IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

TRUMAN UHRICH, *Petitioner/Appellee*,

v.

KAYLEENA BROWN, *Respondent/Appellant*.

No. 1 CA-CV 20-0357 FC
FILED 11-30-2021

Appeal from the Superior Court in Mohave County
Nos. B8015D0202004052
B8015D0202004053
The Honorable Steven C. Moss, Judge

REVERSED AND REMANDED

COUNSEL

The Doyle Firm, P.C., Phoenix
By Brandon D. Millam
Counsel for Respondent/Appellant

Alongi Law Firm, PLLC, Phoenix
By Thomas P. Alongi
Counsel for Petitioner/Appellee

MEMORANDUM DECISION

Presiding Judge David B. Gass delivered the decision of the court, in which Judge Michael J. Brown and Judge David D. Weinzweig joined.

G A S S, Judge:

¶1 Mother Kayleena Brown challenges the superior court's order awarding Truman Uhrich legal decision-making and "primary residential parent" status over her two biological minor children, W.U. and C.B. Because the superior court violated mother's due process rights, we reverse and remand.

FACTUAL AND PROCEDURAL HISTORY

¶2 Mother and the children live in Maricopa County. Uhrich is W.U.'s paternal uncle, but he bears no biological or legal connection to C.B. Mother sent the children to stay with Uhrich, who lives in Mohave County, for two weeks during spring break. While Uhrich had the children, he filed an emergency petition in the Mohave County superior court for non-parent legal decision-making.

¶3 The day Uhrich filed, the superior court held an emergency hearing and awarded Uhrich temporary legal decision-making over the children. On the same day, a private process server served an order on mother to appear at a court hearing on March 11, and mother appeared telephonically. At the end of that hearing, the superior court ordered Uhrich to continue holding temporary legal decision-making, scheduled trial for June 18, and ordered a May 18 in-camera interview of C.B.

¶4 The superior court later *sua sponte* changed the trial date from June 18 to May 18. The superior court sent mother's notice of the change to the wrong address. Mother failed to appear on the accelerated trial date. Uhrich acknowledged he also did not receive notice of the change, but he was at the courthouse for C.B.'s in-camera interview so he was able to attend the trial.

¶5 At trial, the superior court ordered the children to live with Uhrich, gave him sole legal decision-making, said he would serve as the children's "primary residential parent," and awarded parenting time to mother. Mother timely appealed. We then placed this case in the *Pro Bono*

Representation Program and appointed *pro bono* counsel to represent the parties on appeal.[1] This court has jurisdiction under article VI, section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21.A.1 and 12-2101.A.1.

ANALYSIS

I. Jurisdiction and Venue

¶6 Mother argues the Mohave County superior court lacked jurisdiction and was an inappropriate venue because the children lived in Maricopa County. We disagree.

¶7 The Mohave County superior court had jurisdiction because Arizona's superior courts are a "single and unified trial court of general jurisdiction," meaning all superior courts constitute a single court. *See Olesen v. Daniel*, 251 Ariz. 25, 28, ¶ 10 (App. 2021). If one superior court has jurisdiction, another superior court also has jurisdiction, unless the "legislature explicitly expresses" otherwise. *Id.* Mother relies on A.R.S. § 25-402.B, but this court held A.R.S. § 25-402.B addresses venue, not jurisdiction. *See id.* at ¶¶ 8–12.

¶8 Mother's claim for change of venue as of right also fails. Unlike subject matter jurisdiction, parties may waive venue objections by words or conduct, and they cannot raise the venue issue for the first time on appeal. *Id.* at ¶ 12. Here, mother did not preserve the venue issue. During the March 11 hearing, she told the Mohave County superior court it would be inconvenient for her to travel to Mohave County and "completely not doable." With this statement alone, mother did not sufficiently raise a venue issue. Mother also did not otherwise sufficiently raise venue as an issue before this appeal, such as filing a motion to transfer venue. *See Reilly v. Super. Ct.*, 141 Ariz. 540, 541–42 (App. 1984) (ruling venue is transferred under A.R.S. § 12-404 when a party files a timely motion for transfer of venue). Mother, therefore, waived her venue claim. *See Massengill v. Super. Ct.*, 3 Ariz. App. 588, 591 (1966) (ruling failure to raise venue constitutes waiver).

¶9 Mohave County superior court had jurisdiction and was a proper venue.

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[1] The court expresses its appreciation to *pro bono* counsel for contributing their time, energy, and other resources in pursuing this appeal. The court commends counsel for the excellent briefing.

II. Due Process

¶10 Mother argues the superior court violated her due process rights because she never received notice of the expedited trial schedule. This court reviews *de novo* alleged due process violations. *Wassef v. Ariz. State Bd. of Dental Exam'rs ex rel. Hugunin*, 242 Ariz. 90, 93, ¶ 11 (App. 2017).

¶11 "Due process entitles a party to notice and an opportunity to be heard at a meaningful time and in a meaningful manner, as well as a chance to offer evidence and confront adverse witnesses." *Cruz v. Garcia*, 240 Ariz. 233, 236, ¶ 11 (App. 2016) (internal citations omitted). "Due process errors require reversal only if a party is thereby prejudiced." *Volk v. Brame*, 235 Ariz. 462, 470, ¶ 26 (App. 2014). Lack of notification and meaningful opportunity to be heard violates due process when dealing with fundamental parenting rights such as legal decision-making. *Cruz*, 240 Ariz. at 236, ¶ 12 (family law judgment failed based on procedural due process violation if parties lacked notice and a meaningful opportunity to be heard).

¶12 Mother did not receive due process here. First, she did not know about the hearing because the superior court rescheduled the date without notifying her. *See Smart v. Cantor*, 117 Ariz. 539, 542 (1977) (holding it was a violation of mother's due process when she did not receive adequate notice to prepare a response because a "parent is entitled to due process whenever his or her custodial rights to a child will be determined by a proceeding"). Second, mother did not have a proper opportunity to present her case. *See Evans v. Evans*, 116 Ariz. 302, 306–07 (App. 1977). She had no chance to conduct discovery. When, as here, a case involves a child's best interests, the "parties [must] have time to prepare and present all relevant evidence to the court." *See id.*

¶13 Mother did not have notice of the expedited trial date because she did not receive the mail notification. Though mother provided her updated address to the court clerk, the mailing certificate shows the superior court sent the order to the wrong address. The superior court then held the trial without mother and awarded Uhrich sole legal decision-making and designated Uhrich as "the primary residential parent." Mother only learned of the orders after the hearing finished. The superior court, therefore, violated mother's due process. We, therefore, reverse the May 18 ruling and remand the case for the superior court to proceed with a properly noticed hearing.

III. Abuse of Discretion

¶14 Mother argues the superior court abused its discretion by giving Uhrich legal decision-making and naming him as "the primary residential parent." Though we need not reach this issue because we reverse the superior court's order on due process grounds, we exercise our discretion to address the merits in part to clarify any issues arising on remand. *See State v. Abdi*, 226 Ariz. 361, 366, ¶ 18 (App. 2011) (ruling this court has the discretion to decide issues when they "likely will arise on remand").

¶15 This court reviews for abuse of discretion the superior court's denial of a petition to modify a legal decision-making or parenting-time order. *See Baker v. Meyer*, 237 Ariz. 112, 116, ¶ 10 (App. 2015). This court defers to the superior court's findings of fact unless they are clearly erroneous. *Engstrom v. McCarthy*, 243 Ariz. 469, 471, ¶ 4 (App. 2018).

¶16 As noted above, the superior court designated Uhrich as the primary residential parent. That ruling was legal error under the facts of this case. *See Egan v. Fridlund-Horne*, 221 Ariz. 229, 232, ¶ 8 (App. 2009) (holding this court is not bound by a superior "court's conclusions of law that combine both fact and law when there is an error as to the law" (internal citations omitted)). Uhrich is not a parent and cannot be named as a primary residential parent. *See id.* at 237–38, ¶ 31. Uhrich, at most, can be awarded legal decision-making and "placement of the child." *See* A.R.S. § 25-409.A; *Egan*, 221 Ariz. at 238, ¶ 31.

CONCLUSION

¶17 We reverse the superior court's order awarding Uhrich legal decision-making and "primary residential parent" status over mother's two biological children. We remand the case for reconsideration and a proper adversarial hearing to resolve disputed issues. Uhrich requests his "filing fee or costs." We decline to award costs because he is not the successful party. We award mother *pro bono* costs under A.R.S. § 25-324.

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