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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 06-17-2010  
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BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

In re the Matter of: ) 1 CA-CV 09-0426  
)  
JASON BRIAN BURR BOWRA, ) DEPARTMENT B  
)  
Petitioner/Appellee, ) **MEMORANDUM DECISION**  
) (Not for Publication  
v. ) - Rule 28, Arizona  
) Rules of Civil  
CORINNE J. PACIMEO, ) Appellate Procedure)  
)  
Respondent/Appellant. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Yavapai County

Cause No. P-1300-DO-0020050129

The Honorable Rhonda L. Repp, Judge Pro Tempore

**AFFIRMED**

Law Office of V. A. McNeice  
By Valarie A. McNeice  
Attorney for Petitioner/Appellee

Prescott

Corinne Judith Pacimeo, *In Propria Persona*

Tucson

**N O R R I S**, Judge

¶1 Corinne Pacimeo ("Mother") appeals from an order of the family court denying her petition to modify child custody. She argues the court improperly granted Jason Brian Burr Bowra ("Father") joint custody, permitted Father to untimely submit

discovery materials the day of trial, and approved Father's relocation from Yavapai County to Pinal County. For the following reasons, we affirm the court's orders regarding child custody and relocation.<sup>1</sup>

#### **FACTS AND PROCEDURAL BACKGROUND**

¶2 In January 2006, the family court approved the parties' parenting plan for joint legal custody. In June 2006, the court awarded Father temporary custody because Mother tested positive for drug use. From January 2007 until December 2008, Mother was incarcerated. Following her release, Mother filed a petition for modification of custody requesting joint custody and seeking to prevent Father from relocating with the child. After holding an evidentiary hearing on June 9, 2009, the court denied Mother's request and approved Father's relocation. Mother appeals.

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<sup>1</sup>Father failed to file an answering brief. Because child custody is at issue, we decline to treat this omission as a confession of reversible error. See *Nydam v. Crawford*, 181 Ariz. 101, 101, 887 P.2d 631, 631 (App. 1994) (superior court has discretion regarding application of confession of error doctrine).

## DISCUSSION

### I. Sufficiency of the Evidence

¶3 Citing Arizona Revised Statutes ("A.R.S.") section 25-403 (Supp. 2009),<sup>2</sup> Mother argues the family court should not have awarded custody to Father because she submitted "enough proof" joint legal custody was in her son's best interests; she also contends the court's factual findings regarding her substance abuse, criminal behavior, suicide attempts, and mental health were inaccurate. We review the family court's decision regarding child custody for abuse of discretion, and we will not disturb the court's determination unless reasonable evidence does not support its factual findings. *Owen v. Blackhawk*, 206 Ariz. 418, 420, ¶ 7, 79 P.3d 667, 669 (App. 2003); *Ariz. Dep't of Econ. Sec. v. Matthew L.*, 223 Ariz. 547, \_\_\_, ¶ 7, 225 P.3d 604, 606 (App. 2010).

¶4 The family court made the following findings in rejecting Mother's request for custody:

[Mother] is not fit to be a custodial parent nor does she have a suitable living situation for the child at this time. Since [Mother] was incarcerated, [Father] has provided all of the day-to-day care for the child and the child is thriving. Mother's release from prison and her short-term

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<sup>2</sup>Although this statute was amended after the date of the court's under advisement ruling, the revisions are immaterial. Thus, we cite to the current version of this statute.

sobriety do not erase her criminal history. [Mother's] own statements in her criminal proceedings establish that she has a long history of substance abuse, substantial criminal behavior and suicide attempts.

[Mother] has serious mental health issues and has not seen the necessity of engaging in ongoing counseling to address the unresolved issues stemming from her abusive childhood.

¶15 The court's findings and orders were "[b]ased upon the evidence presented [at trial], the pleadings on file, other [c]ourt records, of which judicial notice was taken, and having considered the arguments presented at the conclusion of trial." The record on appeal, however, does not include a copy of the transcript of the hearing. The duty to order and include the transcript in the record on appeal was Mother's. See ARCAP 11(b)(1) ("[n]o later than 10 days after filing the notice of appeal, the appellant shall order an original and one copy of a certified transcript"). And, "[w]hen no transcript is provided on appeal, the reviewing court assumes that the record supports the trial court's decision." *Kline v. Kline*, 221 Ariz. 564, 572, ¶ 33, 212 P.3d 902, 910 (App. 2009) (quoting *Johnson v. Elson*, 192 Ariz. 486, 489, ¶ 11, 967 P.2d 1022, 1025 (App. 1998)). Thus, we are required to assume the record supports the court's factual findings and order awarding Father custody.

## *II. Disclosure Deadlines*

¶16 Mother argues she "was unable to properly prepare for [her] defense" because she was "ordered to accept" Father's untimely discovery disclosures on the day of trial. The trial minute entry reflects Mother objected to admission of several of Father's exhibits, but without the trial transcript, we must assume the court acted within its discretion when it overruled Mother's objections. See *id.*; *Solimeno v. Yonan*, 224 Ariz. 74, \_\_\_, ¶ 9, 227 P.3d 481, 484 (App. 2010) (family court has "broad discretion in determining whether evidence has been properly disclosed and whether it should be admitted at trial").

## *III. Father's Relocation*

¶17 Mother also argues Father "was ordered **NOT** to relocate on February 20, 2009" and states the court failed to address her March 30, 2009, motion for contempt, which urged the court to bar Father from moving although he had already moved "over 100 miles away," "without 60 days notice." The court approved Father's relocation to Pinal County, however, noting Mother had withdrawn "her previous objection to [Father's] relocation, which is supported by a high likelihood that it will improve [Father's] economic situation and the living conditions for Father and Child." On this record, Mother appears to have waived the issue of Father's relocation and we cannot say the

court abused its discretion in approving relocation. See *Kline*, 221 Ariz. at 572, ¶ 33, 212 P.3d at 910; *Owen*, 206 Ariz. at 420, ¶ 7, 79 P.3d at 669 (appellate court reviews decision regarding parental relocation for abuse of discretion).

*IV. Judicial Preference for Father*

¶18 Mother finally argues, without development, the court “favor[ed] [Father] due to him having counsel.” On this record, there is no evidence of judicial preference or bias for Father over Mother, and we reject this argument.

**CONCLUSION**

¶19 For the foregoing reasons, we affirm the family court’s order granting Father custody and approving Father’s relocation.

/s/

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PATRICIA K. NORRIS, Judge

CONCURRING:

/s/

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JOHN C. GEMMILL, Presiding Judge

/s/

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MAURICE PORTLEY, Judge