IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

BENJAMIN LEE LAYTON,
Petitioner/Appellee,

and

CATHERINE SOFIA JOYCE LAYTON,
Respondent/Appellant.

No. 2 CA-CV 2018-0152-FC
Filed February 20, 2020

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NOT FOR PUBLICATION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. D20163154
The Honorable Jane A. Butler, Judge Pro Tempore

AFFIRMED

COUNSEL

Benjamin Layton, Bothell, Washington
In Propria Persona

Tiffany & Bosco P.A., Phoenix
By Kelly Mendoza and Gianni Pattas
Counsel for Respondent/Appellant

MEMORANDUM DECISION

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

S T A R I N G, Presiding Judge:

¶1 Catherine Layton appeals from the trial court's ruling granting joint legal decision-making authority and unsupervised parenting time to Benjamin Layton. We affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to affirming the trial court's ruling. *In re Marriage of Downing*, 228 Ariz. 298, ¶ 2 (App. 2011). Catherine and Benjamin were married in October 2010, and have one child together, A.L., born in October 2013. In 2001, Benjamin pled guilty to one count of sexual conduct and one count of sexual abuse, both involving a minor under the age of fifteen. He was released from lifetime probation in 2016, but remains a lifetime registered sex offender.[1]

¶3 In June 2016, Benjamin helped Catherine and A.L. move to Washington, and he also planned to relocate there. In September of that year, Catherine sought an order of protection against Benjamin, and in October, Benjamin filed for divorce. In June 2017, during the dissolution proceedings, Catherine filed a motion asking the trial court to release Benjamin's probation records, which the court denied.

¶4 In August 2018, following a three-day bench trial, the trial court entered a decree of dissolution. In its detailed, sixteen-page ruling, the court made findings pursuant to A.R.S. §§ 25-403(A), 25-403.01, 25-403.03, and 25-403.05, designated Catherine as the primary residential parent, and granted Benjamin joint legal decision-making and unsupervised parenting time. Although the court noted the presence of relevant allegations of domestic violence, it ultimately concluded the allegations were unsubstantiated. And, the court specifically found that the circumstances underlying Benjamin's sex-offender status would not create

[1] Catherine was aware of Benjamin's sex-offender status and the circumstances of the offenses before the marriage.

a danger for A.L. if Benjamin were granted unsupervised parenting time. Catherine appealed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Discussion

¶5 On appeal, Catherine argues the trial court violated her procedural due process rights by using information obtained from an in camera review of Benjamin's probation records in its determination of legal decision-making and parenting time. She also maintains the court abused its discretion "in completely disregarding controverting evidence in its analysis of the child's best interests," finding no domestic violence in the parties' relationship, and finding no significant risk to A.L. despite Benjamin's sex-offender status.

Due Process

¶6 Catherine argues she was denied procedural due process because she "never had an opportunity to review [Benjamin]'s probationary file that the family court relied on in making its ruling," and because the court "went beyond the purpose of reviewing [the] probationary records for the sole purpose of determining what [Benjamin] told probation officers as to who was the primary parent of [A.L.]." Although Catherine did not raise this argument below, in our discretion, we may consider constitutional arguments not properly raised before the trial court. *See Ramsey v. Yavapai Family Advocacy Ctr.*, 225 Ariz. 132, ¶ 19 (App. 2010).

¶7 In her June 2017 motion for release of Benjamin's probation records, Catherine asserted:

> [Benjamin] is a lifetime registered sex offender for dangerous preparatory crimes against at least three children. The details of his initial offenses, his presentence evaluation, and his participation in services are of fundamental importance to his fitness to parent a minor child. Without this information, there is simply no way this Court can make an informed decision on this case.
>
> . . . In the event the Court deems this information too sensitive to be released to the parties, the Court could order the file delivered to the

> Division for in camera inspection, or order that the names of any minor children be redacted prior to disclosure of the file.

The trial court denied Catherine's motion.

¶8 On the first day of trial, Catherine renewed her request for the records to be released, arguing that because Benjamin "is asking for unsupervised contact with [A.L.] and given that he failed a polygraph . . . I think it's important to have those probation records disclosed" to "find out why he failed it." Catherine also argued the records should be disclosed because the parties disputed who had been A.L.'s primary caregiver and the records would allow the trial court to determine the parties' credibility. In response, the court stated: "I'm going to order that the Court have an in camera inspection, and I will report to both sides about what, if anything, [Benjamin] said to the probation officers about who was the primary caregiver of [A.L.]. Does that sound reasonable?" Counsel for both parties responded affirmatively. In its ruling, the court stated it had reviewed Benjamin's probation records "with respect to the 2016 failed polygraph," and noted Benjamin's reported behavior between June 2013 and March 2016 "that may have resulted in a failed polygraph."

¶9 Benjamin argues the trial court did not violate Catherine's due process rights because both parties agreed to an in camera review of his probation records, the court did not rely solely on the records in making its ruling, and Catherine had "time to prepare and present all relevant evidence to the Court."[2] We agree.

¶10 The trial court's ruling included its findings from the in camera review as to the failed polygraph and ultimately designated Catherine as A.L.'s primary residential parent. And, although Catherine appears to argue the court was only permitted to examine Benjamin's probation records for the limited purpose of determining what he had said about being A.L.'s primary caregiver, she asked the court to review Benjamin's probation records without limitation in her pretrial motion and

[2] Although Benjamin fails to cite to the record in support of his argument that both parties agreed to the in camera review as required by Rule 13(a)(7)(B) and (b)(1), Ariz. R. Civ. App. P., in our discretion we consider his arguments. *See Varco, Inc. v. UNS Elec., Inc.*, 242 Ariz. 166, n.5 (App. 2017); *see also Nold v. Nold*, 232 Ariz. 270, ¶ 10 (App. 2013) (noting waiver a discretionary doctrine).

at trial argued for release of the records to determine why Benjamin failed his polygraph test. Catherine cannot now complain about the scope of the review. *See Schlecht v. Schiel*, 76 Ariz. 214, 220 (1953) ("By the rule of invited error, one who deliberately leads the court to take certain action may not upon appeal assign that action as error."), *abrogated in part on other grounds as recognized in A Tumbling-T Ranches v. Paloma Inv. Ltd. P'ship*, 197 Ariz. 545, ¶ 23 (App. 2000). Therefore, her procedural due process argument fails.

Legal Decision-Making and Parenting Time

¶11 Catherine argues the trial court abused its discretion by "completely disregarding controverting evidence in its analysis of [A.L.]'s best interests" and "by finding that a significant history of domestic violence did not exist and finding that there was no significant risk to [A.L.] despite [Benjamin] being a registered sex offender." Intertwined with Catherine's arguments are allegations that the court's ruling contains several factual inaccuracies.

¶12 We review the trial court's legal decision-making and parenting-time decisions for an abuse of discretion. *Nold v. Nold*, 232 Ariz. 270, n.2 & ¶ 11 (App. 2013). A court abuses its discretion when it "commits an error of law in reaching a discretionary decision," "reaches a conclusion without considering the evidence," commits another substantial error of law, or makes a finding lacking substantial evidentiary support. *Flying Diamond Airpark, LLC v. Meienberg*, 215 Ariz. 44, ¶ 27 (App. 2007); *State ex rel. Dep't of Econ. Sec. v. Burton*, 205 Ariz. 27, ¶ 14 (App. 2003) ("An abuse of discretion exists when the record, viewed in the light most favorable to upholding the trial court's decision, is devoid of competent evidence to support the decision."). We will not reweigh conflicting evidence, and we will affirm if substantial evidence supports the court's decision. *Hurd v. Hurd*, 223 Ariz. 48, ¶ 16 (App. 2009). Trial courts are given broad discretion to determine what is in a child's best interest because they are in the best position to make that fact-based determination. *Porter v. Porter*, 21 Ariz. App. 300, 302 (1974).

¶13 Catherine challenges the trial court's ruling point-by-point under §§ 25-403(A), 25-403.01(B), 25-403.03, and 25-403.05. We first address her arguments regarding the court's findings under § 25-403(A).[3]

[3]We address Catherine's arguments regarding domestic violence under § 25-403(A)(8) in our discussion of domestic violence under § 25-403.03.

Best Interests of Child

¶14 Under § 25-403(A), the trial court shall determine legal decision-making and parenting time "in accordance with the best interests of the child." The statute enumerates eleven factors for the court to consider, including the parents' past, present, and future relationship with the child; the child's interaction and interrelationship with parents and siblings; whether the child is adjusting to home and school; the wishes of the child; the "mental and physical health of all individuals involved"; the likelihood the parent will "allow the child frequent, meaningful and continuing contact with the other parent"; and whether there have been acts of domestic violence or child abuse. In a contested case, the court must 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." § 25-403(B). Catherine challenges the court's ruling as to several of the enumerated statutory factors.

Relationship Between Child and Parents

¶15 Evaluating the past, present, and potential future relationship between A.L. and her parents under § 25-403(A)(1), the trial court found both parents' relationships with A.L. to be affectionate and appropriate. On appeal, Catherine argues the court did not take into account the fact that she or a third party had been present for "a substantial amount of the time" Benjamin spent with A.L. She also challenges the court's finding that Benjamin's time with A.L. was only supervised after their relocation to Washington because, before their move, Benjamin required a chaperone around minor children as a condition of his probation.

¶16 To the extent Catherine asks this court to reweigh the evidence, we will not do so. *See Hurd*, 223 Ariz. 48, ¶ 16. And, not only do we presume the trial court considered all admitted evidence, *Fuentes v. Fuentes*, 209 Ariz. 51, ¶ 18 (App. 2004), but "[w]e must give due regard to the trial court's opportunity to judge the credibility of the witnesses," *Hurd*, 223 Ariz. 48, ¶ 16. Benjamin testified that during his Skype visits with A.L., she knows who he is, calls him "daddy," and enjoys the time they spend together, and that during his in-person visits with A.L., "[s]he runs up. She hugs [him]. She won't let go. She tells [him] that she misses [him]. She tells [him] that she loves [him]." He also testified allegations that he had abused A.L. when she was eleven months old were false and unsubstantiated. Thus, substantial evidence supported the court's finding that Benjamin's relationship with A.L. was affectionate and appropriate,

and the court was not precluded from so finding even if a substantial amount of the time he spent with A.L. had been supervised. *See id.*

Child's Adjustment

¶17 The trial court found Catherine did not provide evidence as to A.L.'s adjustment to home, school, and community, and noted Benjamin was "unable to do so since [Catherine] . . . moved [A.L.] to Washington State and refuses [Benjamin] unsupervised contact with [A.L.], or to let [him] know where she and [A.L.] live, or where [A.L.] attends daycare." Catherine argues this statement is incorrect and the court failed to acknowledge Benjamin's weekly Skype contact with A.L. in which he could have made observations as to her surroundings. However, regardless of the reason such evidence was not provided, the court was unable to make a finding under § 25-403(A)(3). Thus, we need not consider this argument.

Parents' Mental Health

¶18 Under § 25-403(A)(5), the trial court must consider the "mental and physical health of all individuals involved." As to her own mental health, Catherine argues the court inaccurately found she "has a long history of therapeutic care for mental illness" because she "has seen two therapists in New Jersey, and three in Arizona, all for depression." The court's finding is apparently based on an initial client questionnaire from a therapist Catherine saw in 2016 in which Catherine indicated she had seen two therapists in New Jersey and three in Arizona for depression "and related problems." Catherine contends her participation in therapy for problems *related to* depression does not necessarily mean she saw all of the therapists for depression.

¶19 But, the trial court made a reasonable inference about Catherine's mental health based on the information provided in the questionnaire, despite testimony that Catherine sought treatment for "motivation and working" purposes, "conversational train[ing]," and stress in addition to depression, as well as testimony that she did not see three therapists in Arizona. *See Summers v. Gloor*, 239 Ariz. 222, n.1 (App. 2016) ("We view the facts and all reasonable inferences to be drawn therefrom in the light most favorable to upholding the trial court's orders."). We defer to the trial court's assessment of witness credibility, *Gutierrez v. Fox*, 242 Ariz. 259, ¶ 49 (App. 2017), and uphold its factual findings unless clearly erroneous, Ariz. R. Fam. Law P. 82(a)(5). Because the questionnaire was sufficient to support the court's finding, and because we do not reweigh the evidence on appeal, we find no error. *See Hurd*,

223 Ariz. 48, ¶ 16; *see also Lewis v. Midway Lumber, Inc.*, 114 Ariz. 426, 429 (App. 1977) ("A finding of fact cannot be clearly erroneous if there is substantial evidence to support it, even though there also might be substantial conflicting evidence.").

¶20 As to Benjamin's mental health, Catherine argues the trial court "improperly used information obtained from [Benjamin]'s closed probation file and proceeds to note all of [his] diagnos[es] like [they are] a laundry list but does not delve into what this means or how it affects [his] behavior." But, as discussed above, the court's in camera review of Benjamin's probation records was not improper. And, contrary to Catherine's argument, under its discussion of Benjamin's mental health, in addition to listing his diagnoses, the court acknowledged his convictions for sexual offenses and subsequent participation in therapy. Substantial evidence supports the court's findings regarding Benjamin's mental health. *See Hurd*, 223 Ariz. 48, ¶ 16.

Likelihood of Parent Allowing Contact

¶21 As to which parent is more likely to allow A.L. frequent, meaningful, and continuing contact with the other parent under § 25-403(A)(6), Catherine challenges the trial court's finding that "by preventing [Benjamin] from having unsupervised contact with [A.L.], [Catherine] is not acting in good faith to protect [A.L.] from witnessing domestic violence or being the victim of domestic violence or child abuse. Rather, she is prohibiting [Benjamin] from having meaningful parenting time with [A.L.]." In support of its finding, the court noted Catherine's "removal of [A.L.] to Washington," "her insistence that all parenting time with [Benjamin] be supervised, interrupting [Benjamin]'s Skype or FaceTime visits with [A.L.], and returning [Benjamin]'s mail to [A.L.] with no forwarding address."

¶22 Catherine argues the trial court's finding under this factor ignores the evidence presented and is "directly contrary" to its finding that Catherine and Benjamin's lack of agreement as to legal decision-making under § 25-403.01(B) was not unreasonable. She points to evidence of domestic violence and Benjamin's sex-offender status, and claims she did not interrupt Benjamin's Skype sessions with A.L. unless they became inappropriate or Benjamin encouraged A.L. to misbehave. Catherine also claims she did not return the mail Benjamin sent to A.L., and challenges the court's failure to note her financial reasons for wanting to move back to Tucson after Benjamin had moved to Washington.

¶23 Contrary to Catherine's argument, even though the trial court may not have referred to certain evidence in its ruling, this does not establish the court failed to consider it. Not only do we defer to the trial court's credibility determinations, *Gutierrez*, 242 Ariz. 259, ¶ 49, but we presume the court considered all admitted evidence, *Fuentes*, 209 Ariz. 51, ¶ 18. And, as noted, we will not reweigh such evidence on appeal. *Hurd*, 223 Ariz. 48, ¶ 16. Benjamin testified that he was worried Catherine would not let him see or talk to A.L. based on statements Catherine had made, and that she had interrupted his Skype sessions with A.L. He also testified he was unable to send cards or gifts to A.L. Thus, substantial evidence supported the court's conclusion as to this factor. *See id.* And, because the court's analysis of A.L.'s best interests in regard to decision-making and parenting time was supported by substantial evidence, Catherine has shown no abuse of discretion. *See id.*; *see also Burton*, 205 Ariz. 27, ¶ 14.

Factors Specific to Legal Decision-Making

¶24 Catherine also challenges the trial court's findings under A.R.S. § 25-403.01(B). When "determining the level of decision-making that is in the child's best interests," in addition to the best-interest factors enumerated under § 25-403(A), a court must consider: whether the parents have agreed to joint legal decision-making; whether a lack of agreement is due to unreasonableness or an unrelated issue; the "past, present and future abilities of the parents to cooperate in decision-making"; and the logistical possibility of the arrangement. § 25-403.01(B).

¶25 Here, the trial court found that the lack of agreement as to legal decision-making was not unreasonable because of Benjamin's registered sex-offender status. In its discussion of this factor, the court noted Benjamin and his therapist both had testified Benjamin was A.L.'s "primary caregiver when [Catherine] returned to work after maternity leave and should therefore continue to have unsupervised liberal parenting time with [A.L.]." Catherine challenges this statement, asserting the court ignored testimony of various witnesses indicating Benjamin was not A.L.'s primary caregiver. But, as noted, we presume the court considered all admitted evidence. *Fuentes*, 209 Ariz. 51, ¶ 18. And, we do not reweigh evidence, and we defer to the court's determination of witness credibility. *Hurd*, 223 Ariz. 48, ¶ 16. Moreover, the court's ultimate finding under this factor—that the lack of agreement was not unreasonable—does not undermine Catherine's position.

¶26 As to Catherine and Benjamin's past, present, and future abilities to cooperate in decision-making for A.L., Catherine argues the trial

court "incorrectly found that there was a successful co-parenting relationship as [Benjamin] was emotionally abusive and controlling of [her]." In support of her argument, she points to testimony that Benjamin threatened her life, A.L.'s life, and his own life, and testimony about his "controlling, stalking types of behaviors." However, the court also heard testimony that Catherine and Benjamin were able to negotiate and speak civilly with each other, focusing on the best interests of A.L. As noted, we do not reweigh conflicting evidence, and we give deference to the court's credibility assessments. *Id.* Substantial evidence supports the court's finding that Catherine and Benjamin were able to cooperate in decision-making for A.L. *See id.*

¶27 Catherine also challenges the trial court's finding that joint legal decision-making is logistically possible because, as of August 2018, it was unclear if Benjamin had moved to Washington, the Best Interest Attorney noted that the parties do not communicate well, and evidence was presented that Catherine had "post-traumatic stress syndrome related to her past and to her current situation with [Benjamin]." But, as discussed above, evidence was presented that Catherine and Benjamin were able to negotiate and speak civilly with each other "via text messaging on Skype." Substantial evidence supports the court's finding that joint legal decision-making is logistically feasible. *See id.*

¶28 Although the record contains contradictory evidence, Catherine has not demonstrated the trial court reached its conclusions without considering the evidence or made its findings without substantial support. Thus, the court did not abuse its discretion in granting Benjamin joint legal decision-making authority. *See Nold*, 232 Ariz. 270, ¶ 11; *see also Hurd*, 223 Ariz. 48, ¶ 16.

Domestic Violence Findings

¶29 Catherine argues the trial court erred in finding there had been "no domestic violence in the parties' relationship as described by A.R.S. § 25-403.03." Under § 25-403(A)(8), a trial court must consider "[w]hether there has been domestic violence or child abuse pursuant to § 25-403.03." While it is in a child's best interest "[t]o have substantial, frequent, meaningful and continuing parenting time with both parents" and "[t]o have both parents participate in decision-making about the child," A.R.S. § 25-103(B), a court cannot award joint legal decision-making if it makes a finding of significant domestic violence pursuant to A.R.S. § 13-3601 or if it finds by a preponderance of the evidence that there is a significant history of domestic violence, § 25-403.03(A). And, "[i]f the court

determines that a parent . . . has committed an act of domestic violence against the other parent, there is a rebuttable presumption that an award of sole or joint legal decision-making to the parent who committed the act of domestic violence is contrary to the child's best interests." § 25-403.03(D). The court must also consider a history of threatening to cause physical harm. § 25-403.03(B).

¶30 Here, the trial court found there had been no domestic violence under §§ 25-403(A)(8) or 25-403.03 because, despite Catherine's allegations, "neither [Benjamin]'s therapist nor [Catherine]'s therapists, nor an investigation conducted by the King County Court in Washington found any history of domestic violence." Catherine asserts the court mischaracterized the Washington domestic violence assessment and improperly relied on Washington's definition of domestic violence because, under Arizona's definition, "[Benjamin] committed domestic violence on numerous occasions."[4]

¶31 Contrary to Catherine's argument, the trial court did not rely solely on the Washington assessment or definition, and found no domestic violence under Arizona law. In its ruling, the court noted evidence that Benjamin had not abused, controlled, threatened, or harmed Catherine, that he is "passive," "compliant," and "would do anything for [Catherine]," as well as the lack of evidence of violence or physical harm. Thus, substantial evidence supports the court's findings, and we defer to the court's determinations of witness credibility and its weighing of conflicting evidence. *See Gutierrez,* 242 Ariz. 259, ¶ 49; *Hurd*, 223 Ariz. 48, ¶ 16. The court did not abuse its discretion in finding there had been no domestic violence in the parties' relationship. *See Burton*, 205 Ariz. 27, ¶ 14.

[4]Catherine also argues the trial court incorrectly stated in its ruling that she had applied for an order of protection in Washington on October 26, 2016, but that she in fact had applied for and received the order on September 28, 2016. Based on the record before us, Catherine is correct. However, she does not argue how this could have changed the outcome as to whether there had been domestic violence or child abuse in light of the lack of other evidence on this point. *See Creach v. Angulo*, 186 Ariz. 548, 550 (App. 1996) ("To justify the reversal of a case, there must not only be error, but the error must have been prejudicial to the substantial rights of the party.").

Presumption Against Registered Sex Offenders

¶32 Catherine next argues the trial court abused its discretion in finding no significant risk to A.L. given that Benjamin is a registered sex offender. Under § 25-403.05(A), a court cannot grant a registered sex offender sole or joint legal decision-making or unsupervised parenting time unless the court makes a written finding that there is no significant risk to the child. In this case, the court noted Benjamin's status as a registered sex offender and ultimately concluded in writing that he does not pose a significant risk to A.L. Catherine challenges this finding, arguing the court ignored controverting evidence and discounted "many concerning factors." However, Benjamin's therapist testified that he had participated in group therapy for approximately ten years as a condition of his probation and that he was voluntarily participating in individual therapy at the time of trial in this case. The therapist described Benjamin's "significant progress" during the time she worked with him, stating he had "learned proactive steps" to avoid reoffending and had been utilizing those skills in parenting A.L. She also testified he was "a very low risk to reoffend" and opined he did not pose a threat to A.L. based on changes in his thinking and "emotional changes." And, after complying with all of the conditions of his probation, Benjamin's lifetime probation was terminated in 2016. Thus, substantial evidence supports the court's conclusion that Benjamin does not pose a significant risk to A.L. *See Hurd*, 223 Ariz. 48, ¶ 16.

¶33 Finally, Benjamin's original indictment included two additional counts relating to two other victims, and Catherine challenges the trial court's statement that "[b]ecause the State did not move forward with prosecution on these two counts, it can be inferred that the charges were unprovable." She asserts "[t]here are a myriad of reasons why it could be decided not to move forward in prosecuting a charge such as that it is part of [a] plea agreement to dismiss certain counts, [or] the victims' parents wanted to spare their children going through a trial," and "the plea agreement reached specifically notes the other two children as victims entitled to restitution from [Benjamin]." While we agree that there are other reasons the state may have chosen not to prosecute the two additional counts, we find no error in light of the substantial evidence relied on by the court as to why Benjamin did not pose a significant risk to A.L. *See id.* The court did not abuse its discretion by awarding Benjamin joint legal decision-making and unsupervised parenting time. *See id.* ¶¶ 11, 16**;** *see also Burton*, 205 Ariz. 27, ¶ 14.

Credibility Determination

¶34 Catherine argues the trial court "committed an egregious error in finding that [she] had been 'abused and molested' by her parents as a child and seemingly uses this erroneous finding to imply that [she] is not credible due to the alleged conflict between [her] actions and 'abuse' of [Catherine] by her father." In its ruling, the court stated Catherine had admitted at trial that she "had suffered physical abuse at the hands of [her parents] who abused and molested her as a child." The court noted Catherine's testimony "is at odds with [her] conduct. Specifically, she and [A.L.] lived with [Catherine's parents] when they relocated to Washington. And, notwithstanding her allegations of childhood abuse from [Catherine's father], at trial he testified on [Catherine]'s behalf criticizing [Benjamin]'s parenting ability. [Catherine]'s dissonant conduct depreciates her credibility."

¶35 The trial court's assertion that Catherine was "abused and molested" as a child appears to be based on the same initial client questionnaire discussed above in which she checked a box indicating that she had been "abused *or* molested" as a child. (Emphasis added.) When asked about the physical and emotional abuse she experienced growing up, Catherine explained her mother and father would leave her for months at a time, she was spanked as a child, and when she would give her mother "attitude . . . [she] would get slapped." Similarly, Catherine's therapist testified she "was the victim of physical and emotional abuse at the hands of her mother" and had "a negligent father." When asked whether she knew if Catherine had been abused or molested, the therapist stated, "I think it was abuse."

¶36 Although the trial court may have erred in concluding Catherine was molested as a child, the court does not appear to have relied solely on this finding in its assessment of Catherine's credibility. Thus, even if the court erred as to this particular determination, it does not undermine the court's decision to grant joint legal decision-making and unsupervised parenting time to Benjamin in light of the extensive evidence presented at trial and discussed in the ruling. *See Creach v. Angulo*, 186 Ariz. 548, 550 (App. 1996) (to justify reversal, error must be prejudicial). We do not second-guess the court's assessment of Catherine's credibility. *See Shella H. v. Dep't of Child Safety*, 239 Ariz. 47, ¶ 15 (App. 2016); *Christina G. v. Dep't of Econ. Sec.*, 227 Ariz. 231, ¶ 13 (App. 2011) (trial court in best position to judge credibility of witnesses). The court's ruling reflected that it considered each of the factors in §§ 25-403(A), 25-403.01(B), 25-403.03, and 25-403.05 and made the required findings on the record. Because

substantial evidence supports the court's decision, we find no abuse of discretion and affirm the legal decision-making and parenting-time rulings. *See Hurd*, 223 Ariz. 48, ¶ 16; *see also Burton*, 205 Ariz. 27, ¶ 14.

Attorney Fees

¶37 Both parties request an award of attorney fees and costs on appeal pursuant to A.R.S. § 25-324 and Rule 21(a), Ariz. R. Civ. App. P.[5] Section 25-324(A) provides that this court may order one party to pay the other party's attorney fees and costs, "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings." And § 25-324(B) requires this court to award attorney fees and costs to the other party if: "[t]he petition was not filed in good faith," "was not grounded in fact or based on law," or "was filed for an improper purpose."

¶38 In our discretion, we deny both parties' requests pursuant to subsection (A), and because neither party has established a basis for an award under subsection (B), we deny those requests as well. As the successful party on appeal, however, we award Benjamin his costs on appeal pursuant to A.R.S. § 12-341 upon his compliance with Rule 21.

Disposition

¶39 For the foregoing reasons, we affirm the trial court's order granting Benjamin joint legal decision-making authority and unsupervised parenting time.

[5]Benjamin also asks this court to impose sanctions on Catherine pursuant to Rule 11(c), Fed. R. Civ. P. However, as Catherine notes, the Federal Rules of Civil Procedure do not apply in state courts. Moreover, even if we were to apply Rule 11, Ariz. R. Civ. P., Arizona's version of the federal rule, it is not a proper basis for sanctions on appeal. *Cf. Villa De Jardines Ass'n v. Flagstar Bank, FSB*, 227 Ariz. 91, n.10 (App. 2011); *see also* Ariz. R. Civ. P. 1 (The Arizona Rules of Civil Procedure "govern the procedure . . . in the superior court of Arizona."); Ariz. R. Civ. App. P. 25 (providing basis for sanctions on appeal).