DIVISION ONE
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RUTH WILLINGHAM, ACTING CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:	No. 1 CA-CV 09-0717
LORENA GARCIA RAMIREZ,	DEPARTMENT D
Petitioner/Appellee,	**MEMORANDUM DECISION**
v.	Not for Publication (Rule 28, Arizona Rules of Civil Appellate Procedure)
CHAD EVERETT BROADNAX,	
Respondent/Appellant.	
STATE OF ARIZONA ex rel. ARIZONA DEPARTMENT OF ECONOMIC SECURITY,	
Intervenor/Appellee,	

Appeal from the Superior Court in Maricopa County

Cause Nos. FC 2008-005428
FC 2008-092839

The Honorable David M. Talamante, Judge

AFFIRMED

Lorena Garcia Ramirez — Mesa
In Propria Persona Petitioner/Appellee

Chad Everett Broadnax — Phoenix
In Propria Persona Respondent/Appellant

N O R R I S, Judge

¶1 Chad Broadnax ("Father") appeals from the family court's order concerning child custody and parenting time. He challenges the family court's factual findings and asserts the court made numerous errors of law. We disagree and affirm the order.

FACTS AND PROCEDURAL BACKGROUND

¶2 Father and Lorena Ramirez ("Mother") are the parents of a minor child ("Child") born in 2004. On August 7, 2008, Father petitioned to establish custody, parenting time, child support, and also moved for temporary orders.[1] After a temporary-orders hearing, the court awarded joint legal custody with Mother as the primary residential parent. The court gave Father parenting time two days a week.

¶3 Thereafter, law enforcement arrested Mother for interference with judicial proceedings when she did not allow Father to take Child for parenting time.[2] Following the arrest, immigration authorities took custody of Mother, alleging she was an undocumented immigrant. After Mother's release on bond, the court affirmed its previous custody order and changed Father's

[1]Before Father's petition, the State of Arizona, Department of Economic Security ("State"), petitioned to establish child support, and the family court subsequently issued a child-support order and entered judgment against Father for past child support. The court consolidated the child-support action and custody action.

[2]Mother maintained that before her arrest she never saw the court's order granting Father parenting time every Saturday.

parenting time to every other weekend from Friday afternoon through Sunday evening.

¶4 In March 2009, Mother moved for temporary orders to suspend Father's parenting time, alleging inappropriate touching had occurred between Child and one of Father's other children. The court temporarily suspended Father's parenting time but subsequently reinstated it.

¶5 After a trial, the court issued factual findings and ordered joint legal custody with Mother having final decision-making authority "after reasonable consultation with Father." Additionally, the court granted Father parenting time on alternating weekends plus two overnights, one prior to and one after Mother's weekend. Father timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(B) (2003).

DISCUSSION

¶6 First, Father argues the court did not consider Child's best interests in determining custody. We review a family court's decision concerning custody and parenting time for an abuse of discretion. *Owen v. Blackhawk*, 206 Ariz. 418, 420, ¶ 7, 79 P.3d 667, 669 (App. 2003). To find an abuse of discretion, "the record must be devoid of competent evidence" supporting the family court's decision. *Borg v. Borg*, 3 Ariz.

App. 274, 277, 413 P.2d 784, 787 (1966) (quoting *Fought v. Fought*, 94 Ariz. 187, 188, 382 P.2d 667, 668 (1963)).

¶7 When making a custody determination, a court must consider the relevant statutory factors enumerated in A.R.S. § 25-403(A) (Supp. 2010) concerning the child's best interests.[3] If custody is contested, the court must make specific findings on the record about all relevant factors and the reasons why its decision is in the best interests of the child. A.R.S. § 25-403(B).

¶8 The court made findings on the relevant A.R.S. § 25-403(A) factors. It found Child was bonded with both parents, had a positive relationship with the members of each parent's household, and was well adjusted to each parent's home. A.R.S. § 25-403(A)(3)-(4). Additionally, the court determined both parents were mentally and physically able to care for Child, both were capable of allowing frequent and meaningful contact

[3]Those factors are: 1) the wishes of the parents as to custody; 2) the wishes of the child as to custody; 3) the interaction and interrelationship of the child with the parents; 4) the child's adjustment to home, school, and community; 5) the health of the parties involved; 6) which parent is more likely to allow the child frequent and meaningful contact with the other; 7) whether one parent has provided primary care of the child; 8) the nature and extent of coercion or duress used by a parent in obtaining an agreement for custody; 9) whether the parents have complied with the education program requirements; 10) whether either parent was convicted of false reporting of child abuse or neglect; and 11) whether there has been domestic violence or child abuse. A.R.S. § 25-403(A)(1)-(11).

with the other parent, and Mother had been the primary caretaker of Child. A.R.S. § 25-403(A)(5)-(7).

¶9 Father failed to provide this court with transcripts of the family-court proceedings. *See State ex rel. Dep't of Econ. Sec. v. Burton*, 205 Ariz. 27, 30, ¶ 16, 66 P.3d 70, 73 (App. 2003) (appellant is responsible for ensuring the record on appeal contains all transcripts and documents necessary to address the issues raised on appeal); *see also* Arizona Rule of Civil Appellate Procedure ("ARCAP") 11(b)(1) ("If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a certified transcript of all evidence relevant to such finding or conclusion."). When a party fails to include necessary items in the record on appeal, this court must assume the missing items support the family court's findings and conclusions. *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995). Accordingly, based on the court's findings and Father's failure to provide transcripts, we cannot conclude the court failed to consider Child's best interests. *Id*.

¶10 Father appears to challenge how the family court weighed the evidence. For instance, he argues the court did not consider evidence Mother alienated Father from Child, Mother made a false claim of sexual abuse regarding one of Father's

other children,[4] Mother was charged with driving under the influence of alcohol, and Mother's extended family was dangerous. The court expressly considered the Parenting Conference/Statutory Report ("Report"), which contained much of the evidence on which Father relies on appeal.[5] Without a transcript, we assume Mother presented controverting or mitigating evidence and all the evidence supported the court's order. Moreover, we do not re-weigh conflicting evidence on

[4]Father argues the March 2009 temporary order suspending his parenting rights while law enforcement investigated the sexual-abuse allegations violated his constitutional rights. Because Father failed to timely challenge the temporary order by special action, his parenting rights have since been reinstated and a final custody order has been entered, thus the issue is moot and we have no jurisdiction to review the order. *See Villares v. Pineda*, 217 Ariz. 623, 625, ¶ 11, 177 P.3d 1195, 1197 (App. 2008) (temporary orders are not appealable except by special action); Ariz. R. Fam. L.P. 47(M) ("Temporary orders become ineffective and unenforceable . . . following entry of a final . . . order . . . ."). Likewise, Father's due-process argument concerning the temporary-custody order issued in October 2008, which allowed Mother to have parenting time following her release from incarceration, is moot and we lack jurisdiction to consider it. We note, contrary to Father's argument, the family court held an emergency hearing at which Father appeared before issuing the October 2008 order.

[5]To the extent Father's argument can be construed as asserting the court should not have ignored the recommendation in the Report that he be given final decision-making authority, we reject it. Although a court may consider expert opinion in making a child-custody determination, it may not delegate a judicial decision to an expert and must exercise its independent judgment in a custody matter. *DePasquale v. Superior Court*, 181 Ariz. 333, 336, 890 P.2d 628, 631 (App. 1995); *see also* A.R.S. § 25-403(A) ("court shall determine custody"). Accordingly, the court's decision not to adopt a recommendation from the Report does not mean it abused its discretion.

appeal and will not second-guess the family court's credibility determinations. *O'Hair v. O'Hair*, 109 Ariz. 236, 240, 508 P.2d 66, 70 (1973); *Gutierrez v. Gutierrez*, 193 Ariz. 343, 347, ¶ 13, 972 P.2d 676, 680 (App. 1998). Accordingly, based on this record, we cannot conclude the court abused its discretion in determining custody.

¶11 Next, Father argues the family court violated his rights to equal protection (gender bias), due process, and freedom of speech.[6] We review alleged constitutional violations de novo. *State v. McGill*, 213 Ariz. 147, 159, ¶ 53, 140 P.3d 930, 942 (2006).

¶12 Absent a transcript, we cannot determine whether Father raised these issues in the family court and must assume, even under a de novo standard of review, that the family court did not violate Father's constitutional rights. *Baker*, 183 Ariz. at 73, 900 P.2d at 767. Further, our review of the record on appeal supports our assumption the family court did not

[6]Although Father correctly argues he has a fundamental constitutional right to care for Child, the custody order does not deprive Father of this right. *See Diana H. v. Rubin*, 217 Ariz. 131, 134, ¶ 12, 171 P.3d 200, 203 (App. 2007) ("parents have a fundamental liberty interest protected by the Fourteenth Amendment 'in the care, custody, and management' of their children").

violate Father's constitutional rights to equal protection, due process, or freedom of speech.[7]

¶13 Father contends the family court showed bias by not allowing him to properly care for Child. Father fails to cite legal authority or any portion of the record supporting this accusation. *Ritchie*, 221 Ariz. at 305, ¶ 62, 211 P.3d at 1289. Moreover, a judge is presumed to be free of bias and prejudice, and a party challenging a judge's impartiality must overcome this presumption by a preponderance of the evidence. *State v. Ramsey*, 211 Ariz. 529, 541, ¶ 38, 124 P.3d 756, 768 (App. 2005). No evidence in the record points to bias or prejudice, and, to the extent we can infer Father challenges the court's impartiality in light of its decision to give Mother final

[7]Father also contends the court violated his equal-protection rights by threatening him with contempt for his indigence. This court lacks jurisdiction over appeals from civil-contempt orders except those appealed by special action. *Danielson v. Evans*, 201 Ariz. 401, 411, ¶ 35, 36 P.3d 749, 759 (App. 2001); *Holt v. Hotham*, 197 Ariz. 614, 615, ¶ 4, 5 P.3d 948, 949 (App. 2000). Here, the court initiated contempt proceedings after the notice of appeal was filed, which also deprives this court of jurisdiction. *See Navajo Nation v. MacDonald*, 180 Ariz. 539, 547, 885 P.2d 1104, 1112 (App. 1994); *China Doll Rest., Inc. v. Schweiger*, 119 Ariz. 315, 316, 580 P.2d 776, 777 (App. 1978) (appellate court lacked jurisdiction to consider superior-court ruling made "approximately two months after the notice of appeal was filed"). Additionally, although Father filed a notice of appeal from a subsequent minute entry concerning contempt and child support, that appeal was dismissed. *See* ARCAP 15(c). Accordingly, we lack jurisdiction to consider this argument. We note, however, a court may enforce a child-support order by way of contempt. *See Ruhsam v. Ruhsam*, 110 Ariz. 326, 328, 518 P.2d 576, 578 (1974).

decision-making authority for Child, we note adverse judicial rulings do not demonstrate bias or prejudice. *See Smith v. Smith*, 115 Ariz. 299, 303, 564 P.2d 1266, 1270 (App. 1977) ("the bias and prejudice necessary to disqualify a judge must arise from an extra-judicial source and not from what the judge has done . . . in the case").

¶14 Next, Father argues the State represented Mother in the custody proceedings in violation of A.R.S. § 25-509(A), (C) (2007). The State, however, initiated an action for child support. Although the court consolidated the cases, nothing in the record indicates the State participated in the custody proceedings. Moreover, Mother's counsel represented her throughout the family-court proceedings. Accordingly, we reject this argument.

¶15 Father asserts he was disadvantaged because he was unable to hire an attorney. Parties in a civil case have no constitutional right to counsel. *Acolla v. Peralta*, 150 Ariz. 35, 38, 721 P.2d 1162, 1165 (App. 1986); *see also Encinas v. Mangum*, 203 Ariz. 357, 359, ¶ 10, 54 P.3d 826, 828 (App. 2002) (due process is satisfied in civil case if litigants are given opportunity to either hire attorney or represent themselves). In any event, Father retained counsel prior to trial and had counsel at trial. Therefore, this argument has no merit.

¶16 Father contends he has no money to pay Mother's attorneys' fees. The family court awarded Mother $2800 in attorneys' fees plus $262 in costs as a sanction. Before trial, Mother moved for sanctions due to Father's failure to appear at a settlement conference. Father's counsel responded that Father did not attend the settlement conference due to a scheduling error on counsel's calendar. The court considered the motion for sanctions at trial, and, because Father failed to provide a transcript, we assume the court's decision to award attorneys' fees as a sanction was supported by the evidence.

¶17 Finally, Father makes several arguments concerning the child-support hearing and judgment. In September 2008, the court held a hearing and subsequently issued a child-support order.[8] Father did not timely appeal from this order, and we have no jurisdiction to consider it. *See Lee v. Lee*, 133 Ariz. 118, 124, 649 P.2d 997, 1003 (App. 1982) (failure to timely appeal an appealable order deprives this court of jurisdiction to consider the propriety of the order). Even if Father had timely appealed from this order, he did not provide the

[8]In the custody order on appeal, the court referred matters concerning child support and child-support arrearages to the IV-D Commissioner. The commissioner issued additional child-support orders after Father filed his notice of appeal from the custody order. To the extent Father's arguments concern these subsequent orders, we have no jurisdiction to consider them. *See supra* ¶ 12 n.7.

transcript of the hearing and thus we would assume the evidence presented supported the court's order.

CONCLUSION

¶18 For the foregoing reasons, we affirm the family court's order regarding custody and parenting time.

/s/
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PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

/s/
_____
JOHN C. GEMMILL, Judge

/s/
_____
PATRICIA A. OROZCO, Judge