

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



DIVISION ONE
FILED: 06/21/2011
RUTH A. WILLINGHAM,
CLERK
BY: GH

In re the Marriage of:) 1 CA-CV 10-0439
)
MICHAEL DEE SPRINKLE,) DEPARTMENT C
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
)
v.) (Not for Publication -
) Rule 28, Arizona Rules of
VALENTYNA RUZICH SPRINKLE,) Civil Appellate Procedure)
)
Respondent/Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause Nos. FC2005-011856 and FC2006-053575 (Consolidated)

The Honorable Helene F. Abrams, Judge

AFFIRMED

Law Office of John E. Herrick
By John E. Herrick
Attorneys for Petitioner/Appellee

Phoenix

Valentyna Ruzich Sprinkle
Appellant *in propria persona*

Phoenix

O R O Z C O, Judge

¶1 Valentyna Ruzich Sprinkle (Mother) appeals from an
order denying her request to terminate supervised parenting time

and granting sole custody of the parties' two minor children to Michael Dee Sprinkle (Father). For the following reasons, we affirm the order.

PROCEDURAL AND FACTUAL BACKGROUND¹

¶12 The parties have six-year old twins. The parties' marriage was dissolved in 2008 and they were awarded joint legal custody of the minor children. Father was awarded unsupervised parenting time. At that time, Mother and the children resided in Utah and Father lived in Arizona.

¶13 As a result of Father filing a motion to enforce the parenting time orders, the family court held a hearing in April 2008. The court found that Mother was attempting to alienate the children from Father and temporarily granted Father sole custody of the children in Arizona and ordered that Mother have up to six hours a week of supervised parenting time. The court further ordered Mother to undergo a psychological evaluation and recommended a particular psychologist in Arizona, Dr. Almer. Instead, Mother saw Dr. Mejia, a clinical psychologist in Utah.

¹ Mother's appellate briefs do not contain appropriate references to the record and include some documents that were not presented to the trial court. We will not consider documents submitted on appeal that were not considered by the trial court. See *G.M. Dev. Corp. v. Cmty. Am. Mortgage Corp.*, 165 Ariz. 1, 4-5, 795 P.2d 827, 830-31 (App. 1990). However, contrary to Father's contention, Mother did submit a transcript of the April 7, 2010 custody hearing which was considered.

¶14 Dr. Mejia's report to the court indicated that he saw Mother pursuant to the April 2008 order. Dr. Mejia recommended that Mother receive psychological treatment focused on treating paranoia and anxiety, which if successful would permit the children to have access to both parents. He also recommended that her treatment focus on ensuring the children's welfare following Mother's divorce from Father and overcoming the issues that led to her making unfounded allegations, which might be emotionally damaging to the children.

¶15 The court held a status conference following receipt of this report. At that time, the court noted "there may be some financial impediments which make it difficult for Mother" to exercise her supervised parenting time. Nonetheless, the court ordered supervised parenting time to continue and offered other options to assist Mother in exercising her parenting time. The court also encouraged Mother to commence therapy as *recommended by Dr. Mejia* immediately. The court stated that it would reconsider whether Mother was ready for unsupervised parenting time after the therapist provided reports to the court.

¶16 Mother saw several different psychologists over the next year. She began regularly exercising supervised parenting time in September 2008. The parties were unable to agree

whether any of Mother's therapists provided the appropriate counseling as recommended by Dr. Mejia and as ordered by the court. As a result, Mother continued to have supervised parenting time.

¶17 Mother filed a motion to terminate supervised parenting time more than a year after Father obtained temporary sole custody. Father responded and asked the court to make the temporary custody orders permanent and enforce the prior order requiring Mother to undergo psychological treatment prior to any unsupervised parenting time. The court held an evidentiary hearing.

¶18 The family court found that the therapy Mother obtained over the past year did not address issues regarding parental alienation and unfounded allegations of abuse. Rather, the court found the treatment Mother received focused on her being a victim of domestic violence. The parenting coordinator also recommended that Mother have a psychiatric evaluation and possibly medication prior to any unsupervised parenting time. Based on these findings, the trial court denied Mother's request to terminate supervised parenting time. The court also considered all the relevant factors under Arizona Revised Statutes (A.R.S.) section 25-403 (Supp. 2010), and determined that awarding permanent sole custody to Father was in the

children's best interests.² Finally, the court affirmed its prior order "directing Mother to undergo a psychological evaluation" with either Dr. Almer or a mutually agreed upon mental health professional.

¶19 Mother filed a timely notice of appeal from this order. We have jurisdiction pursuant to A.R.S. § 12-2101.B, .C (2003).

DISCUSSION

¶10 Mother contends that the evidence does not support the trial court's decision that it was in the children's best interests to award Father sole custody and continue her supervised parenting time. We review the trial court's custody and parenting time decisions under an abuse of discretion standard. *In re Marriage of Diezsi*, 201 Ariz. 524, 525, ¶ 3, 38 P.3d 1189, 1190 (App. 2002). A court abuses its discretion when the record is "devoid of competent evidence" to support its 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)). An abuse of discretion also occurs when a court commits a legal error "in the process of exercising its

² We cite to the current version of applicable statutes when no revisions material to this decision have since occurred.

discretion." *Fuentes v. Fuentes*, 209 Ariz. 51, 56, ¶ 23, 97 P.3d 876, 881 (App. 2004).

¶11 Mother contends that a modification of the custody order is justified under A.R.S. § 25-411.D (Supp. 2010) because the current custody arrangement seriously endangers the children's physical, mental, moral, and emotional health. Mother argues that Father does not have any health or dental insurance coverage for the children in violation of a court order. Mother testified that at her supervised visits, the children had bruises and used inappropriate language. She testified that they came in shoes that were too small and often had skin rashes.

¶12 Mother's briefs cite several allegations of physical and emotional abuse and mistreatment of the children since Father obtained sole custody in April 2008. Mother testified to some of these incidences during the hearing. Mother admitted that she has called Child Protective Services (CPS), Phoenix Police Department, and the Maricopa County Sheriff's Office to check on the children's welfare because the children swear and cry during her visits and do not eat enough.

¶13 Father testified that he has received about twenty calls from various agencies to follow up on reports from Mother since he gained custody of the children in April 2008. Father

testified that all reports were unsubstantiated and the inquiries frighten the children. The CPS and law enforcement reports found no evidence of abuse or neglect. The parenting coordinator explained that frequent welfare checks would indeed be traumatizing to young children.

¶14 Mother also claims that Father does not always answer when she calls the children, and when she talks to the children, it appears someone is "coaching" them. Father testified that Mother's calls upset the children when she asks if they want to come to her house which is not allowed under the orders.

¶15 Mother repeats allegations of Father's drug use, domestic violence, and other questionable conduct that pre-date the April 2008 custody order. Mother argues that this is contrary to the best interests of the children and the court should not have awarded sole custody to Father. Father's 2007 drug conviction no longer creates a presumption that awarding sole custody to Father is not in the children's best interests. The presumption against awarding custody to a parent with a drug conviction only applies to drug convictions within twelve months of the request for custody. See A.R.S. § 25-403.04.A (2007). Additionally, in 2007 and again in 2008, the court explicitly considered Father's domestic violence and drug convictions and concluded that Father either rebutted the statutory presumptions

against awarding him custody, or else the presumption did not apply. Mother cannot now complain about these rulings.

¶16 The family court concluded that the reports made since Father has had custody of the children have not been substantiated. The evidence supports this conclusion. The parenting coordinator also expressed concern that Mother's repeated unsubstantiated reports to the authorities traumatize the children. Mother's current therapist, Dr. Andrews, was not aware of the dates Mother filed any reports with the authorities and did not offer any opinion as to the appropriateness of Mother's actions.

¶17 We agree with the trial court that there was no credible evidence that Father actually abused or mistreated the children. The court appropriately considered and made findings regarding the statutory factors in A.R.S. § 25-403.A. The evidence supports each of these findings. "The trial court having had the opportunity of observing the demeanor of the parties was in a far better position to determine what would be in the best interest of the [children] and we will be most reluctant to change that determination absent the most compelling of reasons." *Young v. Bach*, 107 Ariz. 180, 181, 484 P.2d 176, 177 (1971).

¶18 Implicit in Mother's argument that Father should no longer have custody is the contention that her parenting time need no longer be supervised. The family court denied Mother's request to terminate her supervised parenting time because the counseling Mother has received since Dr. Mejia's report did not focus on the issues necessary to successfully exercise unsupervised parenting time; i.e., "issues regarding alienation and unfounded allegations."

¶19 The evidence established that Mother's repeated reports to the authorities are unfounded and the subsequent follow up checks are traumatizing to the children. Thus, we agree with the family court that the counseling Mother has participated in has not adequately addressed the issues preventing Mother from exercising unsupervised parenting time. The order for supervised parenting time, therefore, was appropriate.

ATTORNEYS' FEES AND COSTS ON APPEAL

¶20 Father requests an award of his attorney's fees and costs on appeal pursuant to A.R.S. § 25-324 (Supp. 2010). In the exercise of our discretion, we deny his request because there is no current financial information in the record.

CONCLUSION

¶21 For the above mentioned reasons, we affirm the custody and parenting time orders. We also deny Father's request for an award of attorney's fees and costs on appeal.

/S/

PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

DONN KESSLER, Judge

/S/

MICHAEL J. BROWN, Judge