

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

VICTORIA CHAMBERS,  
*Petitioner/Appellant,*

*v.*

DANTAVIOUS GENTRY,  
*Respondent/Appellee.*

No. 1 CA-CV 21-0262 FC  
FILED 12-28-2021

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Appeal from the Superior Court in Maricopa County  
No. FC2013-007889  
The Honorable Bradley H. Astrowsky, Judge

**AFFIRMED**

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COUNSEL

DeWitt-Lopez Law, PC, Phoenix  
By Kristen J. DeWitt-Lopez  
*Counsel for Petitioner/Appellant*

Underwood Law Office, Phoenix  
By Sonya E. Underwood  
*Counsel for Respondent/Appellee*

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**MEMORANDUM DECISION**

Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Jennifer B. Campbell and Judge Maurice Portley joined.<sup>1</sup>

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**T H U M M A**, Judge:

¶1 Victoria Chambers (Mother) appeals from a post-decree order modifying legal decision-making, parenting time and child support. Mother claims her due process rights to advance notice were violated and that the superior court otherwise abused its discretion. Because Mother has shown no error, the order is affirmed.

**FACTS AND PROCEDURAL HISTORY**

¶2 Mother and Dantavious Gentry (Father) were never married but have one minor child together. In 2014, the superior court entered a judgment establishing paternity, legal decision-making, parenting time and child support. Mother was awarded sole legal decision-making while Father, who was then living in Alabama, received supervised parenting time. In 2015, Father was allowed to have unsupervised parenting time.

¶3 In June 2019, the parties stipulated to (and the court ordered) joint legal decision-making, with Mother having final approval. A series of disputes about parenting time involved Father claiming Mother violated court orders and Mother claiming Father was using illegal substances and failing to reimburse her for the child's medical expenses. After significant motion practice, in January 2020, Mother filed a petition seeking sole legal decision-making authority and that Father's parenting time be supervised.

¶4 Mother also moved for temporary orders without notice, alleging serious concerns about the child's wellbeing while in Father's care. The court entered an ex parte order suspending Father's parenting time but, after an evidentiary hearing, vacated that order. The court also named a court appointed advisor (CAA) to investigate Mother's claims. Father then filed a counter-petition seeking to expand parenting time.

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<sup>1</sup> The Honorable Maurice Portley, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Section 3, of the Arizona Constitution.

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¶5 The court set a November 2020 evidentiary hearing on the petition and counter-petition, where Mother, Father and others testified. Given time constraints, the court set another hearing for January 14, 2021, and issued temporary orders requiring Father to timely pick-up and drop-off the child at parenting time exchanges.

¶6 A dispute arose about Father’s attempt to exercise parenting time on the weekend of December 11, 2020, with Father claiming confusion about the pick-up location and that Mother failed to respond to his inquiries. Father raised the issue in a January 7, 2021 pretrial statement filed for the January 14, 2021 hearing, and again in a January 13, 2021 supplemental pretrial statement. Mother addressed the issue in her January 13, 2021 pretrial statement.

¶7 At the January 14, 2021 evidentiary hearing, Mother, Father and the CAA testified. After taking the matter under advisement, in March 2021, the superior court awarded Father additional parenting time. In doing so, the court found Mother acted unreasonably and “intentionally interfered with Father’s relationship with the child” and her conduct was “wholly contrary to co-parenting and the child’s best interests.” This court has jurisdiction over Mother’s timely appeal from the March 2021 order pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1) and -2101(A)(1) (2021).<sup>2</sup>

## DISCUSSION

### I. Mother Has Not Shown a Denial of Her Due Process Rights.

¶8 Mother contends the court denied her due process rights because she was not given notice that the court would consider the December 2020 incident at the January 14, 2021 evidentiary hearing, which deprived her “of the proper opportunity to prepare for the [c]ourt to consider the issue.” The record, however, is to the contrary.

¶9 First, the pretrial statements preceding that hearing raised the December 2020 incident. Father’s filing, made a week before the hearing, did so by noting the date, location and other details. Mother’s filing, made the day before the hearing, took nearly a page to address the incident, doing so in describing her positions on contested issues of fact and law. This record shows Mother had notice that the issue would be addressed at the January 14, 2021 hearing. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)

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<sup>2</sup> Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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(The fundamental requirements of due process are notice and the opportunity to be heard “at a meaningful time and in a meaningful manner.”) (citation omitted).

¶10 Second, the record does not show that Mother objected to the superior court considering the incident at the January 14, 2021 hearing. Mother’s pretrial statement did not set forth such an objection, did not claim that she needed more time to address the incident and did not assert that she could not properly gather evidence to address the incident. The minute entry from the January 14, 2021 hearing notes no objection. Nor does the court’s March 2021 order, which spans 19 pages. Because the record does not show that Mother timely objected during the superior court proceedings, she cannot raise the issue on appeal. *See Trantor v. Fredrickson*, 179 Ariz. 299, 300 (1994) (errors not raised in the trial court cannot be raised on appeal); *Odom v. Farmers Ins. Co. of Ariz.*, 216 Ariz. 530, 535 ¶ 18 (App. 2007) (“[A]rguments raised for the first time on appeal are untimely and deemed waived.”).

¶11 Third, although Mother claims she “fervently objected” to the superior court considering the December 2020 incident at the January 14, 2021 hearing, she failed to provide the transcript from that hearing. Thus, this court presumes the transcript supports the court’s March 2021 ruling. *See Cullison v. City of Peoria*, 120 Ariz. 165, 168 n.2 (1978); *Myrick v. Maloney*, 235 Ariz. 491, 495 ¶ 11 (App. 2014).

¶12 On this record, Mother had notice that the December 2020 incident would be addressed at the January 14, 2021 hearing. As a result, her due process rights to notice and an opportunity to be heard “at a meaningful time and in a meaningful manner” were not violated. *Mathews*, 424 U.S. at 333 (citation omitted). Nor has Mother shown prejudice establishing reversible error. *Volk v. Brame*, 235 Ariz. 462, 470 ¶ 26 (App. 2014).

**II. Mother Has Not Shown the Court Abused Its Discretion.**

¶13 Mother argues the superior court abused its discretion by (1) considering information not in evidence and misstating evidence; (2) failing to enforce prior orders; and (3) failing to address all A.R.S. § 25-403 factors. On this record, however, Mother has shown no abuse of discretion.

¶14 Mother’s argument that the court improperly considered information not in evidence and misstated evidence it received is waived, given her failure to provide a transcript of the January 14, 2021 hearing. *See Cullison*, 120 Ariz. at 168 n.2; *Myrick*, 235 Ariz. at 495 ¶ 11. Her argument

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that the court failed to enforce prior court orders is based on the thought that the March 2021 order violated the doctrine of the law of the case by revisiting issues resolved in prior orders. But there was no intervening appeal of those prior orders, meaning application of the law of the case here would be discretionary, not jurisdictional, and the court could modify prior orders. See *Powell-Cerkoney v. TCR-Montana Ranch Joint Venture, II*, 176 Ariz. 275, 279 (App. 1993) (“Prior decisions have established . . . that courts must not afford this procedural doctrine undue emphasis.”). Nor has Mother shown how application of that discretionary application of law of the case could override the focus on the best interests of a child, which is “paramount” here. *Hays v. Gama*, 205 Ariz. 99, 102 ¶ 18 (2003).

¶15 Finally, Mother has not shown that the court failed to consider all relevant factors in issuing its March 2021 order, specifically claiming the court failed to address (1) “[t]he past, present and potential future relationship between the parent and the child” and (2) “[t]he interaction and interrelationship of the child with the child’s parent or parents, the child’s siblings and any other person who may significantly affect the child’s best interests.” A.R.S. § 25-403(A)(1)-(2). The March 2021 order, however, expressly addressed both of these statutory factors. Moreover, to the extent Mother argues the court abused its discretion in assessing the facts relating to those factors, for the reasons set forth above and on the record presented, she has shown no such error. Accordingly, Mother has shown no abuse of discretion.

CONCLUSION

¶16 The March 2021 order is affirmed. Father’s request for attorneys’ fees as sanctions under A.R.S. § 25-324(B) is denied. Father is, however, awarded his taxable costs contingent upon his compliance with ARCAP 21.



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