IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE THE MARRIAGE OF:

YORDY PURNOMO,
Petitioner/Appellant,

and

SHELVY GUNTORO,
Respondent/Appellee.

No. 2 CA-CV 2014-0108
Filed April 15, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. D20130772
The Honorable Alyce L. Pennington, Judge Pro Tempore

AFFIRMED IN PART; DISMISSED IN PART

COUNSEL

Law Office of Lawrence Y. Gee, P.L.L.C., Tucson
By Lawrence Y. Gee
Counsel for Petitioner/Appellant

MEMORANDUM DECISION

Judge Howard authored the decision of the Court, in which Presiding Judge Kelly and Judge Espinosa concurred.

H O W A R D, Judge:

¶1 Appellant Yordy Purnomo appeals from a decree of dissolution that awarded appellee Shelvy Guntoro primary parenting time with their minor son, B.P., and granted her leave to relocate to Indonesia with B.P. He also appeals from a post-decree order directing him to retain a portion of the equalization payment he owed to Guntoro as security for her compliance with the decree. For the following reasons, we affirm the decree, but we dismiss his appeal from the post-decree order.

Factual and Procedural Background

¶2 "We view the facts in the light most favorable to upholding the trial court's ruling[s]." *Hammoudeh v. Jada*, 222 Ariz. 570, ¶ 2, 218 P.3d 1027, 1028 (App. 2009). In March 2013, Purnomo filed a petition for dissolution in which he requested "primary legal and physical custody" of B.P. In response, Guntoro requested sole custody and, later during the dissolution proceedings, filed a petition requesting permission to relocate with B.P. to Indonesia, where both parties were from, where they had married, and of which both were citizens. After a trial on both the petition for dissolution and the petition for leave to relocate, the court entered a decree of dissolution in which it granted joint legal decision-making to both parties, primary parenting time to Guntoro, and leave for Guntoro and B.P. to relocate.

¶3 Following entry of the decree, Purnomo filed both a notice of appeal and a motion to stay the relocation determination pending his appeal. He then requested a stay of the relocation determination from this court. We granted the stay and remanded the matter for consideration of whether any security should be imposed on Guntoro to ensure her compliance with the decree while

residing in Indonesia, which the trial court had determined was unlikely to "recognize a United States order regarding parenting time and decision-making." On remand, the court ordered Purnomo to retain $20,000 of an equalization payment he owed to Guntoro as security for her ongoing compliance with the decree over the next six years.

¶4 We have jurisdiction over Purnomo's appeal from the decree of dissolution pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1), but as explained below, we do not have jurisdiction over his appeal from the post-decree order.[1]

Parenting Time Determination

¶5 Purnomo first argues the trial court abused its discretion in granting primary parenting time to Guntoro because "the . . . court's findings [were] inadequate to satisfy the requirement of A.R.S. § 25-403(B)" and, to the extent the court made any findings, its best-interests determination was "meaningless and inherently not in the best interest of the child" because Indonesian courts will not enforce the decree of dissolution. He also contends the court abused its discretion by making factual findings that were clearly erroneous. We review a court's decision on parenting time for an abuse of discretion. *Nold v. Nold*, 232 Ariz. 270, ¶ 11, 304 P.3d 1093, 1096 (App. 2013).

¶6 A trial court's failure "to make specific findings regarding the reasons why its decision is in the [child's] best interests" pursuant to § 25-403 "in an order or on the record" is an abuse of discretion. *Id.* But, so long as the court makes the requisite findings, we will not disturb those findings if substantial evidence in the record supports them. *Hurd v. Hurd*, 223 Ariz. 48, ¶ 16, 219 P.3d 258, 262 (App. 2009). And we will uphold the court's ultimate

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[1]Guntoro did not file an answering brief in this case, and, in our discretion, we may regard this failure to file as a confession of error. *See In re Marriage of Diezsi*, 210 Ariz. 524, ¶ 2, 38 P.3d 1189, 1190 (App. 2002). We decline to exercise our discretion to do so, however, "because a child's best interests are involved." *Id.*

determination on parenting time unless "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).

¶7 Section 25-403(B) states that, "[i]n a contested legal decision-making or parenting time case, the court shall make specific findings on the record about all relevant factors and the reasons for which the decision is in the best interests of the child." The relevant factors include the eleven factors listed in § 25-403(A). The rationale for requiring specific findings is both to aid appellate review of the court's decision and "to provide the family court with a necessary baseline against which to measure any future petitions by either party based on changed circumstances." *Reid v. Reid*, 222 Ariz. 204, ¶ 18, 213 P.3d 353, 358 (App. 2009) (internal quotation marks omitted).

¶8 Although Purnomo argues the trial court failed to make specific findings in compliance with § 25-403, he admits "the trial court's decree lists and discusses the factors enumerated in . . . § 25-403(A)." And the decree of dissolution clearly shows the court considered and made findings under each and every factor listed in § 25-403(A) and explains the court's reasons for granting primary parenting time to Guntoro. Thus, the decree sets forth the "necessary baseline" required by § 25-403 and was sufficient to comply with the statute's specific findings requirement. *Reid*, 222 Ariz. 204, ¶ 18, 213 P.3d at 358 (internal quotation marks omitted).

¶9 Purnomo contends, however, that any findings were "meaningless" because Guntoro intended to move to Indonesia, where the local courts will not enforce the decree. But the trial court explicitly considered the relocation and the possibility that Indonesian courts likely will not enforce the decree, as well as contentions by both parties that each already had initiated actions in Indonesian courts that might undermine provisions in the decree concerning visitation or contact with B.P. Therefore, Purnomo essentially asks us to reweigh the factors already considered by the court in making its parenting time determination, which we will not do. *See Borg*, 3 Ariz. App. at 277, 413 P.2d at 787; *cf. Hurd*, 223 Ariz.

48, ¶ 16, 219 P.3d at 262 (appellate court does not reweigh evidence on review).

¶10 Purnomo additionally contends that by giving primary parenting time to Guntoro, who is relocating to a nation that is not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction, the trial court has undermined the directive of A.R.S. § 25-103(B) encouraging substantial parenting time with both parents. But the court considered this fact and still concluded that relocation was in the child's best interest. Again, we will not second-guess that determination. *See Borg*, 3 Ariz. App. at 277, 413 P.2d at 787. And we will not adopt a bright-line rule that allowing relocation to a non-Hague-signatory nation is not in the best interest of the child as a matter of law.

¶11 Purnomo further contends the trial court made factual findings that were clearly erroneous, but he has failed to provide us with a complete set of trial transcripts. As the appellant, he was "responsible for making certain the record on appeal contain[ed] all transcripts or other documents necessary for us to consider the issues" he raised. *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995); *see also* Ariz. R. Civ. App. P. 11(c)(1)(B) ("If the appellant will contend on appeal that a judgment, finding or conclusion, is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record transcripts of all proceedings containing evidence relevant to that judgment, finding or conclusion."). And we assume the missing transcripts support the court's factual findings. *See Baker*, 183 Ariz. at 73, 900 P.2d at 767.

¶12 Because the trial court made specific findings under § 25-403 and we assume the evidence presented at trial supported its factual findings, we conclude the court did not abuse its discretion in awarding primary parenting time to Guntoro. *See Nold*, 232 Ariz. 270, ¶ 11, 304 P.3d at 1096; *Baker*, 183 Ariz. at 73, 900 P.2d at 767.

Relocation Determination

¶13 Purnomo also argues the trial court abused its discretion in permitting Guntoro to relocate to Indonesia with B.P.

because the court failed to make specific findings of the factors relevant to relocation listed in A.R.S. § 25-408(H) and "there [was] substantial evidence against relocation" with regard to a number of the factors. We review a court's decision on relocation for an abuse of discretion, and the court abuses its discretion when, in a contested parenting time case, it fails to make specific findings on the record about the factors relevant to relocation listed in § 25-408(H). *Owen v. Blackhawk*, 206 Ariz. 418, ¶¶ 7, 9, 12, 79 P.3d 667, 669-71 (App. 2003).[2]

¶14 To raise the lack of specific findings on appeal, however, a party is "required to bring the lack of . . . finding[s] to the attention of the trial court to preserve the issue." *Banales v. Smith*, 200 Ariz. 419, ¶ 8, 26 P.3d 1190, 1191 (App. 2001). Otherwise he waives the issue. *Id.* The purpose of this rule is to ensure that parties "afford[] the trial court and opposing counsel the opportunity to correct any asserted defects" in the court's "necessary findings of fact and conclusions of law." *Id.* ¶ 6.

¶15 We refrain from applying the doctrine of waiver only in "'extraordinary circumstances.'" *Id.*, *quoting Trantor v. Fredrikson*, 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994); *see also Nold*, 232 Ariz. 270, ¶ 9, 304 P.3d at 1095 (no waiver when findings on record are so deficient that future courts and parties deprived of "'baseline information required for future petitions involving . . . child's . . . best interests.'"), *quoting Reid*, 222 Ariz. 204, ¶ 19, 213 P.3d at 358. But we apply the doctrine of waiver in cases where the court appears to have "made every attempt" to comply with its duty to consider all the statutory factors relevant to the best interests of the child and the lack of complete findings on the record appears to have been "a simple oversight." *Banales*, 200 Ariz. 419, ¶¶ 7-8, 26 P.3d at 1191.

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[2]Our opinion in *Owen* refers to former § 25-408(J), which has since been renumbered as § 25-408(H). 206 Ariz. 418, ¶ 8, 79 P.3d at 669-70; *see* 2012 Ariz. Sess. Laws, ch. 309, § 18 (renumbering former § 25-408(I) to current § 25-408(H)); 2005 Ariz. Sess. Laws, ch. 45, § 5 (renumbering former § 25-408(J) to former § 25-408(I)).

¶16 The decree of dissolution entered by the trial court does not show that it made specific findings for each of the factors listed in § 25-408(H). But Purnomo did not object to this lack of specific findings. And, he did not raise the lack of specific findings before the court in his post-decree motion to stay the relocation determination, during the hearing on that motion, or in his motion to impose a bond or other security to ensure Guntoro's compliance with the decree.

¶17 Further, although the trial court did not make explicit findings in the decree on each of the relocation factors in § 25-408(H), its findings of fact in the decree on the § 25-403(A) factors show that it considered and found facts pertaining to all of the relocation criteria. As required by § 25-408(H)(1), the court considered each of the § 25-403 factors. And directly relevant to a number of the relocation factors, the court found that Guntoro would not be permitted to remain in the United States, that she was not authorized to work in the United States but had an opportunity for work back home in Indonesia, that she had significant financial difficulties in the United States, that B.P. was "slightly more bonded" emotionally to her, and that she and B.P. would have extended family support from both her family and Purnomo's family in Indonesia. *See* § 25-408(H)(2), (3), (6), (7) (relocation in good faith; advantages of move for custodial parent and child; effect of move on emotional, physical, and developmental needs; and motives of parents and validity of reasons for and against relocation). Further, as explained above, the court was aware of and considered the risk of noncompliance with parenting time orders in the decree because of the likelihood Indonesian courts would not enforce the decree. *See* § 25-408(H)(4) (likelihood of compliance with parenting time orders after relocation).

¶18 Additionally, the decree had detailed provisions regarding Purnomo's parenting time once B.P. relocated to Indonesia and noted the difficulty Guntoro might have returning to the United States for visitation, showing that the court both considered and created "realistic opportunit[ies] for parenting time with each parent." § 25-408(H)(5). And the court's finding that Purnomo had not yet obtained permanent residence status after waiting for more than seven years to obtain it suggests the court

considered the possibility Purnomo himself might not stay in the United States and whether relocation to Indonesia would add any additional instability to B.P.'s life compared to staying with his father. *See* § 25-408(H)(8) (effect of relocation on stability).

¶19 Thus, the decree of dissolution shows that the trial court "made every attempt" to consider all the relevant factors affecting whether relocation to Indonesia was in the best interests of B.P. *Banales*, 200 Ariz. 419, ¶ 7, 26 P.3d at 1191. And by all appearances, the court's failure to make specific findings for each of the § 25-408(H) factors was an oversight that the court easily could have remedied had Purnomo raised the issue and given it the opportunity to do so. *See id.* ¶¶ 6, 8. Moreover, the decree's extensive recitation of the court's factual findings and its careful consideration of Guntoro's potential relocation to Indonesia provide ample "'baseline information'" from which future courts and the parties will be able to understand the court's best-interests determination, *Nold*, 232 Ariz. 270, ¶ 9, 304 P.3d at 1095, *quoting Reid*, 222 Ariz. 204, ¶ 19, 213 P.3d at 358, and Purnomo has not demonstrated extraordinary circumstances that would compel us to refrain from finding waiver, *see Banales*, 200 Ariz. 419, ¶ 6, 26 P.3d at 1191.

¶20 We therefore conclude that Purnomo waived any error from the trial court's failure to make specific findings about the relocation factors listed in § 25-408(H). *See id.* ¶ 8. And to the extent he challenges the sufficiency of the evidence supporting the court's relocation determination, we presume that the missing trial transcripts support its ruling. *See Baker*, 183 Ariz. at 73, 900 P.2d at 767.

Security for Compliance with Decree

¶21 Last, Purnomo argues the trial court erred by only allowing him to retain "a mere $20,000" as security to ensure Guntoro complies with the decree of dissolution while living in Indonesia. But the security order was not part of the decree of dissolution. Rather, the court entered this order almost a month after the decree was entered and weeks after Purnomo filed his notice of appeal. And he never filed a new or amended notice of appeal after the court entered the order.

¶22 The trial court's order imposing security was a special order after judgment, separately appealable under § 12-2101(A)(2). *See Williams v. Williams*, 228 Ariz. 160, ¶ 20, 264 P.3d 870, 875 (App. 2011) ("A post-judgment order is appealable when the order involves an issue distinct from the underlying judgment and immediately affected a party's rights.").[3] It was not an intermediate order reviewable on an appeal from the decree pursuant to A.R.S. § 12-2102(A). *See Rourk v. State*, 170 Ariz. 6, 13, 821 P.2d 273, 280 (App. 1991) ("An 'intermediate order' is one made between commencement of the action and final judgment, which is not separately appealable.").

¶23 Consequently, because Purnomo failed to file a notice of appeal following this special order, we do not have jurisdiction to review the order and the propriety of the amount set as security. *See Lee v. Lee*, 133 Ariz. 118, 124, 649 P.2d 997, 1003 (App. 1982) ("In the absence of a timely notice of appeal following entry of the order sought to be appealed, we are without jurisdiction to determine the propriety of the order sought to be appealed."). We therefore must dismiss his appeal from the order. *See James v. State*, 215 Ariz. 182, ¶ 11, 158 P.3d 905, 908 (App. 2007).

Disposition

¶24 For the foregoing reasons, we affirm the trial court's rulings in the decree of dissolution and dismiss Purnomo's appeal from the post-decree order setting $20,000 as security for Guntoro's compliance with the decree.

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[3]Our opinion in *Williams* refers to former § 12-2101(C), which has since been renumbered as § 12-2101(A)(2). 228 Ariz. 160, ¶ 19, 264 P.3d at 875; *see* 2011 Ariz. Sess. Laws, ch. 304, § 1.