IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

RANDALL R. SWINDELL,
Petitioner/Appellee,

v.

MONICA M. WARHOLA,
Respondent/Appellant.

No. 2 CA-CV 2018-0035-FC
Filed October 17, 2018

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NOT FOR PUBLICATION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. SP20150234
The Honorable Susan Kettlewell, Judge Pro Tempore

AFFIRMED

COUNSEL

The Huff Law Firm PLLC, Tucson
By Daniel Huff
Counsel for Petitioner/Appellee

Monica Warhola
In Propria Persona

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Espinosa and Judge Brearcliffe concurred.

V Á S Q U E Z, Presiding Judge:

¶1 In this domestic-relations case, Monica Warhola challenges the trial court's order granting appellee Randall Swindell sole legal decision-making and primary parenting time for their minor daughter. Seeing no error, we affirm.

Factual and Procedural Background

¶2 Monica and Randall are the parents of F.F., who was born in February 2013. Following Randall's petition to establish paternity and decide related issues, in July 2015, the trial court entered an order approving a parenting plan agreed upon by Monica and Randall. Under that plan, they shared joint legal decision-making and essentially equal parenting time of F.F. The court also ordered Randall to pay Monica child support.

¶3 In November 2015, Monica filed a petition for modification of legal decision-making and parenting time, alleging that, among other things, Randall had sexually abused F.F. The trial court temporarily granted the motion, awarding Monica sole legal decision-making and parenting time. However, in February 2016, the Arizona Department of Child Safety removed F.F. and initiated a dependency proceeding.[1] F.F. was subsequently placed with Randall.

¶4 In March 2017, Randall filed a petition for modification of legal decision-making, parenting time, and child support, arguing that Monica's allegations of sexual abuse were "false" and that she was

[1] This case was consolidated with the juvenile dependency. However, the documents filed in the dependency are not part of our record on appeal. *See Baker v. Baker*, 183 Ariz. 70, 73 (App. 1995) (appellant responsible for ensuring record on appeal contains all transcripts and documents necessary for this court to consider issues raised on appeal; when appellant fails to provide necessary items, we assume they support trial court's findings and conclusions).

"suffer[ing] from serious, untreated mental illness which impair[ed] her ability to appropriately parent and protect" F.F. After a six-day hearing conducted in May, July, August, and October 2017, the trial court directed the parties to submit written closing arguments and proposed findings of fact and conclusions of law. The court took the matter under advisement and, in December 2017, entered its order granting Randall sole legal decision-making and ordering that F.F. reside primarily with him. The court awarded Monica supervised parenting time until she "engage[d] in and benefit[ed] from individual counseling geared to addressing her unfounded apparent fixation that [F.F.] has been sexually abused by [Randall]." The court also deviated from the guidelines and ordered that Monica need not pay child support based on her "potential need . . . to pay for supervised parenting time." This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Discussion

¶5 As a preliminary matter, we note that Monica's opening brief fails to comply with Rule 13(a), Ariz. R. Civ. App. P. The arguments raised therein are not supported by "citations of legal authorities" or "appropriate references to the portions of the record." Ariz. R. Civ. App. P. 13(a)(7)(A). Despite Monica's pro se status, she is held to the same standards as a qualified attorney, *see In re Marriage of Williams*, 219 Ariz. 546, ¶ 13 (App. 2008), and her failure to comply with Rule 13(a) could constitute a waiver of the issues on appeal, *see Sholes v. Fernando*, 228 Ariz. 455, ¶ 16 (App. 2011). Nonetheless, because we prefer to resolve cases on their merits, *Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 342 (App. 1984), and the best interests of a child are involved here, we will attempt to address Monica's arguments based on the record before us.

¶6 Monica contends the trial court's order granting Randall sole legal decision-making authority and primary parenting time of F.F. was made "with no jury, no trial, and lack of evidence."[2] We review a trial

[2]Monica raises other arguments—including a conflict of interest with counsel and a potential relocation by Randall—that do not appear to have been raised below as part of the trial court's December 2017 order on Randall's petition. Accordingly, we do not address them further. *See Henderson v. Henderson*, 241 Ariz. 580, ¶ 13 (App. 2017) (arguments raised for first time on appeal generally waived); *see also Lee v. Lee*, 133 Ariz. 118, 124 (App. 1982) (this court lacks jurisdiction to review matters not contained in notice of appeal).

court's decision-making and parenting-time orders for an abuse of discretion. *Nold v. Nold*, 232 Ariz. 270, ¶ 11 (App. 2013).

¶7 When addressing a petition to modify legal decision-making and parenting time, the trial court must first determine whether there has been a change in circumstances since the last order. *Engstrom v. McCarthy*, 243 Ariz. 469, ¶ 10 (App. 2018); *see also Christopher K. v. Markaa S.*, 233 Ariz. 297, ¶ 15 (App. 2013). "If the court finds such a change in circumstances, it must then determine whether a change in [legal decision-making and parenting time] would be in the child's best interests." *Christopher K.*, 233 Ariz. 297, ¶ 15; *see also* A.R.S. §§ 25-403(A), 25-403.01(B). In making that determination, the court must evaluate all relevant factors, including those listed in §§ 25-403(A) and 25-403.01(B).

¶8 Regarding Monica's contention that there was no jury and no trial, she was not entitled to either. *Cf. Hoyle v. Superior Court*, 161 Ariz. 224, 229 (App. 1989) (petitioner in paternity action not entitled to jury trial). As described above, §§ 25-403(A) and 25-403.01(B) require "the court," not a jury, to "determine legal decision-making and parenting time." In addition, Rule 91, Ariz. R. Fam. Law P., upon which Randall's petition for modification was apparently based, provides for a "hearing," not a trial. *See Sundstrom v. Flatt*, 244 Ariz. 136, ¶ 7 (App. 2017) (once party petitions to modify legal decision-making, court must find adequate cause for hearing). And in this case, the trial court held an evidentiary hearing on Randall's petition that spanned six days, with numerous witnesses and exhibits offered by both parties.

¶9 As for Monica's argument that the trial court's order was not supported by evidence, we must disagree. Monica did not provide this court with the transcripts of any of the hearings below. As the appellant, Monica has the responsibility to do so. *See* Ariz. R. Civ. App. P. 11(c)(1) (appellant must order transcripts necessary for proper consideration of issues on appeal; if challenging evidence to support judgment, appellant must include in record all transcripts containing evidence relevant to that judgment); *see also Baker v. Baker*, 183 Ariz. 70, 73 (App. 1995). Accordingly, we must presume the missing transcripts would support the trial court's findings and conclusions. *See Johnson v. Elson*, 192 Ariz. 486, ¶ 11 (App. 1998); *see also Baker*, 183 Ariz. at 73.

¶10 Even assuming the transcripts had been provided, Monica's arguments appear to largely reflect her disagreement with the trial court's conclusions about witness credibility and the weight of conflicting evidence—which we do not reweigh on appeal. *See Hurd v. Hurd*, 223 Ariz.

48, ¶ 16 (App. 2009). Notably, the court's thorough, fifteen-page under-advisement order lays out the procedural posture of this case, followed by a discussion of the changed circumstances and a finding of F.F.'s best interests, including its consideration of the eleven factors in § 25-403(A) and four factors in § 25-403.01(B). Accordingly, we cannot say the court abused its discretion in granting Randall sole legal decision-making and primary parenting time. *See Nold*, 232 Ariz. 270, ¶ 11.

Disposition

¶11 For the foregoing reasons, we affirm the trial court's order.