADAM CHRISTOPHER AVILEZ, *Petitioner/Appellee*,

v.

BLANCA ROCIO LOERA MARTINEZ, *Respondent/Appellant*.

No. 1 CA-CV 20-0130 FC
FILED 11-24-2020

Appeal from the Superior Court in Maricopa County
No. FC2016-091850
The Honorable Joan M. Sinclair, Judge
The Honorable Stephen M. Hopkins, Judge

AFFIRMED

COUNSEL

Law Offices of Deborah Varney, LLC, Mesa
By Deborah Varney
Counsel for Petitioner/Appellee

Blanca Loera Martinez, Mesa
Respondent/Appellant

MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the Court's decision, in which Presiding Judge James B. Morse Jr. and Judge Maria Elena Cruz joined.

M c M U R D I E, Judge:

¶1 Blanca Loera Martinez ("Mother") appeals from the superior court's order regarding legal decision-making authority. Finding no error, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Mother and Adam Christopher Martinez ("Father") have two minor children, Rocio and Lucille. The parties legally separated in July 2016. In the separation proceedings, the court entered a parenting plan for the parties. Both parties were awarded joint legal decision-making on educational issues, with neither having the final say. Under the plan, both parents had a "right to participate in school conferences, events and activities, and the right to consult with teachers and other school personnel." The parties had to "exert their best efforts to work cooperatively in future plans consistent with the best interest of the children . . . ."

¶3 Father petitioned for dissolution in December 2017. Mother replied, also seeking dissolution but disputing, *inter alia*, parenting time and school choice.

¶4 Much of the parties' dispute originated in the 2017-18 school year over Rocio's attendance at Rover Elementary School ("Rover"). Father alleged in his dissolution petition that Mother repeatedly failed to get Rocio to school on time. To remedy the alleged problem, he requested parenting time on all Sunday nights and additional weeknights to take Rocio timely to school the following days.

¶5 Mother responded by claiming that Father had enrolled the minor child in Rover against her wishes, and she had tried to relocate somewhere closer to Father's home but could not afford it. She requested that the court deny Father's request to modify parenting time and order that both children attend Sonoma Ranch Elementary School ("Sonoma Ranch").

¶6 The superior court scheduled a trial to resolve legal decision-making authority between the parties. Before the trial, the parties settled all issues except where Rocio would attend school. The parties agreed to submit a consent decree concerning all matters once the court ruled on the lone remaining dispute. In July 2018, the court entered an order (the "July 2018 Order") awarding Mother sole legal decision-making authority regarding education. With all issues now resolved, the court ordered the parties' counsel to file a consent decree incorporating its order. In April 2019, the parties filed, and the court accepted, the consent decree (the "April 2019 Consent Decree").

¶7 Mother enrolled Rocio at Sonoma Ranch for the 2018-19 school year. However, in November 2018, Mother put the children's names in a lottery for a magnet school, ASU Polytech ("Polytech"). On December 30, 2018, Mother suggested to Father that they visit the Polytech campus to decide "if this is a good fit." Father questioned the school's feasibility, given his drive to the campus would double his commute. Mother proposed an arrangement by which Father could take the children to a location where she would retrieve them and take them to Polytech. However, the negotiations broke down when Father insisted on putting the resolution in writing and limiting Mother's ability to change schools if they enrolled them in Polytech. On January 8, 2019, Father emailed Mother, saying that he considered the "subject of Poly closed" unless she told him otherwise. Mother responded that she would be willing to add the transport provision to the parenting plan, but not the rest. The parties never arrived at a mutual agreement to enroll the children at Polytech.

¶8 In January 2019, Mother enrolled Lucille at Polytech for the 2019-20 school year. The completed registration form listed Mother's email and her and another person's phone number, but not Father's email or phone number. Rocio was initially waitlisted, but Mother eventually enrolled Rocio at Polytech by June 2020. In February, Mother emailed Father discussing the children's next year at Sonoma Ranch. The email discussed the merits of the different teachers for both Rocio and Lucille, even though the children were either registered or waitlisted with Polytech. In June 2019, Father emailed Mother about the school supply lists for both children's upcoming year at Sonoma Ranch. The next day, Mother notified Father that the children were offered a placement at Polytech. Father replied, saying that he had not received any previous notice of the offer and did not agree to change schools. On July 2, 2019, Mother told Father that she would be "finalizing [the children's] enrollment for [the] next year."

¶9 In August 2019, Father petitioned for contempt, arguing that Mother's actions violated the parenting plan's terms in the April 2019 Consent Decree. He referenced the terms that required Mother to exercise sole legal decision-making authority on educational issues "after first consulting with father" and directed the parents to confer, consider each other's views, and to "communicate to address day-to-day and more significant issues." He alleged Mother's violation of the parenting plan was deliberate and requested the court to find Mother in contempt. He further argued that Mother's actions resulted in a change of circumstances warranting a modification of Mother's legal decision-making authority under Arizona Revised Statutes ("A.R.S.") sections 25-403 and -411. He asked the court to modify the parenting plan to joint legal decision-making authority, with Father having the final say on educational issues.

¶10 Mother responded to the contempt petition and moved to dismiss Father's petition to modify legal decision-making authority. She argued because the parties entered the consent decree that memorialized the parties' legal decision-making authority within a year of Father's petition, the petition for modification was premature under A.R.S. § 25-411(A). She denied she had violated the terms of the April 2019 Consent Decree, and, therefore, Father had failed to show a change of circumstances warranting modification.

¶11 After a trial, the court concluded that Father's petition was not premature under A.R.S. § 25-411(A) because the one-year requirement dated from its July 2018 Order. The court reasoned that the legal decision-making authority allocation in the April 2019 Consent Decree incorporated its order. Therefore, the order to be modified was the July 2018 Order. The court found that the schools' change for the two children after the July 2018 Order constituted a change of circumstances. After considering the statutory best-interest analysis under A.R.S. § 25-403, the court awarded the parties joint legal decision-making authority on educational issues, with Father having the final say. The court declined to find Mother in contempt.

¶12 Mother appealed, and we have jurisdiction under A.R.S. § 12-2101(A)(1).

DISCUSSION

¶13 Mother argues that the court erred by (1) adjudicating a premature petition; (2) failing to treat Father's petition solely as a petition for contempt; and (3) finding there was a change of circumstances

warranting modification of legal decision-making authority. Mother asks this court to conclude that she did not violate the April 2019 Consent Decree's terms if we find it relevant to our review of the court's change-of-circumstances analysis.

A. On Appeal, This Court Does Not Review the Timeliness of a Modification Petition.

¶14 Mother asserts the superior court erred by adjudicating a premature petition to modify legal decision-making. We decline to consider the merits of this argument.

¶15 Under A.R.S. § 25-411, absent an emergency, a parent is restricted from seeking a parenting-plan modification for one year after it is entered. The purpose of A.R.S. § 25-411 is to "prevent repeated or insubstantial motions for modification." *In re Marriage of Dorman*, 198 Ariz. 298, 302, ¶ 11 (App. 2000) (quoting Unif. Marriage & Divorce Act § 410 cmt. (1970) (amended 1971 and 1973)). But "[e]rrors in preliminary procedures, such as those in [A.R.S.] § 25-411, must be addressed prior to a resolution on the merits." *Id.* Mother did not seek special action review on the premature-filing issue, and we would not further the statute's purpose by reviewing it after an evidentiary hearing and judgment. *See, e.g.*, *Downum v. Downum*, 1 CA-CV 15-0457 FC, 2016 WL 3176444, at *2, ¶¶ 8–9 (Ariz. App. June 7, 2016) (mem. decision) (Father's argument that the court erred by accepting a modification petition filed before a year expired was moot because he failed to seek special action review before resolution on the merits.).

B. The Superior Court Did Not Err by Considering Both the Contempt Allegation and Father's Modification Request Filed in the Same Petition.

¶16 Mother argues Rules 91 and 92 of the Arizona Rules of Family Law Procedure impliedly require parties to submit petitions for modification and contempt separately. Specifically, she alleges Father requested modification for punitive purposes and argues because Father submitted the petition for modification and contempt in one document without a clear separation between the arguments for contempt and modification, the superior court should have regarded Father's petition solely as a petition for contempt. We disagree.

¶17 In pertinent part, Rule 91 governs orders modifying legal decision-making authority, while Rule 92 governs contempt allegations for noncompliance with a court order. Although Father made overlapping

allegations to support both arguments in the petition, his petition complied with Rule 91.3's requirement of detailing facts supporting modification. *Cf. Tarnoff v. Jones*, 17 Ariz. App. 240, 245 (1972) ("All that is required is that the complaint contain a pla[i]n and concise statement of the cause of action and that the defendant is given fair notice of the allegations as a whole.") (citing Ariz. R. Civ. P. 8(a)(2)). Mother did not claim below, nor contest on appeal, that she lacked notice of Father's allegations regarding modification.

¶18 Mother makes a hyper-technical argument that because the clerk could charge a filing fee for each petition under Rule 91 and 92, the court erred by considering the two requests. Mother cites no authority to support an assertion that a modification petition cannot be combined with a contempt petition in the same document. *See* Ariz. R. Fam. Law P. 5(a)(1) (court has the authority to consolidate matters for efficiency). And Mother has not shown prejudice resulting from Father's submission of one petition and paying one filing fee. *See* Ariz. R. Fam. Law P. 86. ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."); *Dorman*, 198 Ariz. at 303, ¶ 13. We find no error.

C. The Superior Court Did Not Abuse Its Discretion by Finding a Change of Circumstances.

¶19 Before a court may modify legal decision-making authority, a court must find a change of circumstances. *Pridgeon v. Superior Court*, 134 Ariz. 177, 179 (1982). Only after finding such a change may the court consider whether modification supports the children's best interest. *Id.* The superior court has broad discretion to determine whether there was a change of circumstances. *Id.* ("On review, the trial court's decision will not be reversed absent a clear abuse of discretion, *i.e.*, a clear absence of evidence to support its actions.").

¶20 Mother argues there was no change of circumstances either after the July 2018 order or the April 2019 Consent Decree. *See Scott v. Scott*, 121 Ariz. 492, 494 (1979) ("To be relevant evidence for a modification, a changed circumstance must occur subsequent to the divorce."); *McClendon v. McClendon*, 243 Ariz. 399, 401, ¶ 9 (App. 2017). She claims that because Father was aware of the children's transfer to Polytech before signing the April 2019 Consent Decree, he was precluded from arguing that as a change in circumstance. *See Scott*, 121 Ariz. at 494; *McClendon*, 243 Ariz. at 402, ¶ 11 (stating that "circumstances existing before any decree or modification is entered cannot also support a subsequent modification").

¶21 The superior court found a changed circumstance because the children are attending different schools, and the oldest is "now in her third school in three years." Except for Rocio's enrollment at Polytech, these changes occurred after the July 2018 Order but before the consent decree was entered. However, Father was not aware of the children's enrollment at Polytech before entering into the April 2019 Consent Decree. Mother's discussions with Father reveal she considered Polytech a prospective choice, albeit one for which she showed enthusiasm. Father refused to consent and thought the matter was resolved. They planned another year for both children at Sonoma Ranch in their subsequent communications, and Polytech did not contact Father independently. Thus, the court did not err by considering the children's transfer to Polytech as a changed circumstance.

¶22 Finally, reasonable evidence supports the court's finding that the circumstances' change affected the children's welfare. The court heard testimony about Rocio's distressed reaction to the second change of schools. The change increased Father's commute and reduced his parenting time. Given the custody modification scope was limited to legal decision-making for education, we affirm the superior court's decision.

C. Whether Mother Violated the Terms of the Consent Decree Is Not an Issue Before the Court.

¶23 The parties dispute whether Mother violated the parenting plan's terms by failing to disclose the children's transfer to Polytech. Father argued to the superior court that Mother's alleged violation of the parenting plan was grounds for contempt and modification of legal decision-making authority. But the superior court concluded that Mother did not intentionally mislead Father, and the children's school change, not Mother's alleged duplicity, constituted a changed circumstance. Father did not appeal the superior court's decision regarding contempt. We do not disturb the superior court's finding that a changed circumstance warranted a re-examination of legal decision-making authority. Thus, we do not address the issue further.

CONCLUSION

¶24 We affirm the superior court's judgment.

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