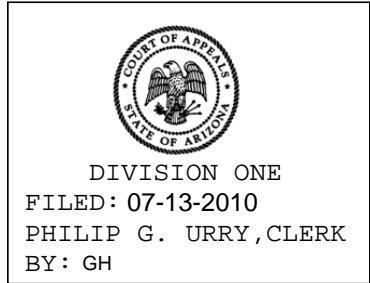


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:)
)
LORI M. HAMILTON,) 1 CA-CV 09-0152
)
Petitioner/Appellant,) Department D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication
ERIC N. ROCKNEY,) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
Respondent/Appellee.)
_____)

Appeal from the Superior Court of Maricopa County

Cause No. FC2003-094900

The Honorable Jo Lynn Gentry-Lewis, Judge

AFFIRMED

Cates, Hanson, Sargeant & Rakestraw, P.L.C. Phoenix
By Leslie Rakestraw
Attorneys for Petitioner-Appellant

Eric Rockney Prescott
In Propria Persona

T H O M P S O N, Judge

¶1 Lori M. Hamilton (mother) appeals from the trial court's denial of her "Request to Relocate with Child." Finding no error, we affirm.

¶2 Mother and Eric N. Rockney (father) have one minor child, born in 1999. In 2003, mother filed for divorce. Attached to mother's Petition for Divorce was a settlement agreement signed by both parties which indicated that father lived in Chino Valley, Arizona, and which outlined their custody agreement. The agreement indicated that mother would have legal custody and father would have visitation; the parties agreed not to move from the state of Arizona with the minor child. In 2008, mother filed a motion seeking the trial court's leave to relocate from Gilbert, Arizona to her home state of Texas. In the motion, mother asserted that their child would then "be in the presence of [her] family on a daily basis" as opposed to father's taking 25 days of visitation over the 2007 school year. She also indicated she was having financial difficulties and her family had offered housing and financial assistance.

¶3 Father objected to the motion to relocate. Father argued, among other things, that his parenting time would be "unreasonably burdened" that such a move would take the minor from his "accustomed school and friends." He also noted that his own extended family also resides in Arizona. Father offered to become the primary custodian. A trial was held. The parties represented themselves. Five witnesses, including the parties, testified. Father, in addition to himself, presented three witnesses. It

appears that mother marked items for identification but did not offer them into evidence.¹ The court found that mother did not present sufficient evidence or testimony pursuant to Arizona Revised Statutes (A.R.S.) § 25-408(I) (2009) to meet her burden to relocate the minor child and denied mother's motion.

¶4 We review child custody determinations for an abuse of discretion. *Owen v. Blackhawk*, 206 Ariz. 418, 420, ¶ 7, 79 P.3d 667, 669 (App. 2003). A non-custodial parent has a statutory right to reasonable parenting time. A.R.S. § 25-408(A). The burden of proof is on the parent seeking the relocation to show that such a move is in the child's best interests. A.R.S. § 25-408(G). The court shall not deviate from a written agreement expressly prohibiting such a relocation unless the court finds that provision "is no longer in the child's best interests." A.R.S. § 25-408(H).

¶5 In deciding a request for relocation, the court must make specific findings on the record as to all relevant factors including addressing whether it is in the children's best interests. See *Owen*, 206 Ariz. at 421, ¶ 9, 79 P.3d at 670. The trial court did not initially make such findings, but later entered a minute entry addressing each factor. The trial court indicated that other than some limited testimony indicating that the child

1. We note that one of the items of evidence that mother apparently sought to introduce was "Dates of Eric's visitation" which contains the same information as her motion for relocation in the record on appeal. This motion shows that, among other time, father spent all of the fall break (seven days) and ten days of the winter break with the child during the 2007 school year.

would be able to participate in sports if he was allowed to relocate, no other testimony was presented in support of such a move.² The trial court indicated that such a move "would clearly interfere with Father's relationship with the child . . . Mother did not state her reasons for relocation and so the Court cannot determine that her request is made in good faith." The court considered the best interests of the child and found mother did not meet her burden of proof for relocation. The trial court did not abuse its discretion in denying mother's motion to relocate the minor child over the objection of his father.³

¶16 Mother, citing ARCAP Rule 21, requests attorneys' fees and costs on appeal. That request is denied.

2. As the record on appeal does not contain the transcript of the hearing, we will assume that the evidence supported the court's denial of the request to relocate. See *Copeland v. City of Yuma*, 160 Ariz. 307, 311, 772 P.2d 1160, 1164 (App. 1989)(citing *A.D.R. Dev. Co. v. Greater Arizona Sav. and Loan Ass'n*, 15 Ariz. App. 266, 267, 488 P.2d 471, 472 (1971)).

3. This appeal addresses only the discrete issue presented above. Our ruling does not address any other issues or rulings by the trial court in this domestic relations case.

¶7 For the foregoing reasons, we affirm.

/S/

JON W. THOMPSON, Judge

CONCURRING:

/S/

PATRICIA A. OROZCO, Presiding Judge

/S/

DIANE M. JOHNSEN, Judge