DIVISION ONE
FILED: 05/07/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:	)	No. 1 CA-CV 11-0607 A
	)	
WILLIAM DALE COUPLAND, JR.,	)	DEPARTMENT D
	)	
Petitioner/Appellant,	)	**MEMORANDUM DECISION**
	)	Not for Publication
v.	)	(Rule 28, Arizona Rules
	)	of Civil Appellate Procedure
SIERRA MARIE MELLO-COUPLAND,	)	
	)	
Respondent/Appellee.	)	
	)	
_____	)	

Appeal from the Superior Court in Maricopa County

Cause No. FC2011-050006

The Honorable Douglas Gerlach, Judge

AFFIRMED

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

Danny L. Klein — Scottsdale
Attorney for Respondent/Appellee

G E M M I L L, Judge

¶1 William Coupland, Jr. ("Father") appeals the family court's orders in the final decree of dissolution. This is an

accelerated appeal in accordance with Arizona Rule of Civil Appellate Procedure 29. Father takes issue with the orders concerning relocation of the parties' two children, child support award amounts, and the allocation of travel expenses. For the reasons that follow, we affirm the family court's decision.

FACTUAL AND PROCEDURAL HISTORY

¶2 Father married Sierra Mello-Coupland ("Mother") in September of 2007. The couple had two daughters born during the marriage. Father has two sons and one other daughter from previous relationships. During the marriage, the family sustained some financial difficulties including a failing business, home foreclosure, and at least two household moves. Following the foreclosure of the family home in Phoenix, the family moved nearby to Father's parents' home very briefly, and then moved to Alaska for approximately two months. After the financial difficulties, Mother had discussions with Father and then Mother relocated to Jefferson, Wisconsin in January 2011, taking the couple's two daughters with her. Mother's relatives offered her employment and the chance to take over their mortuary business. Mother attends mortuary classes and lives with her step-aunt and uncle who own a funeral home in Wisconsin.

¶3 Father filed for legal separation from Mother in

January of 2011. Mother responded to Father's petition and sought dissolution of the marriage. Father amended his petition and the court allowed the action to move forward as a dissolution of marriage proceeding. The parties participated in a bench trial in June of 2011. The family court dissolved the marriage and determined that it was in the best interest of the children to remain in Wisconsin with Mother. Mother was also awarded $572.01 in monthly child support.

¶4 Father filed a consolidated motion for reconsideration and a motion to amend the decree of dissolution after trial. The family court denied Father's motions after further briefing by both parties.

¶5 Father timely appeals and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A) (Supp. 2011).[1]

ANALYSIS

The Family Court Did Not Abuse Its Discretion By Allowing The Children To Relocate To Wisconsin With Mother

¶6 Father argues that there was insufficient evidentiary support in the record for the family court to make a finding that Mother's relocation to Wisconsin with the parties' daughters was in their best interest. Father supports his

[1] Unless otherwise specified, we cite the current versions of statutes when no material revisions have been enacted since the events in question.

argument by claiming that the family court did not properly assess the best interest factors provided in A.R.S. §§ 25-408(I) (Supp. 2011) and 25-403 (Supp. 2011). We disagree.

¶7 We review a family court's decision to allow relocation of children for an abuse of discretion. *See Hurd v. Hurd*, 223 Ariz. 48, 52, ¶ 19, 219 P.3d 258, 262 (App. 2009). The family court is required to make specific findings on the record supporting its decision that relocation is in the best interests of the children. *Id.* at ¶ 20; *see also Owen v. Blackhawk*, 206 Ariz. 418, 420-422, ¶¶ 8, 12, 79 P.3d 667, 669-71 (App. 2003) (requiring the trial court to explain how it weighed the relocation factors). The family court is required to consider "all relevant factors," in accordance with A.R.S. § 25-408(I), including:

> 1. The factors prescribed under § 25-403.
>
> 2. Whether the relocation is being made or opposed in good faith and not to interfere with or to frustrate the relationship between the child and the other parent or the other parent's right of access to the child.
>
> 3. The prospective advantage of the move for improving the general quality of life for the custodial parent or for the child.
>
> 4. The likelihood that the parent with whom the child will reside after the relocation will comply with parenting time orders.
>
> 5. Whether the relocation will allow a

realistic opportunity for parenting time with each parent.

6. The extent to which moving or not moving will affect the emotional, physical or developmental needs of the child.

7. The motives of the parents and the validity of the reasons given for moving or opposing the move including the extent to which either parent may intend to gain a financial advantage regarding continuing child support obligations.

8. The potential effect of relocation on the child's stability.

¶8 The family court's ultimate conclusion regarding the § 25-408(I) factors is as follows:

> No credible evidence suggested (i) that Mother's motive for moving was in bad faith, had anything to do with gaining a financial advantage regarding child support obligations, or was designed to frustrate Father's efforts to have contact with the child[ren], (ii) that Mother is unlikely to comply with parenting time orders, (iii) that Mother's reasons for moving were in any way inappropriate, or (iv) that the move will adversely affect the children's emotional, physical, or developmental needs, or threaten their stability. The evidence also established that the children will benefit by the relocation and that the move will improve the quality of Mother's life. As for whether Father will have a realistic opportunity for parenting time, the fact is that whichever way the [c]ourt rules will restrict one of the parent's parenting time.

¶9 There is ample evidence in the record to support Mother's choice to relocate to Wisconsin and to support the family court's rationale for finding in Mother's favor. We

address the family court's findings based on the statutory factors below.

¶10 First, the evidence supports that Mother's move was not made in bad faith and that Mother's life would be improved by the move. Mother was unemployed for a time in Arizona because she gave birth by C-section to the youngest daughter in 2010. The family business deteriorated and was approximately $20,000 in debt. The family lost its home because of foreclosure and eviction proceedings. The family's status was uncertain; after losing the family home, they lived with Father's parents here in Arizona, and then moved to Alaska for almost two months. Mother's relatives offered her a paid internship with their funeral home business including an option to take over that business, and a place for her and her daughters to live.[2]

¶11 Second, Mother demonstrated that she was likely to comply with parenting time orders. *See infra* ¶¶ 21-24. She testified that she was providing Father with weekly updates about events in their daughters' lives which also included photos sent in weekly emails. Mother provided an established phone schedule for Father to phone or Skype his daughters. Further, at one point, Father stopped making contact with the

[2] We note that Father was also welcome to live in the home in Wisconsin prior to the dissolution proceedings, but Father chose to remain in Arizona.

children and Mother attempted to reinitiate contact without success.

¶12 Next, the family court found that Mother's reasons for moving were not inappropriate and that the children's needs were not adversely affected by the move. According to Mother, the six months prior to her move were "chaos." After losing the home, the family moved to Alaska for almost two months to live with Mother's mother.

¶13 Now in Wisconsin, Mother stated that her daughters have a fixed schedule and an effective routine. Mother testified that her daughters' daycare programs were organized, offering enrichment and numerous activities. Mother's step-aunt, who owns the funeral home and had previously operated an in-home daycare, testified that the children were well adjusted, had a set routine, and demonstrated increasingly more security while in Wisconsin. Mother also testified that she could now put more effort into the children's needs as opposed to "trying to pay bills" while running the failing Arizona business. Additionally, Mother told Father that he did not have to "worry about [the kids] running out of diapers or . . . formula, because [her] aunt and uncle provide everything."

¶14 Furthermore, there was some evidence in the record that Father was considering a move to Wisconsin with Mother prior to the dissolution; Father signed a job application for a

position at the local Jefferson, Wisconsin, water department. And during cross-examination, Father was asked whether he gave "any indication that [he was] going to move to Wisconsin." Father replied that he thought "it would be a good idea."

¶15 Therefore, based on A.R.S. § 25-408(I) (relocation factors), we conclude that the evidence supports the family court's determination that Mother's relocation to Wisconsin was in the best interest of her children.

¶16 In A.R.S. § 25-408(I), the family court is required to perform further factual analysis by evaluating the factors found within A.R.S. § 25-403(A) in order to determine the children's best interests. The factors in § 25-403(A) include:

> 1. The wishes of the child's parent or parents as to custody.
>
> 2. The wishes of the child as to the custodian.
>
> 3. The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest.
>
> 4. The child's adjustment to home, school and community.
>
> 5. The mental and physical health of all individuals involved.
>
> 6. Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent. This paragraph does not apply if the court determines that a parent is acting in

good faith to protect the child from witnessing an act of domestic violence or being a victim of domestic violence or child abuse.

7. Whether one parent, both parents or neither 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 regarding custody.

9. Whether a parent has complied with chapter 3, article 5 of this title.

10. Whether either parent was convicted of an act of false reporting of child abuse or neglect under § 13-2907.02.

11. Whether there has been domestic violence or child abuse as defined in § 25-403.03.

¶17 We will address the specific § 25-403(A) factors relevant to this appeal. Father's arguments center initially on the third factor: the relationship with parents, other siblings, and any other person of importance to the children. The family court determined that there was "[n]o evidence . . . that would weigh more heavily in favor of one parent than the other." Father testified at trial that he had two older teenage sons that had bonded with the children. He also stated that his daughters frequently interacted with his parents and other extended family. Father provided numerous photographs as evidence of the bonds created between the extended family, his sons, and his young daughters.

¶18 Conversely, Mother testified that she did not believe that two maturing teenage boys would want to spend a lot of time with their sisters, ages three and one. She also stated that she felt that phone and Skype contact, along with visitation, was sufficient to maintain the relationships. Other than the relationship with her step-aunt and uncle, Mother offered no additional evidence of familial relationships in Wisconsin.

¶19 The family court is charged with evaluating witness credibility and sincerity, weighing the evidence, assessing all the tangible and intangible factors, and making the necessary findings and conclusions. "We will defer to the trial court's determination of witnesses' credibility and the weight to give conflicting evidence." *Gutierrez v. Gutierrez*, 193 Ariz. 343, 347, ¶ 13, 972 P.2d 676, 680 (App. 1998). We cannot say that the family court abused its discretion when it evaluated this factor.

¶20 Father also challenges the family court's findings for the fifth factor: Mother's mental health. The family court found that Fathers claim "that Mother has mental health issues, . . . was not supported by persuasive evidence." Both Father and Mother testified that Mother had suffered from Post Traumatic Stress Disorder based on her service in the military. Yet, Father testified to limited effects such as Mother's vivid dreams, that she startled easily, and that she disfavored loud

noises. Father further stated, incongruously, that his concern for Mother's mental health was not related to her parenting capabilities. We conclude, therefore, that the evidence supports the family court's finding that there was not enough persuasive evidence to substantiate that Mother had a mental health issue that was detrimental to the children.

¶21 Addressing the next factor, the family court was concerned about the parents' inability to effectively communicate with each other and whether Father's continuing contact with his children (the sixth factor) may have been affected. After evaluating the sixth factor, the family court concluded:

> Although the evidence suggested that the parents' inability to communicate and work cooperatively has affected Father's ability to spend time with the children in a manner that he believes is appropriate, . . . the [c]ourt notes merely that it takes the parties at their word when they say that, going forward, they both hope that the children are able to establish stable and beneficial relationships with both parents.

¶22 Our reading of the record sheds light on this issue. Essentially, Mother created a schedule to provide stability for her daughters and Father felt like he was subject to Mother's dictates –- something Father bristled about. Mother did refuse to give Father the children's daycare provider information. Mother also refused to allow the girls to travel to Arizona

until court orders were in place. Moreover, Mother traveled to Arizona at least three times and only brought the children with her once.

¶23 Nonetheless, Mother may have had good reason for limiting the contact; she was concerned about Father's harassment by phone, mail, and email. Mother had the Jefferson Police Department document several harassing text messages and voicemails left by Father. Mother also told Father that he was free to visit the children in Wisconsin, but Father never exercised that option. Furthermore, Mother testified that both she and Father agreed to the set phone contact schedule and that Father failed to maintain the set time for contacting his daughters and he eventually ceased all contact.

¶24 The record supports the family court's evaluation of this factor and the family court did not abuse its discretion when it addressed this factor. Both parents were not without fault for the lack of communication and subsequent breakdown in Father's meaningful contact with his children. And the family court put the onus on the parents, moving forward, to create proper channels of communication and opportunities for contact with the children.

¶25 Next, Father asserts that the family court erred by finding that Mother was the primary care parent pursuant to the seventh factor. The family court found that Father's assertion

that both parents cared for the children jointly was "contradicted by testimony establishing that, while the parties lived together, Mother was a stay-at-home Mother while Father worked."

¶26 Father argues that they spent equal time parenting the children. We are not persuaded by Father's argument. Father testified that Mother took care of the children eighty percent of the time because he was working. Mother also corroborated Father's admission; she testified that she had been the primary caregiver for her daughters since they were born. This testimony provided sufficient evidence supporting the family court's conclusion that Mother was the primary caretaker for the children. We conclude the family court did not err.

The Family Court Did Not Err in Calculating Mother's Child Support Contribution

¶27 Father argues that the family court incorrectly calculated Mother's current income. Father further contends that Mother is voluntarily underemployed and therefore, the family court should have attributed a higher monthly income to her.

¶28 We review orders for child support for an abuse of discretion. *See McNutt v. McNutt*, 203 Ariz. 28, 30, ¶ 6, 49 P.3d 300, 302 (App. 2002). We review a family court's application of the Arizona Child Support Guidelines

("Guideline(s)") found in the appendix to A.R.S. § 25-320 (Supp. 2011) *de novo*. *See Strait v. Strait*, 223 Ariz. 500, 502, ¶ 6, 224 P.3d 997, 999 (App. 2010).

¶29 The family court concluded that Mother's gross monthly income for child support purposes was $2,024. Although the court did not explain how it calculated the $2,024 entered on the Child Support Worksheet for Mother's gross monthly income, the evidence and the court's discretion support this figure. Mother's income, based on her affidavit of financial information was $1,917 (although we note that Mother does not dispute the $2,024 used by the court). The sum of $1,917 included $400 of monthly income plus $1,517 of public assistance income. After reviewing Mother's affidavit for financial information, we note that she did not account for any expenses paid by her employer, such as lodging. Mother testified, however, that she was receiving housing from her employer which was worth $750 a month on an income imputed basis.

¶30 Pursuant to Guideline 5(A), "[g]ross income includes income from any source." However, the Guidelines also exclude income based on means-tested public assistance programs. *See* Guideline 5(B). Here, Mother's employer stated that she was paying Mother a wage of $400 per month. Mother's other source of income was derived from Wisconsin public assistance programs ("Foodshare," and childcare assistance) in an amount totaling

$1,517 per month.

¶31 We cannot say based on this record that the family court incorrectly determined the child support amount to Father's detriment. The family court could have found that Mother's gross monthly income was $400 in wages plus $750 for lodging ($1,150 total after excluding public assistance income). This would mean that Father could potentially have to contribute more in monthly child support. Alternatively, the court may have attributed the $2,024 in income to Mother based on a minimum wage calculation plus the $750 for lodging expenses. *See* A.R.S. § 25-320(N) (stating that the court should presume a parent is capable of earning at least minimum wage).

¶32 Father argues that the court should have begun with Mother's income figure of $1,917 and then added the $750 for Mother's paid lodging, bringing the total to $2,667. Under Guideline 5(B), however, Mother's income may not include the public assistance payments. As noted above, Father also argues that the court should have attributed more income to Mother based on her education and past earnings. As explained above, the court may have, in fact, attributed more income to Mother than she is actually earning, to reach the $2,024 figure. On this record, we will not disturb the family court's child support calculations because we find no abuse of discretion.

¶33 In further regard to Father's underemployment

argument, we note that the Guidelines allow the family court to consider the reasons one parent may be working below her full earning capacity, and as a remedy, the court has discretion whether to attribute income to the underemployed spouse. *See* Guideline 5(E); *Engel v. Landman*, 221 Ariz. 504, 510-11, ¶ 22, 212 P.3d 842, 848-49 (App. 2009) (discussing attribution of income for underemployed spouse); *Little v. Little*, 193 Ariz. 518, 521, ¶ 6, 975 P.2d 108, 111 (1999) (citing the Guidelines and acknowledging that voluntary reduction in income without reasonable cause is grounds for imputing higher income to the parent). The Guidelines provide examples for which the family court may "decline to attribute income to either parent." Guideline 5(E). For example, and pertinent to the case before us, the family court may forgo income attribution when: "A parent is engaged in reasonable career or occupational training to establish basic skills or reasonably calculated to enhance earning capacity." *Id.* Moreover, the family court is required to balance the best interests of the children against the parent's beneficial interest in voluntary underemployment. *Id.*

¶34 Here, the family court determined that "[b]ased on the evidence presented and the weight . . . to that evidence, the [c]ourt finds that Mother is able to offer the children a living environment in Wisconsin that is better than the living environment here [in Arizona]." The family court further

concluded that "the children will benefit by the relocation and that the move will improve the quality of Mother's life."

¶35 We understand Father's concerns. Mother has a bachelors degree and an MBA, and Mother stated that she made over $38,000 in 2008 while in Arizona. Now Mother is earning $400 per month and living off Wisconsin state assistance while enrolled in mortuary school.

¶36 However, based on the factors in §§ 25-408(I), 25-403(A), and our analysis above, we conclude that the family court acted within its discretion in finding that Mother's underemployment was reasonable and in the best interest of the children.

The Family Court Correctly Apportioned Travel Expenses

¶37 Father also asserts the family court should have directed Mother to pay a greater share of the travel expenses because her relocation to Wisconsin created severe restrictions on his parenting time. We disagree.

¶38 "We review the allocation of travel expenses for an abuse of discretion." *Cook v. Losnegard*, 228 Ariz. 202, ___, ¶ 9, 265 P.3d 384, 386 (App. 2011). "In making such decisions, 'the court shall consider the means of the parents and may consider how their conduct (such as a change of residence) has affected the costs of parenting time.'" *Id.* (quoting Guideline 18). *See also In re Marriage of Robinson*, 201 Ariz. 328, 335, ¶

19, 35 P.3d 89, 96 (App. 2001) (affirming the allocation of travel expenses equally when the family court was aware that one parent had moved and it contemplated the parties' respective financial conditions).

¶39 The family court ordered the parties to split the travel expenses fifty-fifty so that Father could exercise his parenting time with the children. The family court considered both parties' finances as recorded in the Child Support Worksheet. According to the Worksheet, Father's gross monthly income is more than twice Mother's gross monthly income. Moreover, both Father and Mother testified about their respective financial positions. Based on the income disparity, the family court could have exercised its discretion and ordered Father to pay more than fifty percent of the travel expenses. The court found that Mother's choice to relocate was without "bad faith," not intended to gain "financial advantage," and not done to "frustrate Father's efforts to have contact with the child[ren]." We assume the family court accounted for Mother's potentially unilateral decision to move to Wisconsin and apportioned the travel costs correspondingly.

¶40 No doubt there are added expenses incurred by flying a parent or multiple children back and forth from Arizona to Wisconsin. However, the court balanced the increased expenses based on the family's current geographic limitations

proportionally. The court determined that the children would "benefit by the relocation." Although Mother chose to relocate, both Mother and Father are obligated to preserve parenting time for Father's continued involvement in the children's lives; on this issue, by order of the court, they are doing so equally.

¶41 Based on this record, the family court properly and reasonably exercised its discretion to equally apportion the travel expenses.

CONCLUSION

¶42 For the foregoing reasons, we conclude that the family court did not abuse its discretion and we affirm the decree of dissolution.

¶43 Both parties request reasonable attorneys' fees and costs on appeal under A.R.S. § 25-324 (Supp. 2011), but after reviewing the parties' finances and their respective positions on appeal, we decline to award attorneys' fees to either party. We will award Mother her taxable costs contingent upon her compliance with Arizona Rule of Civil Appellate Procedure 21.

/s/
JOHN C. GEMMILL, Presiding Judge

CONCURRING:

/s/
PETER B. SWANN, Judge

/s/
ANDREW W. GOULD, Judge