IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

CRYSTAL MARSHALL,
Appellant,

and

BRANDON MARSHALL,
Appellee.

No. 2 CA-CV 2019-0201-FC
Filed February 25, 2021

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NOT FOR PUBLICATION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. D20173015
The Honorable Scott Rash, Judge

AFFIRMED

COUNSEL

Kirk Smith, Chandler
Counsel for Appellant

Joshua Marshall Law P.L.L.C., Tucson
By Joshua M. Marshall
Counsel for Appellee

MEMORANDUM DECISION

Presiding Judge Espinosa authored the decision of the Court, in which Vice Chief Judge Staring and Judge Eckerstrom concurred.

E S P I N O S A, Presiding Judge:

¶1 Crystal Marshall appeals from the trial court's ruling on her motion to determine the primary residence of the minor children whose care she shares with her former spouse, Brandon Marshall. For the reasons explained below, the order is affirmed.

Factual and Procedural Background

¶2 The facts, which we view in the light most favorable to upholding the trial court's judgment, are not disputed. *See Krisko v. John Hancock Mut. Life Ins. Co.*, 15 Ariz. App. 304, 305 (1971). The parties married in 2013 and lived in Tucson with their two minor children. Crystal relocated to Maricopa County in December 2017, while Brandon continued to reside in Tucson. In 2018, a decree of dissolution of marriage was entered, in which they agreed "to equal parenting time with the minor children residing with each party on a weekly basis," and to engage in mediation in April of 2019 to discuss a parenting time schedule for when the eldest child would enroll in school. To that end, in the spring of 2019, the parties reached a partial agreement that the children would live with the residential parent during the school year, with the nonresidential parent having the children every other weekend. They did not agree on or designate who would be the residential parent. Crystal thereafter requested an evidentiary hearing to determine the residential parent, which the parties agreed to treat as a relocation issue, with Crystal bearing the burden of proof.[1]

¶3 At the conclusion of the hearing, in which both parties testified, the trial court determined "both parents are good parents and

[1]*See Berrier v. Rountree*, 245 Ariz. 604, ¶ 8 (App. 2018) (when court is asked to choose between two distant residences to establish a primary home, it is a relocation question); A.R.S. § 25-408(A)(2) (relocation if moving more than one hundred miles within the state).

equally able to care for their children," but Crystal "failed to meet her burden to show relocation of the children to a primary residence in Maricopa County is in the children's best interest." The court therefore ordered the primary residence to be with Brandon and subsequently issued a written order with findings as to each factor under A.R.S. § 25-408. We have jurisdiction over Crystal's appeal. *See* A.R.S. §§ 12-120.21, 12-2101.

Discussion

¶4 Crystal contends the trial court's ruling denying her relocation request and transferring primary physical custody of the children to their father "was not justified legally and factually." The trial court is required to decide relocation requests in accordance with the children's best interests, and the parent seeking to relocate the children has the burden of proof. A.R.S. § 25-408(G). The court must consider all of the factors in A.R.S. § 25-408(I), including the best interest factors enumerated in A.R.S. § 25-403(A). The court also is required to "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." *Owen v. Blackhawk*, 206 Ariz. 418, ¶ 9 (App. 2003); *see also* A.R.S. § 25-403(B). A trial court's findings of fact will be set aside only if they are clearly erroneous. Ariz. R. Fam. Law P. 82(a)(5). We review the trial court's relocation ruling for abuse of discretion. *See Woyton v. Ward*, 247 Ariz. 529, ¶ 5 (App. 2019). The trial court abuses its discretion by making an error of law or a discretionary ruling unsupported by the record. *See Boyle v. Boyle*, 231 Ariz. 63, ¶ 8 (App. 2012).

¶5 Crystal provides no argument supporting her claim that the trial court's ruling was legally or factually erroneous. Instead, her appeal essentially contends the court failed to weigh the evidence in the manner she advocates. She focuses almost exclusively on evidence that supports her position, however, without acknowledging the considerable evidence supporting Brandon's position and the trial court's findings.[2] Among

[2]For instance, she highlights that she established the children with a pediatrician and was prepared to enroll the children in school in Phoenix while ignoring that the children had previously been established with a pediatrician in Tucson and Brandon was prepared to enroll them in an arguably better school. And she asserts her work schedule is much more flexible than Brandon's, allowing her to spend more parenting time with the children, but overlooks Brandon's testimony that his jobs also afford flexibility.

courts considering a dispute such as this one, "the trial judge is in the best position to determine what is best for the child," *Burk v. Burk*, 68 Ariz. 305, 308 (1949), and we "do not substitute our judgment for the trial court's," *Great W. Bank v. LJC Dev., LLC*, 238 Ariz. 470, ¶ 22 (App. 2015); *see also Bennigno R. v. Ariz. Dep't of Econ. Sec.*, 233 Ariz. 345, ¶ 31 (App. 2013) (we do not "reweigh the evidence . . . [and] reach a different conclusion about the children's best interests"). We will affirm the trial court's ruling "if substantial evidence supports it." *Hurd v. Hurd*, 223 Ariz. 48, ¶ 16 (App. 2009).

¶6 Substantial evidence supports the trial court's findings as to the numerous factors it was obligated to consider. *See* §§ 25-403, 25-408. We observe, however, that although not raised by Crystal either below or on appeal, the court appears to have erred as to one factual finding that could potentially have impacted two factors—the interaction and interrelationship of the children with other people who may affect their best interest, § 25-403(A)(2), and the prospective advantage of the move for improving the general quality of life for the custodial parent or for the children, § 25-408(I)(3).

¶7 The trial court found that the children's maternal grandmother resides in Phoenix, but "approximately 30 miles" away from Crystal, and concluded "regular visits seem unlikely" because the grandmother was "not close enough to [Crystal's] residence that she may spend substantial time with the children." But Crystal's testimony, uncontroverted by Brandon, was that when she had first moved to Phoenix in December 2017, she lived thirty-two miles from her parents but she "now live[s] eight minutes from them." Crystal's failure to raise this issue below denied the court an opportunity to consider its apparent error and amend its findings if warranted. *See* Ariz. R. Fam. Law P. 35.1, 82(b). And Brandon was denied the opportunity to argue the finding was not clearly erroneous. Accordingly, we consider the issue waived. *See Hawkins v. Allstate Ins. Co.*, 152 Ariz. 490, 503 (1987) (With few exceptions, "an appellate court will not consider issues not raised in the trial court."); *Crystal E. v. Dep't of Child Safety*, 241 Ariz. 576, ¶ 8 (App. 2017) ("[O]ur review should be confined to the issues raised by the appellant.").

¶8 More importantly, although as noted earlier we do not reweigh the evidence, *Bennigno R.*, 233 Ariz. 345, ¶ 31, in light of the trial court's detailed and well-grounded findings concerning the children's best interests, we cannot say one ostensible mistake regarding the potential availability of the maternal grandmother merits reversal or remand. *See Woyton*, 247 Ariz. 529, ¶ 5 (relocation reviewed for abuse of discretion,

which occurs when record is devoid of competent evidence to support decision or court commits legal error). Among several other factors the court weighed in favor of retaining the children's status quo, it particularly noted that the children had special educational needs that were being met in their current placement and that disrupting their existing situation would be detrimental to their progress and "negatively affect the[ir] stability." We are thus confident in concluding that the court's one questionable finding of fact would not have changed its calculus in determining the children were best served by not relocating them. *See* § 25-408(G) (parent seeking relocation bears burden of proving what is in child's best interest); *Porter v. Porter*, 21 Ariz. App. 300, 302 (1974) (trial court has "broad discretion" to determine what is most beneficial for children).

Attorney Fees and Costs on Appeal

¶9 Both parties request an award of attorney fees and costs on appeal pursuant to A.R.S. § 25-324. The record does not contain current or recent information regarding the parties' financial resources, and, in the exercise of our discretion, we decline both requests. *See Coburn v. Rhodig*, 243 Ariz. 24, ¶ 16 (App. 2017). As the prevailing party on appeal, however, Brandon is entitled to his costs on appeal upon compliance with Rule 21, Ariz. R. Civ. App. P. *See* A.R.S. § 12-341.

Disposition

¶10 The trial court's ruling denying Crystal's request for relocation is affirmed.