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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

In re the Matter of:

THOMAS PEARSON, *Petitioner/Appellee*,

v.

TERESA WU, *Respondent/Appellant*.

No. 1 CA-CV 20-0517 FC

FILED 6-15-2021

Appeal from the Superior Court in Maricopa County

No. FC2014-052749

The Honorable Michelle Carson, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Jaburg & Wilk, P.C., Phoenix
By Kathi Mann Sandweiss, Carissa K. Seidl
Counsel for Petitioner/Appellee

Jones, Skelton & Hochuli P.L.C., Phoenix
By Eileen Dennis GilBride
Counsel for Respondent/Appellant

Hallier Lawrence, PLC, Phoenix
By Angela K. Hallier
Co-Counsel for Respondent/Appellant

MEMORANDUM DECISION

Presiding Judge D. Steven Williams delivered the decision of the Court, in which Judge Jennifer B. Campbell and Judge James B. Morse Jr. joined.

WILLIAMS, Judge:

¶1 Teresa Wu (“Mother”) appeals the family court’s order finding her in contempt for failing to comply with a parenting time order and awarding attorneys’ fees to Thomas Pearson (“Father”). Because Mother has shown no error, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Mother and Father divorced in 2015. At that time, the parents had two young children. Incorporated into the decree of dissolution of marriage was the parties’ parenting plan and joint legal decision-making agreement. The agreement awarded each parent joint legal decision-making authority, meaning “both parents share decision-making and neither parent’s rights or responsibilities are superior except with respect to specified decisions as set forth by the court or the parents in the final judgment or order.” A.R.S. § 25-401(2). Any short-term modifications to the agreement were required to be in writing.

¶3 In March 2020, the children told Mother that Father would lose his temper and get into fights with his girlfriend. The children relayed an event where Father allegedly kicked the door of a closet where one child was hiding. The children also told Mother that Father’s girlfriend’s minor child would punch, hit, and pinch them. Mother stopped allowing the children to meet with Father during his scheduled parenting time. In emails to Father, Mother indicated that she believed the children would be unsafe at Father’s girlfriend’s home, where Father was living, and indicated her unwillingness to allow the children to visit with Father until they sought “a mediator and undergo family counseling,” or until they could find “a safe solution.” Father emailed responses requesting that Mother abide by the court ordered parenting time. Father called the police on six different occasions when Mother withheld the children from him.

¶4 Father filed a verified petition seeking enforcement of the parenting time order and sanctions against Mother pursuant to A.R.S.

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§ 25-414. Father later amended the petition. Nearly two months after Father's initial verified petition, Mother filed her own petition to modify parenting time and to appoint therapeutic professionals. The family court held an evidentiary hearing on Father's petition in July 2020. At the conclusion of the hearing, the court ordered Father's parenting time resume and that family therapy continue. In August, the court issued an under-advisement ruling detailing its findings, which included finding Mother in contempt, ordering that Father receive make-up parenting days, and granting Father's request for attorney fees and costs.

¶5 This timely appeal followed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1) and -2101(A)(1).

DISCUSSION

A. The Family Court Properly Considered Whether "Good Cause" Existed Pursuant to A.R.S. § 25-414(A)

¶6 We will not disturb a family court's custody or parenting-time order absent an abuse of discretion. *Nold v. Nold*, 232 Ariz. 270, 273, ¶ 11 (App. 2013). We similarly review a civil contempt finding and any sanction for an abuse of discretion. *Stoddard v. Donahoe*, 224 Ariz. 152, 154, ¶ 9 (App. 2010).

¶7 Mother first argues the family court abused its discretion when it failed to find "good cause" for her restricting Father's parenting time. Pursuant to A.R.S. § 25-414(A), "[i]f the court, based on a verified petition and after it gives reasonable notice to an alleged violating parent and an opportunity for that person to be heard, finds that a parent has refused without *good cause* to comply with a visitation or parenting time order," the court must provide a remedy, which may include "find[ing] the violating parent in contempt of court." A.R.S. § 25-414(A) (emphasis added).

¶8 In assessing credibility, the family court found Mother's testimony "mostly credible" and stated that "there is some validity to Mother's concerns." But the court also noted its concern with Mother's unilateral interference with Father's parenting time, including her delay in petitioning the court for a change in parenting time for more than two months after she began restricting Father's time with the children. The court found, as a factual matter, that Mother "overreacted and overreached when she willfully denied Father his parenting time and continued to deny him parenting time without pre-conditions." The court further considered

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Father's participation in family therapy without being ordered to participate and, based upon "the evidence presented," concluded that "Father's parenting time could have continued safely and appropriately, without interruption, before and while the family continued with their therapeutic intervention to improve upon the circumstances for the children in each home." These factual findings are reasonably supported by evidence in the record. To the extent Mother infers that this court should reassess the credibility or weight of evidence presented at the evidentiary hearing, we decline to do so. *Gutierrez v. Gutierrez*, 193 Ariz. 343, 347, ¶ 13 (App. 1998) ("We will defer to the trial court's determination of witnesses' credibility and the weight to give conflicting evidence."). On this record, Mother has shown no error.

B. The Family Court Properly Considered the Best Interests of the Children

¶9 Mother also contends the family court abused its discretion by failing to consider the best interests of the children. *See Hays v. Gama*, 205 Ariz. 99, 102-03 (2003) (explaining a family court should consider the best interests of a child when ordering contempt sanctions). But the court did consider the children's best interests. For example, the court noted that "lapses in parenting time can be contrary to the best interests of the children," and further found that Mother failed to present evidence that "restoration of Father's parenting time in its full capacity under previous Order would seriously endanger the children's physical, mental, moral or emotional health." Implicit in the court's finding is consideration of the best interests of the children. *See Boyle v. Boyle*, 231 Ariz. 63, 67, ¶ 15 (App. 2012) (noting the appellate court may infer findings necessary to support the trial court ruling); *see also Ward v. Ward*, 88 Ariz. 130, 135 (1960) ("The trial court is given broad discretion in determining what will be most beneficial for [a] child.").

C. The Family Court Did Not Violate Mother's Due Process Rights

¶10 Mother's final argument is that her due process rights were violated because the court afforded her insufficient time to fully testify and cross-examine Father. Procedural due process requires the court afford litigants adequate time to be heard and to cross-examine witnesses. *Volk v. Brame*, 235 Ariz. 462, 468, ¶ 20 (App. 2014). The family court has broad discretion to "impose reasonable time limits appropriate to the proceedings." Ariz. R. Fam. Law P. 22(a); *Findlay v. Lewis*, 172 Ariz. 343, 346 (1992) ("A trial court has broad discretion over the management of its docket. Appellate courts do not substitute their judgment for that of the trial court in the day-to-day management of cases.").

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¶11 The family court allotted 60 minutes for the evidentiary hearing. During Mother’s opening statement, her counsel noted she was, “worried about only having an hour.” But Mother was given advance notice of the time allotted for the hearing and never objected to or asked for more time prior to the hearing. Even at the hearing, it was only after the court asked counsel if more time was needed that Mother’s counsel requested an additional 30 minutes. Over Father’s objection, the court gave Mother an additional 10 minutes. While Mother may have benefited from additional time to present evidence, on this record Mother has shown no abuse of discretion, particularly where she did not ask for an additional allotment of time before the day of the hearing. *See Backstrand v. Backstrand*, 250 Ariz. 339, 447, ¶ 29 (App. 2020) (“whether additional time is necessary remains committed to the court’s discretion”). Mother’s due process rights were not violated.

D. Attorneys’ Fees and Costs

¶12 On appeal, Father requests an award of attorneys’ fees in accordance with A.R.S. § 25-414(C) and A.R.S. § 25-324(A). Because Father is the non-violating party and has prevailed in this case, he is entitled to attorneys’ fees on appeal pursuant to A.R.S. § 25-414(C). Father is also awarded costs upon compliance with Arizona Rule of Civil Appellate Procedure 21.

CONCLUSION

¶13 We affirm the family court’s order finding Mother in contempt and awarding Father his attorneys’ fees.



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