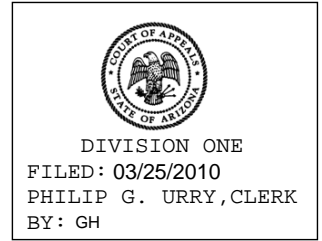


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



)	1 CA-CV 09-0421
IN RE THE MATTER OF:)	
)	DEPARTMENT E
KAREN SMITH,)	
)	MEMORANDUM DECISION
Petitioner/Appellant,)	
)	
v.)	Not for Publication -
)	(Rule 28, Arizona Rules
JOSEPH S. JACKSON,)	of Civil Appellate Procedure)
)	
Respondent/Appellee.)	
_____)	

Appeal from the Superior Court in Yavapai County

Cause No. V-1300-DO-0820070552

The Honorable Michael R. Bluff, Judge

AFFIRMED

Law Offices of Robert L. Frugé, P.C.	Prescott
By: Robert L. Frugé	
Attorneys for Petitioner/Appellant	

Joseph S. Jackson	Cottonwood
In <i>Propria Persona</i> Respondent/Appellee	

G E M M I L L, Judge

¶1 Appellant Karen Smith ("Mother") appeals from the trial court's order awarding her and Appellee Joseph S. Jackson

("Father") joint legal custody of their two minor children and from the denial of her subsequent motion to partially set aside that order. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶12 Mother and Father were not married but together they are the parents of two minor sons, ages eight and eleven. In December 2007, Mother filed a Petition for Paternity, Child Custody, Visitation, and Child Support seeking, inter alia, an order awarding her sole legal custody of the children and an award of child support. Father responded that he and Mother should be awarded joint legal custody of the children.

¶13 Through mediation, the parties agreed the children would reside primarily with Mother, Father would have visitations on Tuesdays and weekends, and in lieu of child support, Father would provide Mother and the children with housing. The parties further agreed Father would provide health insurance for the children, Father and Mother would split equally the responsibility for medical costs up to \$2500 per year not covered by insurance, and Father would be responsible for all uncovered medical costs over \$2500 per year. They were unable to agree on legal custody of the children, however, and left this issue for the trial court's determination.

¶14 In October 2008, Mother filed a Petition to Enforce Support, seeking reimbursement from Father for certain medical

expenses for the children that were not covered under the insurance policy. At a hearing on the petition, Father agreed to reimburse Mother for some of these expenses but requested additional time to consider reimbursing Mother for a homeopathic, non-traditional treatment called Nambudripad's Allergy Elimination Technique ("NAET). The court ordered Father to pay the undisputed expenses and continued the hearing to later determine whether Father was required to reimburse Mother for NAET treatments.

¶15 At the continued hearing in February 2009, Father presented proof of payment for the undisputed expenses and argued he should not be required to reimburse Mother for the NAET treatments. After taking the matter under advisement, the trial court found as follows:

The Court has reviewed and considered the materials offered by Mother as Exhibit #2 explaining the [NAET] treatments. The Court finds that while the [NAET] treatments may provide some benefits to the children, Father should not be required to pay for such treatments unless he agrees in advance.

It then ordered that "Father shall not be required to reimburse Mother for any [NAET] or other non-traditional or homeopathic medical expenses for the children."

¶16 In March 2009, the trial court conducted a one-day custody hearing and received testimony from Mother and Father.

In its ruling, the court awarded Mother and Father joint legal custody of the children. The court further ordered:

If the parents cannot agree on medical decisions, Mother shall make the final decision after good faith consultation with Father. (Note: this does not change this Court's ruling that Father is not required to reimburse Mother for non-traditional or homeopathic expenses). If the parents cannot agree on educational decisions for the children, Father shall make the final decision after good faith consultation with Mother.

¶17 Mother filed a motion to partially set aside the order, which the trial court denied. Mother timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(B) (2003).

ANALYSIS

¶18 Mother argues that the trial court failed to adequately explain why its award of joint custody was in the children's best interest as is required under A.R.S. § 25-403.01(B) and erred in finding Father was not required to reimburse her for healthcare expenses from non-traditional and homeopathic treatments. We first address her claim regarding reimbursement for the non-traditional and homeopathic treatments.

Reimbursement for NAET Treatments

¶19 Mother contends the trial court's ruling exempting Father from reimbursing her for NAET treatments is contrary to

Section 9(A) of the Arizona Child Support Guidelines, A.R.S. § 25-320. Section 9(A) states that a trial court must assign responsibility to one of the parents for providing the children's medical insurance. It further provides:

The court shall also specify the percentage that each parent shall pay for any medical . . . costs of the children which are not covered by insurance. For purposes of this paragraph, non-covered "medical" means medically necessary medical . . . care as defined by Internal Revenue Service Publication 502.

A.R.S. § 25-320 app. § 9 (2003). Publication 502 contains a comprehensive definition of "medical expenses" and lists examples of what medical expenses may and may not be itemized deductions on federal income tax returns.

¶10 Mother points out that the definition of "medical expenses" in Publication 502 does not preclude non-traditional or homeopathic treatments. And she asserts that, because the trial court did not specifically find non-traditional and homeopathic treatments are not "medical expenses" or that they are not "medically necessary," the trial court erred in finding Father was not required to reimburse her for these expenses in light of their agreement regarding uncovered medical expenses.

¶11 Mother bore the burden of proving to the trial court that the non-traditional and homeopathic treatments were medically necessary. See *Smith v. Smith*, 133 Ariz. 384, 385-86,

651 P.2d 1209, 1210-11 (App. 1982). The record indicates she did not meet this burden. At the hearing, Mother provided the court with documents explaining NAET treatments, which the trial court reviewed.¹ These documents explain NAET practitioners' methods of administering the treatment and state that treating children with asthma with steroids may result in the children having stunted growth. But the documents do not establish the medical necessity of NAET or other non-traditional or homeopathic treatments.

¶12 The trial court did not explicitly find the treatments were not medically necessary, but it implicitly did so in finding the "treatments *may provide some benefits* to the children" and by ordering that Father did not have to pay for these treatments. (Emphasis added.) The court's finding and ruling indicate the court believed the treatments were of limited benefit to the children's health, if any. On this record, we affirm the trial court's decision that Father is not required to reimburse Mother for non-traditional and

¹ According to these documents, NAET patients are tested for allergies by a machine called the NAET-ER or by muscle response tests. Treatment consists of acupuncture performed while the patient holds the allergen in the palm of his hand and touches the sample several times with his finger tips. If the patient's arm is determined to be strong against pressure applied by the practitioner after the treatment, the treatment is deemed successful. Further treatment may consist of a "brain-body balancing formula" or "any other combinations detected by the practitioner."

homoeopathic treatment expenses. See *Smith*, 133 Ariz. at 386, 651 P.2d at 1211 (affirming trial court's order denying mother's request for reimbursement for child's orthodontic expenses because Mother presented no evidence such expenses were medically necessary).

Sufficiency of Findings Under A.R.S. § 25-403.01(B)

¶13 Mother next argues the trial court failed to adequately explain why its award of joint custody is in the children's best interest, as required by A.R.S. § 25-403.01(B). That subsection provides: "The court may issue an order for joint custody over the objection of one of the parents if the court makes specific written findings of why the order is in the child's best interests." A.R.S. § 25-403.01(B). We conclude that the court's findings are adequate.

¶14 In its order awarding joint custody, the court found that both parents had been "actively involved in the care of the children" and were concerned with the children's best interest. It also found "[b]oth children are well adjusted to each parent's home and their community," and that "both parents are likely to allow frequent and meaningful continuing contact with the other parent." Both parents had also "successfully completed the Parent Education Program" and "[n]either parent has any mental or physical health issues that would affect the children." We believe these findings adequately explain why

joint custody, rather than sole custody with Mother, is in the children's best interests. The trial court's explanation was therefore sufficient under A.R.S. § 25-403.01(B).

¶15 Moreover, the record reveals that Mother asserted she should be awarded sole legal custody because she believed Father "is unable to make rational decisions regarding the health care of the children." In settling the parents' disagreement on this issue, the trial court ruled primarily in Father's favor. And, it explicitly found their disagreement on the issue was rooted solely in the parents' concern for the children's best interests, stating "the parent[s'] lack of agreement is not unreasonable or influenced by issues not related to the best interest of the children." Thus, the trial court explicitly disagreed with Mother's reason for why she should be awarded sole legal custody.

¶16 Mother also contends the court failed to explain why Father should have final decision-making authority regarding the children's educational needs and Mother regarding their medical needs. The court explained this decision, however, when it stated that doing so would "allow the parties to better co-parent the children under a joint custody agreement." We agree with Mother that this reasoning does not in itself explain why joint custody is in the children's best interest. But the trial court, having already determined joint custody is in the

children's best interests, as explained above, was permitted to allocate to different parents final decision-making authority on these issues. See A.R.S. § 25-402(2) (2007).

CONCLUSION

¶17 For the foregoing reasons, we affirm the trial court's orders.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
SHELDON H. WEISBERG, Presiding Judge

_____/s/_____
PHILIP HALL, Judge