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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 01/20/2011
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE THE MARRIAGE OF:) 1 CA-CV 09-0708
)
) DEPARTMENT B
)
KEVIN SCOTT CAMPBELL,) **MEMORANDUM DECISION**
)
)
Petitioner-Appellee,)
) (Not for Publication -
v.) Rule 28, Arizona Rules
) of Civil Appellate Procedure)
TRACY LYNN SCHWITZ,)
)
)
Respondent-Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FC 2008-005066

The Honorable Daniel G. Martin, Judge

AFFIRMED

Kevin Scott Campbell, Appellee
In Propria Persona

Phoenix

Tracy Lynn Schwitz, Appellant
In Propria Persona

Casa Grande

W E I S B E R G, Judge

¶1 Tracy Schwitz ("Mother") appeals from the superior court's judgment and provision in the dissolution decree that Kevin Scott Campbell ("Father") be the primary residential parent of the couple's two minor sons. For reasons that follow, we find no abuse of discretion and affirm.

BACKGROUND

¶2 The parties were married in 1996 and had two sons, one born in 1997 and one in 1999. They separately moved to Arizona in 2008, and Father filed a petition for dissolution in July 2008. In October, the court issued temporary orders that the parents would have shared legal custody and that the children would reside with Father. Father enrolled the children in school in Glendale.

¶3 Trial took place in April 2009. The superior court issued a detailed judgment/decree and specifically stated that it had considered an April 2006 incident of domestic violence Father had committed while the parties were living in Wisconsin. The court also noted that the parties had agreed that aside from that incident, there was no history of domestic violence. The court additionally found that the children were strongly bonded to both parents, were "well-adjusted to living with Father, and to attending [the] school" in which he had enrolled them, and that Father was "a very active participant" in their education.

The court conceded that Mother's ability to participate in school activities was hampered by the distance between her residence in Casa Grande and that of the children.

¶4 Father filed a timely motion for reconsideration regarding Mother's health insurance premiums and her request for spousal maintenance to cover those costs. Mother filed a motion for new trial or to alter/amend the judgment and, among other things, challenged Father's denial of any additional acts of domestic violence and asserted he had failed to prove that he did not pose a risk to the children's physical safety or emotional development. The court granted Mother's request to correct an obvious error in the judgment, ordered her to pay the difference between her child support obligation and Father's spousal maintenance obligation, and clarified that Mother did not owe an arrearage but simply back child support. The court awarded the parties joint legal custody and designated Father as the children's primary residential parent.

¶5 Mother timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-21010(B) (2003).

DISCUSSION

¶6 Mother argues that the superior court failed to consider all of the relevant statutory factors governing the

award of physical custody. She contends that the court overlooked her wishes and failed to determine what the children wished. Although the court may consider each parent's wishes regarding custody, its decision must be based on what the court finds to be in the children's best interests. *Dunbar v. Dunbar*, 102 Ariz. 352, 354, 429 P.2d 949, 951 (1967).

¶17 Mother alleges that the children are afraid to say the wrong things but offers no supporting evidence. She cites the children's enrollment in special school programs since living with Father as evidence that they are not well adjusted, but the court found the children were benefitting from the additional programs.

¶18 Mother argues that she was the primary caregiver until 2008, but this factor alone would not support an award of primary physical custody. She claims that Father is stressed by caring for the children and does not always allow her to speak to the children but provides no supporting evidence. Finally, she argues that because of the domestic violence incident in April 2006, Father should not have physical custody. She asks that we reverse the trial court's order and order that she become the primary residential parent.

¶19 A decision regarding child custody is a matter for the superior court's discretion, and we will not overturn its

decision absent a clear abuse of that discretion. *In re Marriage of Diezsi*, 201 Ariz. 524, 525, ¶ 3, 38 P.3d 1189, 1191 (App. 2002). The version of A.R.S. § 25-403(A) in effect at the time of trial directed the superior court to "consider all relevant factors" in determining child custody and listed ten items. Subsection B required the court to make specific findings on the record and to explain why its decision was in the children's best interests. The court complied with these directives: it made findings on the record and explained why it concluded that the children's best interests would be served by continuing to live with Father and to attend the school at which they began. Mother apparently offered no evidence that the children would benefit more from enrolling in a school in Casa Grande.

¶10 The superior court additionally considered Mother's argument that the counseling Father had completed after his arrest for domestic violence would not have been acceptable to Arizona courts. The court concluded, however, that no evidence showed that Father had not benefitted from the counseling and the Wisconsin court had accepted as satisfactory Father's progress in the counseling program. Furthermore, although Mother had called an expert witness to testify on domestic violence, the expert "was not aware of any facts that would

support a conclusion that the children were behaving in a manner one might expect from children who live with an abuser." Thus, the court did not find that Father was an unfit parent and declined to order that he participate in a domestic violence program. We find no clear abuse of discretion in these findings.

¶11 Moreover, our review is significantly hampered by Mother's failure to provide us with the trial transcripts that might support her contentions. One who appeals from a superior court ruling "is responsible for making certain the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised on appeal." *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995). When a party fails to provide a transcript of the proceedings to which she objects, we must assume that the record supports the trial court's ruling. *Id.* Also, we are not finders of fact: that is a responsibility delegated to the superior court, and to the extent that witness credibility is a factor in the court's decision, we defer to that court's assessment because it has seen all of the evidence and heard all of the testimony. See *Hurd v. Hurd*, 223 Ariz. 48, 52, ¶ 16, 219 P.3d 258, 262 (App. 2009) (appellate court will not re-weigh conflicting evidence but defers to "trial court's opportunity to judge the

credibility of the witnesses" and even if evidence conflicts, will affirm if substantial evidence supports the ruling).

¶12 Accordingly, we affirm the superior court's order that Father remain the primary residential parent. We award Father his reasonable costs on appeal subject to compliance with Arizona Rule of Civil Appellate Procedure 21.

/s/
SHELDON H. WEISBERG, Judge

CONCURRING:

/s/
DONN KESSLER, Presiding Judge

/s/
DIANE M. JOHNSEN, Judge