DIVISION ONE
FILED: 02/25/10
PHILIP G. URRY, CLERK
BY: JT

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:	)	No. 1 CA-CV 09-0222
	)	
ANA TOVAR,	)	DEPARTMENT B
	)	
Petitioner/Appellee,	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
v.	)	Rule 28, Arizona Rules
	)	of Civil Appellate
MANUEL REYES,	)	Procedure)
	)	
Respondent/Appellant.	)	
	)	
_____	)	

Appeal from the Superior Court in Maricopa County

Cause No. FC 2005-005414
FC 2008-005742
(Consolidated)

The Honorable Randall H. Warner, Judge

AFFIRMED

Ana Tovar — Phoenix
Petitioner/Appellee *in propria persona*

Manuel Reyes — Phoenix
Respondent/Appellant *in propria persona*

S W A N N, Judge

¶1 Manuel Reyes ("Father") appeals from the superior court's order granting Ana Tovar's ("Mother") petition to modify parenting time and child support. For the reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Father and Mother married in November 1997. In April 2005, Mother filed a petition for dissolution of marriage, and in May 2006 the superior court entered a decree of dissolution of marriage. The court awarded Father and Mother joint legal custody of their two minor children and found that it appeared appropriate "for the time being" to allow the children to continue to reside at Father's residence. Mother was awarded limited parenting time. The court noted that because of Mother's limited earning ability, child support would not be considered until a review hearing set for September 2006. Apparently, the issue was not considered at the review hearing.[1] In December 2006, this court dismissed Father's untimely appeal from the dissolution decree for lack of jurisdiction.

¶3 In May 2008, Mother filed a petition to modify custody, parenting time, and child support. The court summarily denied the petition on the ground that Mother had failed to

[1] The record on appeal includes only the court's minute entry for the review hearing. The transcript of the hearing is not included.

state any facts warranting the requested modification. Mother's motion for reconsideration was denied.

¶4 In August 2008, Father filed a petition to establish child support. By that filing, a new family court case was commenced. In November 2008, the court held an evidentiary hearing regarding Father's petition. Based on findings regarding the parties' monthly incomes and Mother's limited parenting time, the court ordered Mother to pay nearly $350 per month in child support, effective December 1, 2008. The new family court case was then consolidated with the prior case.

¶5 In November 2008, Mother filed a second petition to modify custody, parenting time, and child support.[2] In December 2008, Father filed a petition for retroactive child support from 2005 to November 2008. The court held an evidentiary hearing regarding both petitions in February 2009. At the hearing, Mother presented her own testimony and the testimony of two witnesses, and Father presented his own testimony. The court received into evidence a court conciliation services memorandum based on court-ordered interviews of the children.

¶6 By signed minute entry, the court affirmed joint legal custody, ordered that parenting time be modified to an equal split, and ordered that neither party owed the other any child

[2] Mother filed the petition to modify after Father had filed his petition to establish child support but before the evidentiary hearing regarding child support was held.

support payments, except that Mother remained responsible for any child support payments ordered through March 1, 2009. The court ruled that Father's petition for retroactive child support was untimely and was barred by *res judicata* because child support had not been awarded in the dissolution decree.

¶7 Regarding parenting time, the court found that the modification was in the children's best interests for two principal reasons. First, the court found that the children clearly wanted and needed more time with Mother, and would benefit emotionally from spending time with both parents. The court noted that Mother had become regularly involved in the children's lives and that the older child was exhibiting severe behavioral problems. Second, the court found that the children clearly felt caught between their parents. The court explained that an equalization of parenting time could decrease arguments between Mother and Father.

¶8 Regarding child support, the court found that when the income figures from the November 2008 evidentiary hearing were applied to an equal parenting time schedule, Mother would owe Father $36 a month in child support. The court further found, however, that it was in the children's best interests to have neither party owe the other any child support. The court explained that the benefits to the children of eliminating

another major source of conflict between Mother and Father outweighed the benefits of child support.

¶9 Father timely appealed. We have jurisdiction pursuant to A.R.S. § 12-2101(C) (2003).

DISCUSSION

¶10 Father appeals only the court's modification of parenting time.[3] The trial court is in the best position to determine the parenting measures that are in a child's best interests, and therefore has broad discretion to determine parenting time. *Armer v. Armer*, 105 Ariz. 284, 289, 463 P.2d 818, 823 (1970). We will not disturb the trial court's determination of parenting time unless it clearly appears that the court has mistaken or ignored the evidence. *Id.*

¶11 Father appears to argue that modification of parenting time should not have been allowed because he had originally been designated the primary residential parent, and Mother's previous request for modification had been denied. Father's argument

---

[3] On appeal, Father makes no mention of the child support modification. Indeed, he asserts that he agrees with the May 2006 dissolution decree, and that decree awarded no child support. Father also makes no mention of the denial of his request for retroactive child support.

Both parties' appellate briefs do discuss an ongoing conflict regarding the division of a community-property house. But it does not appear that appellate review of that issue is actually sought. And even were it sought, we lack jurisdiction to review the order regarding the division. That order was made in the May 2006 dissolution decree, and the time for appeal from the decree has long since expired. *See* ARCAP 9.

finds no support in the law. Pursuant to A.R.S. § 25-411(D) (Supp. 2009), "[t]he court may modify an order granting or denying parenting time rights *whenever modification would serve the best interests of the child*." (Emphasis added.) The court denied Mother's May 2008 petition because Mother had then failed to assert facts that would support modification. That ruling did not preclude Mother from later filing a properly supported petition from which the court could conclude that modification would serve the children's best interests. The court so concluded, and articulated findings that properly supported its conclusion. *See* A.R.S. § 25-408(I) (Supp. 2009) (describing the factors relevant to the determination of what is in a child's best interests).

¶12 Father appears to argue that the evidence did not support the finding that Mother had become regularly involved in the children's lives. He asserts that Mother had not exercised her limited parenting time with the younger child, and that both children were accustomed to spending ninety percent of their time with Father. Father also asserts, without elaboration, that Mother gave "false accusations and statements to the courts [in order] for her to obtain [the] children."

¶13 Because we have not been provided the transcript of the evidentiary hearing, we must presume that the evidence presented at the hearing supported the court's findings. *See*

Baker v. Baker, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995). On the record before us, we find no indication that the court mistook or ignored evidence, and therefore do not find that the court abused its discretion by modifying the parties' parenting time to an equal split.

CONCLUSION

¶14 For the reasons set forth above, we affirm.

/S/

_____

PETER B. SWANN, Judge

CONCURRING:

/S/

_____

PATRICIA K. NORRIS, Presiding Judge

/S/

_____

DANIEL A. BARKER, Judge