DIVISION ONE
FILED: 06/09/2011
RUTH A. WILLINGHAM, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:	)	No. 1 CA-CV 10-0800 A
	)	
PAIGE GAMBLE-TIKKA,	)	DEPARTMENT D
	)	
Petitioner/Appellee,	)	**MEMORANDUM DECISION**
	)	
v.	)	Not for Publication
	)	(Rule 28, Arizona Rules
HOWARD TIKKA, JR.,	)	of Civil Appellate Procedure)
	)	
Respondent/Appellant.	)	
	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. FC2005-051111

The Honorable John Christian Rea, Judge

AFFIRMED

Mariscal, Weeks, McIntyre & Friedlander, P.A. Phoenix
By Marlene A. Pontrelli
and Robert L. Schwartz
Attorneys for Petitioner/Appellee

The Murray Law Offices, P.C. Scottsdale
By Stanley David Murray
Attorneys for Respondent/Appellant

H A L L, Judge

¶1 Howard Tikka, Jr. (Father) appeals from the family court's order setting forth the reasons it permitted Paige

Gamble-Tikka (Mother) to relocate their minor twin daughters to California. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND[1]

¶2 Father and Mother divorced in April 2006. Pursuant to the custody agreement adopted by the court, the parties shared equal parenting time.[2]

¶3 In June 2008, Mother notified Father of her intent to relocate the children to California and Father petitioned the court to prevent relocation. Following an evidentiary hearing in November 2008, the court issued an order permitting Mother to relocate the children to California (relocation order) and Father appealed. This Court vacated the relocation order because although the family court made the relevant statutory findings, it failed to explain why its decision was in the children's best interest and the reason was not apparent from the findings. *Gamble-Tikka v. Tikka,* 1 CA-CV 09-0149, 1 CA-CV 09-0391 (consolidated), 2010 WL 98198 at *2-4, ¶¶ 9-13 (Ariz.

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[1] Father requests that we disregard the introduction in Mother's answering brief because it contains a combination of factual statements and arguments and because she fails to cite to the record. *See* Arizona Rules of Civil Appellate Procedure 13(a)(4), (6), and 13(b)(1). We disregard those portions of Mother's introduction that contain argument and facts without appropriate citation to the record. We rely on Father's statement of facts and our own review of the record for the appropriate facts. *State Farm Mut. Auto. Ins. Co. v. Arrington,* 192 Ariz. 255, 257 n.1, 963 P.2d 334, 336 n.1 (App. 1998).

[2] The parties received alternate weeks with the children.

App. Jan. 12, 2010) (mem. decision). Accordingly, we remanded for additional findings. *Id.* at *4, ¶ 13.

¶4 On remand, Father requested a hearing and Mother objected. Without holding a hearing, the court affirmed the relocation order, set forth additional findings, and explained why relocation is in the children's best interest. Father appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101(A)(2) (Supp. 2011).

DISCUSSION

¶5 Father argues the family court's reasons for allowing relocation contradict its prior findings and do not establish that relocation is in the children's best interest.

¶6 We review a relocation decision for an abuse of discretion. *Hurd v. Hurd,* 223 Ariz. 48, 52, ¶ 19, 219 P.3d 258, 262 (App. 2009). A court abuses its discretion if there is no competent evidence to support its decision or if the court commits an error of law. *Id.*; *Fuentes v. Fuentes,* 209 Ariz. 51, 56, ¶ 23, 97 P.3d 876, 881 (App. 2004). We accept the court's factual findings unless clearly erroneous or unsupported by any credible evidence. *Hrudka v. Hrudka,* 186 Ariz. 84, 91, 919 P.2d 179, 186 (App. 1995) (citations omitted).

¶7 A court may allow a child to relocate if relocation is in the child's best interests. A.R.S. § 25-408(G) (Supp. 2010). "The burden of proving what is in the child's best interests is

on the parent seeking" relocation. *Id.* In determining a child's best interests, A.R.S. § 25-408(I) identifies eight relevant factors the court must consider, including those "prescribed under § 25-403."

¶8 At the conclusion of the November 2008 hearing, the court made preliminary A.R.S. § 25-403(A) (Supp. 2010) findings, including:

> 4. The children seem essentially well adjusted to the current parenting time schedule and their current schools. Regarding the testimony of some issues in the scheme of co-parenting in separate households, those issues, while significant to the parents, are minor. Essentially, for children being raised by two parents who do not live in the same household, the children are pretty well adjusted.
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> . . .
>
> 7. Since the Decree in 2006, the parents shared equal time with the children; so both parents have provided primary care of the children. Mother has cast herself in the role of the primary decision maker with regard to medical and dental; Father has testified about his involvement. Mother may have a slightly larger role in that area, probably by virtue of her style of parenting. There is no indication that Mother is better equipped, or to the extent that Mother has done it more, that it is because Father is uninterested or neglectful.

The court also determined Mother's move would adversely affect the children's stability whether the children reside in Arizona or California. A.R.S. § 25-408(I)(8).

¶9 In the relocation order, the court issued the following pertinent A.R.S. § 25-408(I) findings:

> 6. . . . Both parents have different and unique qualities that are beneficial to the children. Mother is ambitious in her career, hard working, highly organized, and devoted to the children. Father is nurturing, artistic, and devoted to the children. Given Mother's testimony that she intends to move regardless of whether relocation is granted, the Court finds that the emotional, developmental, and physical needs of the children are slightly better served by moving to California.
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> . . .
>
> 8. The children are likely to be stable in either Arizona or California.

The court also found, pursuant to A.R.S. § 25-403(A), that the children have healthy relationships with both parents and "are well adjusted to the current parenting schedule." A.R.S. § 25-403(A)(3), (4).

¶10 On remand, the court made the following additional findings:

> It was highly significant in this case that Mother testified that she was moving to California regardless of whether her petition to relocate the children was granted. The Court found her testimony credible and accepted it. . . .
>
> Given that the parents would be living in different states and one parent by necessity would become the primary residential parent during the school year, two factors stood out to the Court in favor of Mother: (1) While both parents had care giving

> experience, Mother was significantly more active in scheduling and overseeing health care and education. Mother had an established practice and a history of exemplary care giving. Father had experience but was unproven in how he would perform as the primary care giver without Mother's daily influence. It was clear that Mother would be able to perform successfully as the primary care giver. (2) Both parents acknowledged a substantial difference in their parenting styles. Mother's could be characterized as structured, organized, and focused on achievement for the children and herself. Father's self described style was "organic," which emphasized self discovery, nurturing, and creativity. They are extremely complementary styles. Both are important in the children's maturation. However, if one style is to predominate during the school year, the Court found that Mother's style would better promote the children's emotional, developmental, and physical needs.
>
> The Court reached this conclusion based on the testimony and evidence but also based on its observations of the parents during their testimony on direct and cross-examination during the Evidentiary Hearing.

¶11 Father first contends the finding that Mother would be successful as the primary care giver contradicts the earlier finding that "[t]here is no indication that Mother is better equipped" to be the primary care giver. We disagree. Finding that Mother is not necessarily better equipped does not contradict its finding that Mother has an established practice and history of exemplary care giving and would be successful as the primary care giver. Consistent with its earlier findings,

the court specifically found both parents had care giving experience. As the court explained, however, Mother is more active in scheduling health care visits and overseeing the children's education, which is supported by the record. The court did not subsequently state Mother was better equipped to be the primary care giver, but only that it was clear that she would be successful in that role.

¶12 Father also argues the finding that Mother's parenting style is better suited for the school year contradicts the previous findings that the children are "well adjusted to the current parenting time schedule," have "healthy relationships with both parents" and the parties' issues with co-parenting were minor. Again, we find no conflict. The court originally determined "Mother is ambitious in her career, hard working, [and] highly organized." The court expanded on this finding by explaining Mother's parenting style is "structured, organized, and focused on achievement." At the hearing, Mother testified that she and Father "have two different types of households," hers is "a very structured routine type household" and Father's is less structured. Mother also testified that Father struggles with organization, she set up a system to try and maintain consistency with homework, but Father has misplaced homework and sometimes forgot to include it when exchanging the children. We defer to the family court's assessment of witness credibility as

it is in the best position to make such determination. *Gutierrez v. Gutierrez,* 193 Ariz. 343, 347, ¶ 13, 972 P.2d 676, 680 (App. 1998). Accordingly, although the court found that the children were well adjusted to the prior parenting plan, it did not make inconsistent findings when it determined that Mother's structured and organized parenting style was better suited for the school year.

¶13 Father also contends the court's finding after the hearing that Mother's move would affect the children's stability contradicts the subsequent finding that the children will be stable in either Arizona or California. These findings are not inconsistent. The court determined the children were adjusted to the parenting plan then in place and therefore, Mother's move would affect their stability by significantly decreasing one parent's time with the children and that parent's role in the children's lives. But the court's finding that the children would nevertheless be stable in either state does not result in any conflict. Based on the testimony, we cannot conclude that the court abused its discretion in determining that the children would adjust well to living in California with Mother and thus, be stable in California.

¶14 Next, Father argues the court misapplied the law by basing its decision on only two of the numerous statutory factors. *See Pollock v. Pollock*, 181 Ariz. 275, 278, 889 P.2d

633, 636 (App. 1995) ("no single factor is controlling and . . . all of them should be weighed collectively."). The record does not support Father's argument.

¶15 Although the court stated "two factors stood out . . . in favor of Mother," the court did not base its decision solely on those two factors. The court specifically and thoroughly considered each of the relevant statutory factors.[3] For instance, in the relocation order, the court found Mother's desire to relocate reasonable in light of her employment related reasons and her intent to marry her fiancé,[4] and not based on any intent to interfere with Father's relationship with the children. A.R.S. § 25-408(I)(2); *see also Pollack,* 181 Ariz. at 278, 889 P.2d at 636 ("A very important factor is whether the request to move is made in good faith and not simply to frustrate the other parent's right to maintain contact with the child."). Additionally, the court determined "Mother presented as being very flexible and cooperative in arranging and facilitating parenting time for Father if the children live in

[3] As noted in our previous decision, the court considered and made findings on all of the A.R.S. § 25-408(I) and -403(A) factors. *See Gamble-Tikka,* 1 CA-CV 09-0149, 1 CA-CV 09-0391, 2010 WL 98198 at *3, ¶¶ 10-11.

[4] The court noted Mother's fiancé "is established in California and bound there by family and employment." Additionally, the court found the children "have an affectionate and healthy relationship with Mother's fiancé and his daughter, who is close in age to the girls."

California" and "relocation would allow a realistic opportunity for significant parenting time." A.R.S. § 25-408(I)(4)-(5). All of these findings are supported by the record. The court subsequently affirmed the relocation order "as further supported by [the] additional findings." Thus, the court did not consider only one or two factors to the exclusion of all others. *Cf. Owen v. Blackhawk,* 206 Ariz. 418, 420-21, ¶¶ 8, 12, 79 P.3d 667, 669-70 (App. 2003) (The family court abused its discretion because it did not address all of the factors and "did not elaborate or explain how it weighed any factor," rendering this court unable to determine whether the family court gave inappropriate weight to one factor "to the exclusion of other relevant considerations.").

¶16 Father also contends consideration of the prior findings shows relocation is not in the children's best interest and even if some evidence weighs in favor of relocation, more evidence weighs against it.

¶17 Contrary to Father's argument, the court's original findings do not weigh against relocation, but are essentially neutral and do not collectively favor either parent. *See Gamble-Tikka,* 1 CA-CV 09-0149, 1 CA-CV 09-0391, 2010 WL 98198 at *4, ¶ 13. In addition to the previously mentioned findings, the court determined A.R.S. § 25-408(I)(3) was neutral as to the children because although moving to California might improve

Mother's life, nothing in the schools or community would improve the children's quality of life. Further, the court found both parents would likely comply with parenting time orders, neither parent's position is based on a motivation to achieve a financial advantage, both parents are fit and proper parents, and both have been flexible and cooperative since their divorce in adjusting parenting schedules and are exemplary in promoting the other parent's relationship with the children. A.R.S. § 25-408(I)(4), (7); -403(A)(5), (6). With most factors being neutral and two factors weighing in favor of relocation, the court appropriately explained which factors influenced its decision. *Cf. Reid v. Reid,* 222 Ariz. 204, 207, ¶ 13, 213 P.3d 353, 356 (App. 2009) (vacating a custody order because the family court failed to make adequate findings, did not provide explanation about the children's best interest, and this court was unable to ascertain how the family court weighed the applicable statutory factors). We cannot say the court abused its discretion by determining certain factors were more important than others or by giving more weight to certain evidence under these circumstances.[5] *Hurd,* 223 Ariz. at 52, ¶ 16, 219 P.3d at 262.

[5] Father argues the court was erroneously influenced by Mother's argument that the children need a female role model. Although the court mentioned this argument in the relocation order, we noted such argument "may not support a relocation

¶18 Finally, Father argues the court should have held an evidentiary hearing prior to issuing its decision on remand because the existing record did not support a finding that relocation was in the children's best interest. We disagree. We remanded this matter with instructions for the court to explain the reasons why its decision is in the children's best interest. *Gamble-Tikka,* 1 CA-CV 09-0149, 1 CA-CV 09-0391, 2010 WL 98198 at *3, *4, ¶¶ 11, 13. Although the court could have held an additional hearing, it was not required to do so and the record supports the supplemental findings. Moreover, the court stated that it reviewed the audio and video recording of the evidentiary hearing as well as its notes from the hearing in making the additional findings. Contrary to Father's argument, this court did not opine that the record did not support a finding that relocation was in the children's best interest, but only that the family court's findings did not explain how it reached its decision. *Id*. Because the court adequately considered the evidence presented at the hearing, and its

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decision[.]" *See Gamble-Tikka,* 1 CA-CV 09-0149, 1 CA-CV 09-0391, 2010 WL 98198 at *3, ¶ 12. On remand, the court clarified it acknowledged the argument "but did not agree with it."

findings are supported by the record, there was no need for another hearing.[6]

¶19 Both parties request attorneys' fees on appeal pursuant to A.R.S. § 25-324 (Supp. 2010). Section 25-324(A) gives the court discretion to award attorneys' fees "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings." Because neither Mother nor Father provided this court with current information regarding their respective financial resources,[7] and both parties adopted reasonable positions on appeal, we decline to award fees to either party. As the prevailing party, however, we award Mother her costs on appeal. A.R.S. § 12-341 (2003).

CONCLUSION

¶20 For the foregoing reasons, we affirm the court's supplemental relocation order.

_/s/_____
PHILIP HALL, Judge

CONCURRING:

_/s/_____
PATRICK IRVINE,
Presiding Judge

_/s/_____
JOHN C. GEMMILL, Judge

[6] In light of our decision affirming the relocation order as supplemented, we need not address Father's argument concerning the proper disposition of this case on remand.

[7] A child support worksheet filed in April 2006 shows the parties, at that time, had equal incomes.