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



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

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

In re the Matter of: ) 1 CA-CV 11-0046  
)  
DEJA ANDREA CORREIA, ) DEPARTMENT A  
)  
Petitioner/Appellant, ) **MEMORANDUM DECISION**  
) (Not for Publication -  
v. ) Rule 28, Arizona Rules of  
) Civil Appellate Procedure  
WILLIAM JOSEPH GLEASON, III, )  
)  
Respondent/Appellee. )  
\_\_\_\_\_ )

Appeal from the Superior Court of Maricopa County

Cause No. FC2005-092628

The Honorable James P. Beene, Judge

**AFFIRMED**

Knapp & Roberts, P.C.  
By David L. Abney  
Attorneys for Petitioner/Appellant

Scottsdale

Michael E. Hurley  
Attorney for Respondent/Appellee

Phoenix

**T H O M P S O N, Judge**

¶1 Deja Andrea Correia (mother) appeals from the trial court's denial of her motion to relocate the parties' child

(child) to San Diego, California. For the reasons that follow, we affirm the decision of the trial court.

### **FACTUAL AND PROCEDURAL HISTORY**

¶2 Mother and child's father, William Joseph Gleason, III (father) were never married, but they lived together until child was seven years old. In 2006, the superior court awarded the parties joint legal custody of child. Mother was designated the primary residential parent. Father had parenting time on weekends.

¶3 In July 2010, mother sent father a letter of intent to relocate child, who was then thirteen years old, to San Diego. Father filed a petition to prevent the relocation. In September 2010, the trial court held an evidentiary hearing, and declined to interview child in camera after father objected. Subsequently, the trial court awarded the parties joint legal custody of child and granted father's petition to prevent relocation and designated father primary residential parent, with substantial parenting time for mother. Mother relocated to San Diego where she lives with her husband and son and has employment in the mortgage business.

### **DISCUSSION**

¶4 Mother raises one issue on appeal: whether the trial court abused its discretion by not asking child directly about her preference before ruling on the relocation issue. Arizona

Revised Statutes (A.R.S.) § 25-408(G) (Supp. 2009) requires the trial court to determine whether relocation is in the child's best interests and places the burden of proof on the parent seeking to relocate the child. A.R.S. § 25-408(I) sets forth eight factors the court shall consider in determining the child's best interests in a relocation case, including "[t]he factors prescribed under § 25-403." A.R.S. § 25-408(I)(1). Section 25-403(A) (Supp. 2009) sets forth eleven factors which the trial court shall consider when determining custody of a child in accordance with the child's best interests. One factor the court shall consider is "[t]he wishes of the child as to the custodian." A.R.S. § 25-403(A)(2). However, "[t]he child's desires are important but not necessarily controlling." *Bailey v. Bailey*, 3 Ariz. App. 138, 141, 412 P.2d 480, 483 (1966) (citation omitted). We review the trial court's custody decision under an abuse of discretion standard. *Owen v. Blackhawk*, 206 Ariz. 418, 420, ¶ 7, 79 P.3d 667, 669 (App. 2003) (citation omitted).

¶5 Mother acknowledges that the trial court heard evidence about child's preference regarding the relocation from both parents and from her counselor before making his decision.<sup>1</sup>

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<sup>1</sup> Mother does not contend that the trial court did not consider evidence on this point. The trial court's minute entry order, which quotes A.R.S. § 25-403(A) and contains findings as to each factor, states however that no evidence was presented regarding

We find no abuse of discretion in the trial court's decision not to personally interview child. Interviewing the child in a custody case is permissive, not mandatory. See A.R.S. § 25-405(A) (2007) ("The court *may* interview the child in chambers to ascertain the child's wishes as to the child's custodian and as to parenting time.") (emphasis added). See also *In re Marriage of Turek*, 817 P.2d 615, 616 (Colo. Ct. App. 1991) (statute authorizing court to interview a child in chambers to determine child's wishes regarding custody issues does not mandate such an interview); 24A Am. Jur. 2d *Divorce and Separation* § 884 (2011) (court's private interview with child). Mother cites *Stringer v. Vincent*, 411 N.W.2d 474 (Mich. Ct. App. 1987), for the proposition that it was reversible error not to interview child, but we decline to rely on that case. In *Stringer*, the trial court made a custody decision without holding any evidentiary hearing, and based its ruling on the pleadings and a friend of the court report. 411 N.W.2d at 476. The Michigan Court of Appeals stated, "[t]he trial court could not have considered the eleven factors set out in the definition of a child's best interests since it had been presented with no evidence." *Id.* Unlike the trial court in *Stringer*, the court in this case held

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child's wishes. Nevertheless, it is clear from the transcript and the counselor's report, which the judge discussed with the attorneys, that the court did have the evidence, albeit conflicting evidence, regarding child's wishes. Mother takes issue only with the lack of an in camera interview.

an evidentiary hearing and had before it evidence about child's preference.

¶6 Here, the evidence was that child gave different opinions as to where she wanted to live at different times. The trial court had the counselor's report from September 2010, wherein child told her counselor that she had always lived with her mother and wanted to continue living with her. Mother testified that child wanted to live with her in San Diego. Father acknowledged that child told the counselor that she wanted to live with mother, but testified that she also told him that she wanted to live with him. It was within the trial court's discretion to rely on the testimonial evidence of both parties and the counselor's report regarding child's preference and not conduct an interview. We further note that the trial court also properly considered the remaining factors set forth in A.R.S. §§ 25-408(I) and 25-403(A), and was clearly troubled by the impact mother's decision to relocate would have on child's on-going relationship with father. We can find no abuse of discretion on the facts of this case. The question of whether a child of a certain age must be interviewed by the trial court every time there is a custody dispute is a question for the legislature.

**Attorneys' Fees on Appeal**

¶7 Father requests an award of attorneys' fees and costs on appeal pursuant to A.R.S. § 25-324 (2007) and Arizona Rule of Civil Appellate Procedure 21(c). Mother did not take unreasonable positions on appeal, and based on the parties' financial resources, we deny father's request for attorneys' fees and costs.

**CONCLUSION**

¶8 For the foregoing reasons, we affirm the decision of the trial court.

/s/

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JON W. THOMPSON, Judge

CONCURRING:

/s/

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DIANE M. JOHNSEN, Presiding Judge

/s/

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MARGARET H. DOWNIE, Judge