IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE THE CUSTODY OF

JACOB C.

No. 2 CA-CV 2019-0046-FC
Filed March 19, 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NOT FOR PUBLICATION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
Nos. SP20140889 and JD20140107 (Consolidated)
The Honorable John J. Assini, Judge Pro Tempore

AFFIRMED

Louis E. Cespedes, Tucson
In Propria Persona

MEMORANDUM DECISION

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

B R E A R C L I F F E, Judge:

¶1 Louis Cespedes appeals from a number of child custody and related rulings, both final and interlocutory, as to his minor son J.C., entered in juvenile dependency and child custody proceedings. The proceedings, whenever simultaneous, were consolidated. He asks that these rulings be vacated and the case be dismissed. We affirm.

Factual and Procedural Background

¶2 Because the rulings challenged are the custody rulings under Title 25 of the Arizona Revised Statutes, and not the rulings in the consolidated dependency proceedings under Title 8 of the Arizona Revised Statutes, we will apply the standards of review applicable to custody matters. In child custody cases, we view the facts in the light most favorable to upholding the trial court's ruling. *See Orezza v. Ramirez*, 19 Ariz. App. 405, 407 (1973). Cespedes has not disputed the court's factual findings in any of the challenged rulings.

¶3 In 2009, a Puerto Rico family court[1] awarded Cespedes the rough equivalent of sole legal-decision-making authority over and primary residential parenting time with J.C., and granted J.C.'s mother, Marcia Reis Pinto, unsupervised parenting time with J.C. every other weekend and certain holidays.[2] Neither party was permitted to take J.C. out of Puerto Rico without a court order or written agreement with the other parent. In

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[1]The Court of the First Instance of Puerto Rico, Superior Division of Carolina, Custody, Paternity and Support Division. A Court of the First Instance in Puerto Rico is a court of record and of general jurisdiction, 4 L.P.R. § 25a, and equivalent to an Arizona Superior Court. *See* Ariz. Const. art. VI, § 14.

[2]The Puerto Rico court specified only two legal-decision-making powers—to make educational decisions and to secure a passport for the child—and it assigned both powers to Cespedes.

2011, Cespedes and Pinto stipulated to modifying those orders, allowing Cespedes to move to Florida with J.C. By February 2014, Cespedes and J.C. were living in Arizona and Pinto in Texas. In February 2014, the Arizona Department of Child Safety (DCS) filed a dependency petition alleging that Cespedes had physically abused J.C. by hitting him with a belt. Subsequently, Pinto filed a petition to modify the custody orders, requesting sole legal-decision-making authority and primary residential parenting time, child support, and attorney fees. She also asked that Cespedes have only supervised parenting time with J.C.

¶4 In September 2014, J.C. was adjudicated dependent as to each parent based on Cespedes's physical abuse of J.C. and Pinto's inability to protect him from the abuse. The dependency was dismissed in February 2015 after both parents completed services through DCS. Thereafter, the trial court granted Cespedes and Pinto's joint motion to dismiss Pinto's petition to modify. In October 2015, DCS filed a new dependency petition alleging Cespedes had abused J.C. by, again, hitting him with a belt, and that Pinto was unable to protect J.C. from the abuse. In November 2015, Pinto filed another petition to modify the custody orders seeking permission to relocate J.C.'s residence to hers in Austin, Texas. Within a few months thereafter, J.C. was again adjudicated dependent as to each parent.

¶5 In April 2016, the trial court conducted a conference with a judge of the Puerto Rico family court that had jurisdiction over the parties' original custody case.[3] During that call, the Puerto Rico judge agreed with the trial court here that the courts of Puerto Rico no longer had custody jurisdiction. In May 2016, the trial court confirmed its registration of the Puerto Rico custody orders.

¶6 In December 2016, after a series of evidentiary hearings, the trial court found that Cespedes had engaged in "significant domestic violence" and awarded Pinto sole legal-decision-making authority and primary residential parenting time with J.C., and granted Cespedes supervised parenting time. It also ordered Cespedes to pay $1,000.32 per month in child support directly to Pinto. The court also ordered Cespedes to pay Pinto's attorney fees in the amount of $15,000 as a sanction under

[3]This conference was presumably held pursuant to A.R.S. § 25-1010.

A.R.S. §§ 25-415 and 25-324 for violating court orders and delaying the proceedings. Following that order, the dependency was dismissed.

¶7 Cespedes appealed that December 2016 ruling, but this court dismissed the appeal because, given pending matters, it lacked the finality language of Rule 78(b), Ariz. R. Fam. Law P., and thus was not a final, appealable order. *In re Custody of Jacob C.*, Nos. 2 CA-CV 2016-0105, 2 CA-CV 2017-0017-FC, ¶¶ 3-4 (Ariz. App. Oct. 10, 2017) (consol. mem. decision). Thereafter, in December 2017, Pinto filed a motion to enforce the attorney fee award, which was not immediately ruled upon, but which she then re-urged in October 2018.

¶8 At the January 2019 hearing on that re-urged motion, Cespedes told the trial court he did not pay the attorney fees award because it was a "non-final order." The court then entered a judgment against Cespedes for $15,000 in attorney fees plus legal interest, which included Rule 78(c), Ariz. R. Fam. Law P. finality language. Cespedes filed a motion requesting Rule 78(b) finality language instead, which the court granted. Cespedes timely appealed that judgment.

¶9 On March 1, 2019, the trial court issued an under-advisement ruling on a number of motions Cespedes had filed. In its order, the court found that, despite the December 2016 ruling awarding Pinto sole custody, J.C. had moved to Arizona in 2017 with Cespedes and had been living exclusively with him since then. It found that Pinto had not filed any enforcement actions, nor had she seen J.C. since that relocation and that, since then, Cespedes alone had been caring for J.C. and making all legal decisions on his behalf. The court awarded Cespedes sole legal-decision-making authority and primary residential parenting time, and granted Pinto unsupervised parenting time. The court also terminated Cespedes's child support obligation and affirmed all other orders in the December 2016 ruling that did not conflict with its current rulings.

¶10 The trial court found that, as to both the March 1, 2019 order and the earlier December 20, 2016 order, there was "no just reason for delay" and directed that each order, pursuant to Rule 78(b), be entered as final, appealable orders. Cespedes timely amended his notice of appeal to include the March 1, 2019 and December 20, 2016 rulings. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Analysis

¶11 Cespedes asks this court to vacate the May 17, 2016 order confirming registration of the Puerto Rico custody orders, the December 20, 2016 custody orders granting Pinto sole legal-decision-making authority and primary residential parenting time, the January 29, 2019 judgment for attorney fees, and the March 1, 2019 ruling affirming the December 20, 2016 orders. He also asks us to determine that the trial court—as a basis for the December 20, 2016 custody orders—erroneously failed to apply justification as defined by A.R.S. § 13-403 in considering the child abuse claims, and to order the trial court to dismiss the case without prejudice. We review a trial court's custody decisions for an abuse of discretion. *Hurd v. Hurd*, 223 Ariz. 48, ¶ 11 (App. 2009). We review the trial court's application of the law *de novo*. *Woyton v. Ward*, 247 Ariz. 529, ¶ 5 (App. 2019).

Request to Vacate the May 2016 Order Registering the Puerto Rico Custody Orders

¶12 Cespedes contends that the trial court erred in registering the Puerto Rico custody orders at the outset of the case because, among other reasons, the orders to be registered had since been modified.[4] In his brief, Cespedes does not, however, state how such orders had been modified. In his objection to the registration below, however, he asserted that the custody order had been modified—in accord with the parties' agreement that he could move with J.C. to Florida—but the support order had been "maintained" at the originally-ordered rate.

¶13 Pursuant to A.R.S. § 25-1055(D)(2), "the court shall confirm the registered order unless . . . [t]he child custody determination sought to

[4]Cespedes also argues that the juvenile court in the dependency proceedings did not have jurisdiction to register the orders because it related to family law matters, and, similarly, that Pinto's appointed, but private, counsel in that proceeding did not have "authority" to file the request for registration of custody orders. Given that the juvenile court is merely a division of the superior court, A.R.S. § 8-201(21); *State v. Marks*, 186 Ariz. 139, 142 (App. 1996), and that the family law matters were consolidated with the juvenile court proceedings, Rule 3.6, Pima Cty. Super. Ct. Loc. R. P., Cespedes is incorrect as to the court's power. As to the authority of Pinto's counsel, we are aware of no limitations on his authority to file the request.

be registered has been . . . modified by a court having jurisdiction to do so." Under A.R.S. § 25-1307(A)(3), a party may challenge the validity of the foreign support order to be registered if the order "has been vacated, suspended or modified by a later order." Because Cespedes has only asserted that the custody order, but not the support order, was modified, we will address only his objection to the registration of the custody order. As to that objection, registration of the Puerto Rico custody order was immaterial.

¶14 Pursuant to § 25-1055, a child custody order issued by a court in another state (including the territory of Puerto Rico) may be registered in Arizona whether or not the party asking for registration is seeking enforcement. But once registered, a foreign custody order is enforceable in Arizona. A.R.S. § 25-1056. Although a foreign custody order must be registered to be enforced, it need not be registered to be modified if the Arizona court would otherwise have jurisdiction to issue an original custody order and the foreign court has surrendered jurisdiction. A.R.S. §§ 25-1031, 25-1033; *Prouty v. Hughes*, 246 Ariz. 36, ¶ 15 (App. 2018).

¶15 Here, at the time of registration, the trial court had jurisdiction to issue an initial child custody order because Arizona was J.C.'s "home state . . . on the date of the commencement of the proceeding." § 25-1031(A)(1). Cespedes resided here with J.C. continuously for at least six months immediately before the commencement of the proceeding. *See id.*; A.R.S. § 25-1002(7). Further, the Puerto Rico court had determined it no longer had exclusive, continuing jurisdiction over the case. *See* A.R.S. §§ 25-1031, 25-1315. Consequently, registration of the Puerto Rico order was unnecessary to any of the trial court's orders. Nonetheless, Cespedes's challenge to registration is mooted by the subsequent assumption of jurisdiction by the Arizona courts, and we will not consider his argument. *Kondaur Capital Corp. v. Pinal Cty.*, 235 Ariz. 189, ¶ 8 (App. 2014) (appellate court "typically decline[s] to consider moot or abstract questions as a matter of judicial restraint").

Request to Vacate the December 2016 and March 2019 Rulings Regarding Child Custody

¶16 As to Cespedes's request that we vacate the December 2016 and March 2019 custody orders, if we were to do so, the Puerto Rico custody court orders would be the remaining, effective custody orders. Under those orders, Cespedes would have sole legal-decision-making authority over, and primary residential parenting time with, J.C., and Pinto would have

unsupervised visitation. Because these are the same custody orders now in effect, Cespedes would gain nothing. *See Gubser*, 126 Ariz. at 306.

¶17 An appeal may be taken only by an aggrieved party, *see* Ariz. R. Civ. App. P. 1(d), and an appellant may appeal only from "that part of the judgment by which [he] is aggrieved," *Gubser v. Gubser*, 126 Ariz. 303, 306 (1980). "For appellant to qualify as an aggrieved party, the judgment must operate to deny [him] some personal or property right or to impose a substantial burden upon [him]." *Id*. Although "Arizona courts are not constitutionally constrained to consider only 'cases' or 'controversies,' we typically decline to consider moot or abstract questions as a matter of judicial restraint." *Kondaur Capital Corp.*, 235 Ariz. 189, ¶ 8. "It is not an appellate court's function to declare principles of law which cannot have any practical effect in settling the rights of litigants." *Progressive Specialty Ins. Co. v. Farmers Ins. Co. of Ariz.*, 143 Ariz. 547, 548 (App. 1985). Because, as to the relief he seeks here, Cespedes is not an aggrieved party, we deny the relief sought as moot. *See Progressive Specialty Ins. Co.*, 143 Ariz. at 548.

Request to Vacate December 2016 Order and January 2019 Judgment Regarding Attorney Fees

¶18 Cespedes next argues that the award of attorney fees in the December 2016 order was "premature," and that the trial court did not make findings sufficient to support an award of attorney fees in the January 2019 judgment. We review an award of attorney fees for an abuse of discretion. *Myrick v. Maloney*, 235 Ariz. 491, ¶ 6 (App. 2014). Similarly, "[w]e review a trial court's sanction for discovery violations for a clear abuse of discretion." *Seidman v. Seidman*, 222 Ariz. 408, ¶ 18 (App. 2009).

¶19 Section 25-324(A) permits a court "from time to time, after considering the financial resources of both parties" and the reasonableness of the parties' positions in the proceedings, to order one party to pay the attorney fees of the other. Under § 25-415(A)(3) a court "shall sanction a litigant for costs and reasonable attorney fees incurred by an adverse party if the court finds that the litigant has . . . [v]iolated a court order compelling disclosure or discovery" under Rule 65, Ariz. R. Fam. Law P.

¶20 Although Cespedes is correct that the January 2019 judgment does not contain any findings to support the assessment of $15,000 in attorney fees, the December 2016 ruling it gives effect to does. In that ruling on Pinto's motion for attorney fees, in applying §§ 25-324 and 25-415(A), the trial court stated that it considered the financial resources of the parties

and the reasonableness of the positions taken by both Cespedes and Pinto "throughout the proceedings." It then found that Cespedes had "willfully refused to follow the Court's orders to produce his financial affidavit and his tax returns needed" to determine proper child support, which resulted in delays and protraction of the litigation. It further found that Cespedes had "delayed the proceedings," "failed to produce timely disclosure," filed untimely and meritless motions, and engaged in inappropriate courtroom behavior. These findings are sufficient to support the award of fees.

The Trial Court's Failure to Apply A.R.S. § 13-403

¶21 Cespedes next contends the trial court erred by not applying the justification provision of § 13-403(1) to "these proceedings"; that is, to the child custody proceedings. In his opening brief, Cespedes incorporates arguments made in his April 2016 Request for Conclusion of Law, in which he contended the court should apply § 13-403 to child custody proceedings for the "purposes of modifying legal decision-making and parenting time."

¶22 Section 13-403(1) provides that the use of physical force is justified when a "parent or guardian . . . entrusted with the care and supervision of a minor" uses "reasonable and appropriate physical force upon the minor . . . when and to the extent reasonably necessary and appropriate to maintain discipline." While § 13-403 addresses criminal culpability, it also applies in civil suits. A.R.S. § 13-413 ("No person . . . shall be subject to civil liability for engaging in conduct otherwise justified pursuant to the provisions of this chapter."). For purposes of this decision, we will assume, without deciding, that the statute is equally applicable to custody determinations, which, although civil in nature, do not impose civil liability.

¶23 It is undisputed that, in 2014, Cespedes hit J.C. multiple times with a belt, leaving marks and bruises. A similar incident occurred in September 2015. Cespedes, throughout the litigation, maintains his conduct was justified and constituted "'reasonable' discipline, not physical abuse." The trial court did not expressly apply § 13-403 in any of its custody orders. We assume, however, that the court knows and applies the law. *Fuentes v. Fuentes*, 209 Ariz. 51, ¶ 32 (App. 2004) ("[T]rial judges are presumed to know the law and to apply it in making their decisions." (quoting *State v. Trostle*, 191 Ariz. 4, 22 (1997))).

¶24 The trial court's express findings, as detailed above, were that Cespedes had "physically abused" J.C. and committed domestic violence

against him. Such factual findings belie a justified use of force, and amount to findings that Cespedes's use of force was unreasonable and inappropriate. *See Marriage of Gibbs*, 227 Ariz. 403, ¶ 6 (this court draws its own conclusions from facts implied in judgment). These findings would not support a claim of justification under § 13-403(1), which requires that discipline be "reasonably necessary and appropriate."

¶25 We will disturb the trial court's findings of fact "only when clearly erroneous," *Marriage of Gibbs*, 227 Ariz. 403, ¶ 6, and we will affirm the court's rulings if correct for any reason, *see Forszt v. Rodriguez,* 212 Ariz. 263, ¶ 9 (App. 2006). Therefore, we do not find that the trial court erred. To the extent Cespedes appears to be asking us to reweigh the evidence to cast his actions in a better light, we will not do so. *See Hilgeman v. Am. Mortg. Sec., Inc.*, 196 Ariz. 215, ¶ 7 (App. 2000) ("[W]e will not second-guess or substitute our judgment for that of the trial court." (quoting *Gen. Elec. Capital Corp. v. Osterkamp*, 172 Ariz. 185, 188 (App. 1992))).

Dismissal of the Case

¶26 Finally, Cespedes asks this court to order the trial court "to dismiss the case without prejudice." However, because he provides no meaningful argument justifying such relief, he does not comply with the Arizona Rules of Civil Appellate Procedure, and we will not consider his request. *See* Ariz. R. Civ. App. P. 13(a)(7) ("An appellant's opening brief must set forth . . . [a]ppellant's contentions concerning each issue presented for review, with supporting reasons for each contention, and with citations of legal authorities and appropriate references to the portions of the record on which the appellant relies."); *see also Bennigno R. v. Ariz. Dep't of Econ. Sec.*, 233 Ariz. 345, ¶ 11 (App. 2013) (appellate court will not address arguments waived by party's lack of proper and meaningful argument).

Disposition

¶27 For the foregoing reasons, we leave undisturbed the trial court's May 2016 registration of the Puerto Rico custody orders. We also refuse to vacate the December 2016 and March 2019 child custody rulings as moot. We further affirm the December 2016 attorney fee award and resulting January 2019 attorney fee judgment. We do not find any error as to the application of A.R.S. § 13-403, and, finally, we deny Cespedes's request for dismissal of the case as waived.