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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

CHARLENE RENEE HURN,
Petitioner/Appellant,

v.

WAYNE M. CUMBRIA,
Respondent/Appellee.

No. 1 CA-CV 20-0643 FC
FILED 9-30-2021

Appeal from the Superior Court in Maricopa County
No. FC2011-093406
The Honorable Rodrick J. Coffey, Judge

AFFIRMED

COUNSEL

Burt Feldman & Grenier, Scottsdale
By Mary K. Grenier
Counsel for Petitioner/Appellant

Hildebrand Law PC, Scottsdale
By Carlos Noel, Kip M. Micuda
Counsel for Respondent/Appellee

MEMORANDUM DECISION

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

M O R S E, Judge:

¶1 Charlene Hurn ("Mother") appeals from a post-dissolution order denying a petition to modify child support. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Mother and Wayne Cumbria ("Father") married in 2005 and divorced in 2012. The parties have two daughters and a son, all minors ("Children").

¶3 In the original decree, the family court ordered that Father would have summers and certain weekends with the Children, and pay $2,680.83 a month in child support, if Father moved from Scottsdale to Lake Havasu City. Father moved to Lake Havasu City in November 2012. The court also ordered Father to pay 80% of the costs of jointly approved extracurricular activities. The court found that a deviation from the child support guidelines was not appropriate. *See* A.R.S. § 25-320 app. ("Guidelines") § 20.

¶4 In 2014, Mother and Father both petitioned to modify parenting time and child support. The court found that "little or nothing has changed since" the original decree. But the court adjusted the parenting plan "along the lines of a more traditional long-distance parenting time plan[.]" The court also held that Mother did not present evidence to justify a deviation in child support and denied the same.

¶5 Mother filed another post-decree petition in February 2020. The court held a hearing in September 2020. Father conceded that his daughters did not want to see him, and he was willing to forgo court-ordered parenting time. Mother testified that Father refused to help pay for the Children's extracurricular activities, while Father countered that Mother used the activities to drive a wedge between him and the Children. Father also accused Mother of violating the parenting plan by changing the

Children's schools without consulting him. Both parties accused the other of slander.

¶6 After the hearing, the court found that Father was not exercising parenting time with his two daughters and only using limited parenting time with his son. The court found "a material change[] in circumstances that affects the welfare of the minor children warranting a modification to parenting time" and awarded Mother sole legal decision-making authority. The court ended Father's parenting time with the daughters and reduced parenting time with the son. The court also found Mother failed to prove that an upward deviation of child support was in the best interests of the Children and denied her request for one.

¶7 The court declined to award either party attorney fees. After the court denied Mother's post-trial motions, she timely appealed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

DISCUSSION

¶8 Mother raises three issues on appeal: (1) child support, (2) the post-trial motions, and (3) attorney fees.

I. Child Support Modification and Deviation.

¶9 We review the family court's ruling on a petition for modification of child support for an abuse of discretion. *Milinovich v. Womack*, 236 Ariz. 612, 615, ¶ 7 (App. 2015). The family court abuses its discretion if (1) the record, viewed in the light most favorable to the court's decision, is devoid of evidence to support the decision; or (2) the court commits an error of law. *Little v. Little*, 193 Ariz. 518, 520, ¶ 5 (1999); *Birnstihl v. Birnstihl*, 243 Ariz. 588, 590, ¶ 8 (App. 2018). We will uphold the award for any reason supported by the record. *Nia v. Nia*, 242 Ariz. 419, 422, ¶ 7 (App. 2017).

¶10 Neither party challenges the court's calculation of child support based on the Guidelines. Although the family court did not file its own child support worksheet, the court found, based on the parties' worksheets, that Father's child support obligation would be less than the amount ordered in the original decree.

¶11 A child support order can only be modified "on a showing of changed circumstances that are substantial and continuing." A.R.S. § 25-327(A); *see Jenkins v. Jenkins*, 215 Ariz. 35, 39, ¶ 16 (App. 2007) (noting a showing of changed circumstances that are substantial and continuing is a

prerequisite). Father does not address this issue in his brief. Because the family court addressed a deviation from the Guidelines, we will assume Mother demonstrated a substantial and continuing change in circumstances and address the court's rejection of her deviation request.

¶12 The court declined to grant Mother's request for an upward deviation, finding that Mother failed to prove that a deviation is in the best interests of the Children. A parent may request an "upward deviation" from the presumptive "Basic Child Support Obligation." Guidelines § 8. The Guidelines provide several factors for the court to consider in high-income cases. *See* Guidelines § 8. The court must also find that "[a]pplication of the guidelines is inappropriate or unjust in the particular case" and consider "the best interests of the child[.]" Guidelines § 20(A)(1-2); *Pearson v. Pearson*, 190 Ariz. 231, 234 (App. 1997). The party seeking the deviation has the burden to prove that a higher amount is in the child's best interest. *Nash v. Nash*, 232 Ariz. 473, 478, ¶ 18 (App. 2013). The family court has broad latitude to fashion an appropriate award of child support. *Jenkins*, 215 Ariz. at 37, ¶ 8. When, as here, neither party requested findings of fact or conclusions of law prior to trial, *see infra* ¶ 19, we presume that the family court "found every fact necessary to support the judgment" and will affirm if any reasonable construction of the evidence justifies the decision. *Neal v. Neal*, 116 Ariz. 590, 592 (1977).

¶13 Mother asserts that the court "improperly considered Mother's past requests for an upward deviation (and the prior denials of same) as a basis for its denial here." Mother mischaracterizes the family court's order. Although the court noted Mother's two previous requests, it did so in the context of finding no "substantial and continuing change of circumstances . . . absent the Court deviating from the child support worksheet." The family court's order later states that it "considered Mother's third request for an upward deviation and declines to grant that request."

¶14 Mother similarly argues that the family court's reliance on prior findings was error. We previously held that if there is a continuing change in circumstances, the "court must review the parties' situation anew; no presumption from a previous order exists." *Nia*, 242 Ariz. at 425, ¶¶ 24-25 (rejecting "argument that there is a presumption for a deviation"); *see also Birnstihl*, 243 Ariz. at 590, ¶ 8 (holding that claim preclusion does not apply to modifications of child support). Here, the court found that the findings in its "2014 Order are well-reasoned and that same reasoning holds true today" and incorporated part of that order by reference. We disagree with Mother's description of the court's action as a presumption. *Cf. Golonka v.*

Gen. Motors Corp., 204 Ariz. 575, 590, ¶ 50 (App. 2003) (noting that a presumption is a procedural device that shifts the burden of production or persuasion). Instead, it is apparent that the court agreed with its prior finding that "Mother is not entitled to demand child support that would allow her to live the same lifestyle as Father; that is not the purpose of child support. Mother is receiving more than enough child support to pay for Father's portion of the children's reasonable living expenses. . . ." We decline to find that incorporating prior findings is the same as establishing a presumption.

¶15 Relying on *Nash*, Mother argues that the court impermissibly ordered only the "minimal amount of support." In *Nash*, we held that when "determining child support, the superior court must consider the reasonable needs of the children in light of the parents' resources." 232 Ariz. at 479, ¶ 23; *see* Guidelines § 8 (court should consider such factors "as the needs of the children in excess of the presumptive amount"). After citing *Nash*, the family court found that "Mother failed to prove that an upward deviation in child support of any amount is in the best interests of the children." The record contains evidence that the Children's needs were met, and Father produced evidence to rebut Mother's claims of financial strain. Mother laments that she is unable to take the Children on trips to Europe. But Father offered to take all three Children to Croatia, and when the daughters declined to go, he provided funds that Mother used to travel with the daughters and enroll them in volleyball camp. Father testified that he believed Mother lived a more lavish lifestyle, specifically citing her restaurant habits. *See Nash*, 232 Ariz. at 480, ¶ 27 (noting "the touchstone always is the best interests of the child, a child's share in the good fortune of his or her parents must be subject to the limitation that the award be 'consistent with an appropriate lifestyle'" (quoting *Miller v. Schou*, 616 So.2d 436, 438-39 (Fla. 1993))). To the extent the record supports multiple inferences, it was the family court's province to weigh the evidence. *Hurd v. Hurd*, 223 Ariz. 48, 52, ¶ 16 (App. 2009).

¶16 Finally, we are unpersuaded by Mother's argument that Father "misused" the prior child support order. The order required Father to pay for 80% of jointly approved extracurricular activities. Because Father did not consent to the activities in which Mother enrolled the Children, he was not required to contribute.

¶17 In sum, we conclude the family court did not abuse its broad discretion in awarding Mother child support consistent with the Guidelines.

II. Post-Trial Motions.

¶18 Mother appeals the denial of her motion to amend the judgment. *See* Ariz. R. Fam. Law P. 83. We review for an abuse of discretion. *Wisniewski v. Dolecka*, 251 Ariz. 240, 241, ¶ 5 (App. 2021). Mother's motion raised the same arguments addressed above. We conclude the court did not abuse its discretion.

¶19 Mother also appeals the court's denial of her post-trial request for additional findings of fact regarding the denial of an upward deviation. *See* Ariz. R. Fam. Law P. 82(b). But Mother did not request findings of fact prior to trial. *See* Ariz. R. Fam. Law P. 82(a). Our supreme court, "in an unbroken line of decisions . . . has consistently held that a request for findings of fact comes too late to be made the basis of error for non-compliance therewith if made after judgment is rendered." *Julian v. Carpenter*, 65 Ariz. 157, 159 (1947) (citing *Deatsch v. Fairfield*, 27 Ariz. 387 (1925)); *see also United Leasing, Inc. v. Commonwealth Land Title Agency of Tucson, Inc.*, 134 Ariz. 385, 386-87 (App. 1982) (holding that rule permitting post-trial request for modified findings inapplicable when no findings were requested). Thus, the court did not err in denying Mother's request.

III. Attorney Fees.

¶20 Mother also appeals the family court's denial of her request for attorney fees. The family court may award attorney fees "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings." A.R.S. § 25-324(A). After finding that Father has greater financial resources and that neither party acted unreasonably, the court declined to award fees. Mother disagrees and asserts that Father acted unreasonably. The determination of the parties' reasonableness is left to the sound discretion of the family court. *In re Marriage of Williams*, 219 Ariz. 546, 549, ¶ 14 (App. 2008). Mother has shown no abuse of that discretion.

CONCLUSION

¶21 We affirm. In our discretion, we decline to award either party attorney fees on appeal but award Father his reasonable costs upon timely compliance with ARCAP 21.

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