IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE THE MARRIAGE OF

AMBER VARGAS,
Appellant,

and

DANIEL CRUZ,
Appellee.

No. 2 CA-CV 2020-0078
Filed August 4, 2021

Appeal from the Superior Court in Pinal County
No. S1100DO201300569
The Honorable Richard T. Platt, Judge Pro Tempore
The Honorable Barbara A. Hazel, Judge Pro Tempore

AFFIRMED

COUNSEL

Georgini Law Offices L.L.C., Casa Grande
By Tresa S. Georgini
Counsel for Appellant

The Law Office of Vincent L. Mattioli, Scottsdale
By Vincent L. Mattioli
Counsel for Appellee

MEMORANDUM DECISION

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

S T A R I N G, Vice Chief Judge:

¶1 Amber Vargas appeals from the trial court's ruling granting Daniel Cruz final decision-making authority on matters related to their minor child's education and modifying his child support obligation. We affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to affirming the trial court's ruling. *See Downing v. Downing*, 228 Ariz. 298, ¶ 2 (App. 2011). Vargas and Cruz were married in 2009 and have one child together, N.C., born in 2010. In 2013, Vargas petitioned for dissolution, and the court issued a decree dissolving the marriage and awarding the parties joint legal decision-making authority and equal parenting time. In 2017, pursuant to a modification petition, the court ordered the parties to "share joint legal decision–making with neither party having a final say."

¶3 In July 2019, Vargas filed the petition currently at issue, requesting modification of legal decision-making, parenting time, and child support, and asking the trial court to award her final decision-making authority as to all matters related to N.C.[1] Cruz filed a counter-petition, asking the court to "[m]odify legal decision-making authority so that the parties share joint legal decision making but allow [him] the final say."

[1]Vargas also moved for emergency temporary orders after discovering Cruz's seventeen-year-old son from a previous marriage, D.C., was being investigated for sexual assault. The court initially granted Vargas's motion for temporary orders, finding Cruz did not provide a safe environment for N.C. during his parenting time and awarding Vargas sole legal decision-making authority with discretion as to Cruz's parenting time. However, following an evidentiary hearing, the court dismissed the emergency orders and reinstated its previous legal decision-making and parenting-time orders on the condition that N.C. not have unsupervised contact with D.C. and only be present in the same household as D.C. with adult supervision.

After a bench trial, the court denied Vargas's request to be awarded final decision-making authority on all matters and ordered the parties to exercise joint legal decision-making authority, with Cruz having final decision-making authority on all matters relating to N.C.'s education, including decisions as to school and after-school childcare programs. It also ordered that the parties would have equal parenting time pursuant to a "week on, week off" schedule and reduced Cruz's child support obligation from $245 per month to $74 per month. This appeal followed.[2] We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(2).[3]

Modification of Legal Decision-Making

¶4 Vargas argues the trial court erred in granting Cruz final decision-making authority on all matters related to N.C.'s education, including after-school care. Specifically, she contends the court "failed to base its decisions on the best interests of" N.C. and instead based its ruling on "incorrect findings of fact that are not adequately supported by the record." Further, she argues, the court did not have jurisdiction to order that she "discontinue the use of her child care provider."

¶5 We review a trial court's modification of legal decision-making authority for an abuse of discretion. *See Baker v. Meyer*, 237 Ariz. 112, ¶ 10 (App. 2015). The court abuses its discretion when it commits an error of law or when the record is "devoid of competent evidence to support" its decision. *Woyton v. Ward*, 247 Ariz. 529, ¶ 5 (App. 2019)

[2]Vargas filed a motion for reconsideration after filing her notice of appeal; thus, the trial court lacks jurisdiction to rule on that motion. *See City of Phoenix v. Leroy's Liquors, Inc.*, 177 Ariz. 375, 381 (App. 1993) (when a party files a notice of appeal before trial court has opportunity to rule on motion for reconsideration, court is divested of jurisdiction). Neither party asks us to suspend and revest jurisdiction to allow the court to rule on the motion.

[3]Although the child support order includes finality language under Rule 78(c), Ariz. R. Fam. Law P., the under-advisement ruling filed on the same day does not. However, because the under-advisement ruling and child support order together fully resolve all issues raised in the post-decree petition, such language appears to be unnecessary in light of the recent decision in *Choy Lan Yee v. Yee*, 251 Ariz. 71, ¶ 1 (App. 2021) (family court ruling on post-decree motion is appealable special order entered after final judgment under § 12-2101(A)(2) and does not require Rule 78 certification after "court resolves all relief sought in the motion").

(quoting *Little v. Little*, 193 Ariz. 518, ¶ 5 (1999)). We accept the court's findings of fact absent clear error. Ariz. R. Fam. Law P. 82(a)(5); *Engstrom v. McCarthy*, 243 Ariz. 469, ¶ 4 (App. 2018). "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." *Lewis v. Midway Lumber, Inc.*, 114 Ariz. 426, 429 (App. 1977). "Evidence is substantial if it allows 'a reasonable person to reach the trial court's result.'" *Castro v. Ballesteros-Suarez*, 222 Ariz. 48, ¶ 11 (App. 2009) (quoting *Davis v. Zlatos*, 211 Ariz. 519, ¶ 18 (App. 2005)). We will not reweigh conflicting evidence on appeal, *see Clark v. Kreamer*, 243 Ariz. 272, ¶ 14 (App. 2017), and we defer to the court's assessments of witness credibility, *see Gutierrez v. Fox*, 242 Ariz. 259, ¶ 49 (App. 2017).

¶6 Vargas challenges the trial court's ruling point-by-point under A.R.S. §§ 25-403(A), 25-403.01(B), and 25-403.05. We first consider her arguments regarding its determinations under § 25-403(A).

N.C.'s Best Interests

¶7 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 sets out 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"; "[w]hether one parent intentionally misled the court"; and whether there have been acts of domestic violence or child abuse. *Id.* 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). Notably, however, trial courts are given broad discretion to determine what is in a child's best interests because they are in the best position to make that fact-based determination. *Porter v. Porter*, 21 Ariz. App. 300, 302 (1974).

N.C.'s Interaction with Parents, Siblings, and Others

¶8 Evaluating "[t]he interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interest" under § 25-403(A)(2), the trial court found that N.C. "interacts with [Vargas], her

spouse and three other children in her residence," as well as Cruz, "his spouse and other members of his household." On appeal, Vargas argues that although N.C. has a "good relationship" with Cruz and other members of his household, "there have been issues with [Cruz]'s spouse" in that she "prohibits [N.C.] from wearing clothes he received from [Vargas], or that he left [Vargas]'s house wearing."

¶9 However, testimony at trial concerning the nature of the relationship indicated N.C. had been "interested in going to a dog show . . . with" Cruz's spouse, and Cruz testified his spouse "regularly" picks N.C. up from school. Thus, Vargas's argument essentially asks us to reweigh the evidence concerning the relationship, which we will not do. *See Clark*, 243 Ariz. 272, ¶ 14. Because substantial evidence indicates N.C. interacts with Cruz's spouse, the trial court did not clearly err in so finding. *See Lewis*, 114 Ariz. at 429.

N.C.'s Adjustment

¶10 Regarding N.C.'s adjustment to home, school, and community under § 25-403(A)(3), the trial court found he is well-adjusted to both Vargas's and Cruz's homes, as well as to his school and community. The court stated the parties could not agree as to which middle school N.C. would attend, noting Vargas's testimony that her preferred school had a higher rating than the one Cruz preferred, that her other children attend her preferred school and it would be hard for her to pick up N.C. from a different school, and that if N.C. attended her preferred school, he could take the bus home. It also noted Cruz's testimony that if N.C. were to attend the school Cruz preferred, "he would be with his friends since all of them attended the same elementary school together." The court concluded "[t]here is not a clear choice as to which option is in the child's best interests."

¶11 Vargas challenges the trial court's conclusion, arguing it stated "many reasons . . . as to why attending [her preferred school] would be a better . . . choice" for N.C. and "would be easier" for her, and the only reason Cruz provided in support of his school choice "is that the child's friends will likely be attending that school." She also points to Cruz's testimony that "he cannot speak on exactly what he found as far as research when it comes to the differences between" the two schools, as well as her own testimony that her preference is "only approximately four to five miles away from [Cruz]'s residence, which would result in a simple four-to-seven-minute drive for him."

¶12 Conflicting evidence exists as to which school is in N.C.'s best interests, including Cruz's testimony that N.C.'s "friends that he's pretty much grown up with" would likely attend Cruz's preferred school because "that's normally the school that they go into" from N.C.'s current elementary school. And, Cruz testified Vargas lives only five miles from his preferred school. Thus, the trial court did not clearly err in finding there was not a clear choice as to which school was in N.C.'s best interests. *See Clark*, 243 Ariz. 272, ¶ 14; *Lewis*, 114 Ariz. at 429.

¶13 In addition, after noting Cruz wanted N.C. to attend the Boys and Girls Club for after-school care and Vargas wanted him to attend a daycare center after school, the trial court stated: "It appears to be in the child's best interest to attend the Boys and Girls Club after school." Vargas contends that "[i]f the trial court found that there was not a clear school choice in the best interest of [N.C.] when [its] reasoning clearly supported" sending him to her preferred school, "the court should not have found that it was in the child's best interest to attend the Boys and Girls Club after school since it provided no reasoning for its finding" and "did not consider [her] position when allocating decision-making authority."

¶14 In support of her argument, Vargas points to her own testimony that she wanted N.C. to attend a particular daycare center after school because her other children go there and "she believes it is in [N.C.]'s best interest to stay in the community he is adjusted to and continue using the same daycare services he has utilized for nine years." However, Cruz testified N.C. "hates day care," and he wanted N.C. to go somewhere "more age appropriate and more cost effective." Further, he testified he would "cover the entirety of the cost" of $65 per month, and N.C.'s school bus could transport him to the Boys and Girls Club after school. And, Cruz testified the Boys and Girls Club was closer to Vargas's home than the daycare center and had a homework assistance program. On this record, the trial court did not clearly err in finding "[i]t appear[ed] to be" in N.C.'s best interests to attend the Boys and Girls Club after school. *See Clark*, 243 Ariz. 272, ¶ 14; *Lewis*, 114 Ariz. at 429; *Fuentes v. Fuentes*, 209 Ariz. 51, ¶ 18 (App. 2004) (we presume the court considered all admitted evidence). Moreover, Vargas's contention that the court was required, and failed, to provide reasoning for its finding that it would be in N.C.'s best interests to attend the Boys and Girls Club is without merit. The court supported its ultimate decision to award Cruz final decision-making authority regarding N.C.'s education with "specific findings on the record about all relevant factors and the reasons for which the decision is in" N.C.'s best interests. § 25-403(B).

¶15 Vargas also contends the trial court lacked jurisdiction to order her to "discontinue the use of her original child care provider and instead have [N.C.] attend the Boys and Girls Club for after-school care services." Specifically, she asserts that although the court explained it did not have jurisdiction to decide which school N.C. would attend, "[b]y finding that it would be in [N.C.]'s best interest to attend the Boys and Girls Club . . . and then granting [Cruz] final legal decision-making authority over all educational matters, the trial court made a legal decision about [N.C.]'s life." Further, she concludes, because "schools and after-school care programs are both educational matters," a court "cannot be prohibited from deciding which school a child attends but allowed to choose which after-school care program he attends."

¶16 Contrary to Vargas's argument, the trial court did not decide which after-school program N.C. would attend, nor did it order her to discontinue her use of the daycare center for N.C.'s after-school care. The court correctly acknowledged that, pursuant to *Nicaise v. Sundaram*, 244 Ariz. 272, ¶ 27 (App. 2018), *vacated in part on other grounds*, 245 Ariz. 566, ¶ 17 (2019), although "A.R.S. § 25-403(A) empowers the court to 'determine legal decision-making and parenting time,'" it does not allow the court to make legal decisions concerning a child's life. Still, "[t]he court may . . . consider each parent's proposed decisions when allocating decision-making authority" because "[s]uch information is directly relevant to the best-interests analysis under A.R.S. § 25-403." *Id.* ¶ 30. Thus, the court properly granted Cruz final decision-making authority over matters related to N.C.'s education after considering Vargas's and Cruz's proposed school and after-school preferences. *See id.* ¶¶ 27, 30; *Fuentes*, 209 Ariz. 51, ¶ 18. The court did not lack jurisdiction to make such a determination. *See Nicaise*, 244 Ariz. 272, ¶ 30.

Likelihood of Parent Allowing Contact

¶17 As to which parent "is more likely to allow the child frequent, meaningful and continuing contact with the other parent" under § 25-403(A)(6), the trial court found "[b]oth parents are appropriate to make legal decisions for the child." Vargas contends "the record clearly shows that [she] is the parent more likely to allow the child frequent, meaningful, and continuing contact" with Cruz, pointing to portions of the record indicating she "has tried to accommodate [his] spouse during parenting time exchanges," "tries to keep [him] informed as to things that occur during her parenting time," "provides him with make-up days when he misses parenting time," and has offered to share holiday parenting time

with him. She asserts Cruz "fails to do the same" and "does not respond to her requests or is unwilling to compromise."

¶18 Again, Vargas asks us to reweigh the evidence on appeal, which we will not do. *See Clark*, 243 Ariz. 272, ¶ 14. Although the trial court did not refer to the specific evidence Vargas points to on appeal, we presume it considered all admitted evidence. *See Fuentes*, 209 Ariz. 51, ¶ 18. Moreover, substantial evidence supports the court's finding. *See Lewis*, 114 Ariz. at 429. Indeed, Cruz testified he does not deny Vargas parenting time, "very rarely" asks for modification of parenting time, is "okay giving up" parenting time to accommodate Vargas as long as he does not have preplanned activities with N.C., and tries "to respond as quickly as [he] can" to Vargas's messages.

Intentionally Misleading the Court

¶19 Under § 25-403(A)(7), a trial court must consider "[w]hether one parent intentionally misled the court to cause an unnecessary delay, to increase the cost of litigation or to persuade the court to give a legal decision-making or a parenting time preference to that parent." Vargas challenges the court's finding that "[t]here is no evidence that either parent engaged in this type of behavior," arguing "the record shows evidence that [Cruz] took measures to increase the cost of litigation." Supporting her argument, she points to testimony that Cruz did not approve of N.C. staying with his maternal grandmother on Vargas's parenting-time days while Vargas and her husband went on their honeymoon, despite the fact that she had "allowed [him] two make-up days when she had [N.C.] for two of his days following his wedding." And, she asserts, Cruz testified it would be reasonable for N.C. to spend time with *his* family during *his* parenting time, and therefore he "was unreasonable in his request for attorney's fees regarding this issue." Additionally, Vargas contends Cruz's request for sanctions against her for violating an order restricting communications between the parties was "unreasonable" because, contrary to Cruz's allegations, her messages were not "too long," and she only sent "repetitive" messages when "the matter involved [N.C.], was important, and [Cruz] had not previously replied."

¶20 Although Vargas alleges Cruz requested attorney fees and other sanctions against her to increase the cost of litigation, and such requests were "unreasonable," she fails to develop any meaningful argument or point to evidence in the record before us on appeal establishing Cruz intentionally misled the trial court by making these requests. The argument is therefore waived. *See* Ariz. R. Civ. App. P.

13(a)(7)(A) (opening brief must contain argument with "[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" relied upon); *In re J.U.*, 241 Ariz. 156, ¶ 18 (App. 2016) ("We generally decline to address issues that are not argued adequately [and] with appropriate citation to supporting authority.").

Factors Specific to Legal Decision-Making

¶21 Vargas also challenges several of the trial court's findings under § 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 joint legal decision-making. § 25-403.01(B).

¶22 As to "[w]hether a parent's lack of an agreement is unreasonable or is influenced by an issue not related to the child's best interests" under § 25-403.01(B)(2), the trial court found the parties' lack of agreement as to legal decision-making and parenting time was not unreasonable and not based on improper motives. Vargas challenges this finding, arguing her testimony that Cruz "refused to sit down and resolve this matter without going to trial" and his failure to provide the court with the reasoning behind his preferences of school and after-school care indicate the lack of agreement is unreasonable. Further, she argues the lack of agreement "seems to be based on improper motives," contending Cruz's "preferences are extremely convenient for him but would require [her] to go far out of her way to accommodate him and their child."

¶23 Contrary to Vargas's argument, Cruz testified "the majority" of N.C.'s friends would likely attend Cruz's preferred school, N.C. "hates day care," and he wanted N.C. to go somewhere "more age appropriate and more cost effective." On their face, these considerations are not unreasonable. And, again, Vargas essentially asks us to reweigh the evidence on appeal, which we will not do. *Clark*, 243 Ariz. 272, ¶ 14. Further, we presume the trial court considered all admitted evidence. *See Fuentes*, 209 Ariz. 51, ¶ 18. The court did not clearly err in finding the parties' lack of agreement was not unreasonable.

¶24 With regard to § 25-403.01(B)(3), the trial court stated that although evidence showed Vargas and Cruz had cooperated in the past in making decisions regarding N.C., "[b]oth parents have a history of poor communication concerning legal decision-making for [N.C.]," primarily related to his education. Supporting its finding, the court noted the parties' disagreement about which school N.C. would attend and where he would receive after-school care. Vargas asserts "[t]his difficulty stems from [Cruz]'s lack of communication with [her]," and if he "fails to inform [her] of simple things that arise in their child's life, [she] will likely have no say in decisions that [he] may make for the child." Vargas's assertions do not conflict with the court's ultimate finding that the parties have difficulty communicating about matters related to N.C., and, in any event, the record supports the court's finding that both parties "have a history of poor communication."

¶25 And, as to § 25-403.01(B)(4), although Vargas acknowledges that "joint legal decision-making is logistically possible under the circumstances," she contends that Cruz "having final decision-making authority over all educational issues is not." However, Vargas does not further develop this argument, and therefore we do not address it. *See* Ariz. R. Civ. App. P. 13(a)(7)(A); *In re J.U.*, 241 Ariz. 156, ¶ 18.

A.R.S. § 25-403.05

¶26 Additionally, Vargas challenges the trial court's finding that there were "no allegations relating to sex offenders" under § 25-403.05. She argues the record shows Cruz's seventeen-year-old son, D.C., who resides in Cruz's household, had been investigated and charged with sexual assault of his fourteen-year-old cousin and paternal aunt. Further, she points to the court's previous order that N.C. could not be alone with D.C.

¶27 Under § 25-403.05(A), a trial 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. And, under § 25-403.05(B), a "child's parent or custodian must immediately notify the other parent or custodian if the parent or custodian knows that a convicted or registered sex offender or a person who has been convicted of a dangerous crime against children . . . may have access to the child." Neither of these provisions apply in this case. Vargas has not alleged D.C. is a registered or convicted sex offender. Instead, she points only to a criminal investigation and submission of charges against him. Thus, the court correctly found there were no relevant allegations under this statute.

¶28 Accordingly, because the trial court considered each factor relating to N.C.'s best interests and made specific findings supported by the record, it did not abuse its discretion in granting Cruz final decision-making authority as to matters related to N.C.'s education. *See Baker*, 237 Ariz. 112, ¶ 10; *Lewis*, 114 Ariz. at 429; *Porter*, 21 Ariz. App. at 302; *Woyton*, 247 Ariz. 529, ¶ 5.

Modification of Child Support

¶29 Vargas contends the trial court erred in reducing Cruz's child support obligation from $245 per month to $74 per month because its calculation was based on an incorrect application of the Arizona Child Support Guidelines. Specifically, she claims the court erroneously imputed to her wage-earning potential rather than minimum wage, credited Cruz for paying medical and dental insurance for N.C., refused to credit her for payment of childcare expenses, and allowed Cruz to claim N.C. "as a tax dependent for a period exceeding five years." We review the court's modification of a child support order for an abuse of discretion but review its interpretation of the Guidelines de novo, applying their plain language when possible. *See Milinovich v. Womack*, 236 Ariz. 612, ¶¶ 7, 10 (App. 2015). We accept the court's findings of fact unless they are clearly erroneous, drawing our own legal conclusions from those facts. *See Engel v. Landman*, 221 Ariz. 504, ¶ 21 (App. 2009).

Attribution of Wage-Earning Potential

¶30 Vargas first claims that because she was unemployed at the time of trial, the trial court erred in imputing to her a wage-earning potential of $18 per hour rather than minimum wage in the amount of $12 per hour for purposes of calculating her gross monthly income. Section 25-320 app. § 5(E), A.R.S., states that "[i]f a parent is unemployed or working below full earning capacity, the court may consider the reasons," and if a parent's "earnings are reduced as a matter of choice and not for reasonable cause, the court may attribute income to a parent up to his or her earning capacity." However, "[i]f the reduction in income is voluntary but reasonable, the court shall balance that parent's decision and benefits therefrom against the impact the reduction in that parent's share of child support has on the children's best interest." *Id.* Further, "income of at least minimum wage should generally be attributed to a parent" based on the court's assessment of a parent's education, past work experience, and earning capacity. *Id.*; *see, e.g.*, *Taliaferro v. Taliaferro*, 188 Ariz. 333, 337 (App. 1996) (affirming child support award based upon income attributed to

unemployed parent with college degree, prior experience in accounting and computer programming, and consistent work history for many years).

¶31 On appeal, Vargas argues that although her "unemployment was voluntary, it is reasonable pursuant to" § 25-320 app. § 5(E) because her previous job required her to work near Florence, which was "not feasible" as "she did not have a reliable person to take her children to school" and "her only option would have been to drop off the children at daycare before school," resulting in additional expenses. Cruz responds that Vargas failed to show that her lack of employment was reasonable, highlighting her lack of specific explanation about why she could not continue her former employment. He further argues she is employable because she "graduated with a mortuary science degree and . . . is a licensed embalmer," goes to school to earn her additional degree only two days per week, and testified "there were other job options she could have pursued."

¶32 Trial courts have discretion to take testimony and weigh evidence in determining whether to attribute a parent additional income when that parent chooses to reduce his or her actual income. *See Little*, 193 Ariz. 518, ¶¶ 11, 13-14 (describing Arizona's intermediate balancing test for attributing additional income to a parent who has voluntarily accepted reduced income to pursue, among other things, educational opportunities). Indeed, "[t]he primary task for a trial court is to decide each case based upon 'the best interests of the child, not the convenience or personal preference of a parent.'" *Id.* ¶ 14 (quoting *Dep't of Soc. Servs. v. Ewing*, 470 S.E.2d 608, 611 (Va. Ct. App. 1996)).

¶33 To the extent the trial court attributed income to Vargas based on her earning potential, it implicitly found she had not provided a reasonable basis for her unemployment. In its ruling, the court noted Vargas was "unemployed and attending college on a full-time basis." And, it found she had earned $18 per hour at her previous job, which "she quit . . . due to the employer wanting to transfer her work site to a different location." As Cruz notes, the record does not indicate Vargas tried but was unable to find employment. Based on the evidence before it, the court was not required to impute minimum wage to Vargas and did not abuse its discretion in "infer[ring]" Vargas could earn "$18.00 per hour for full-time employment."

Health Insurance

¶34 Vargas also argues the trial court erred in crediting Cruz for payment of N.C.'s medical and dental insurance premiums, thereby

reducing his child support obligation. When calculating a party's total child support obligation, the court "[s]hall add to the Basic Child Support Obligation the cost of the children's medical[,] dental or vision insurance coverage." § 25-320 app. § 9(A). The court shall only add the cost of insuring the child, and "[i]f coverage is applicable to other persons, the total cost shall be prorated by the number of persons covered." *Id.* "If a parent pays a cost under [§ 25-320 app. § 9(A), the court must] deduct the cost from that parent's Proportionate Share of income to arrive at the Preliminary Child Support Amount." § 25-320 app. § 13.

¶35 Here, the trial court found the monthly cost of N.C.'s medical, dental, and vision insurance under Cruz's healthcare plan is $502.06. The court ordered that Cruz is "individually responsible for providing medical insurance for [N.C.], and shall continue to pay premiums for any medical, dental and vision policies covering [N.C.] that are currently in existence," and gave him credit towards his child support obligation in the amount of $502.06 per month.

¶36 Vargas contends N.C. was not covered under Cruz's insurance at the time of trial, and therefore the trial court erred in crediting Cruz for "anticipated" insurance premiums because he "must actually be providing insurance for his child to receive such credit." Further, she argues, although Cruz testified the court's 2017 order obligated him to provide insurance for N.C., "[h]e has since failed to fulfill that obligation" or has failed to provide her with proof of such coverage. Moreover, Vargas argues that even if N.C. is covered under Cruz's insurance plan, "the total amount required to cover the child would be only $414.05" per month.

¶37 Cruz responds that the "guidelines do not state the parent must show the expense currently being taken from finances," and because the trial court's ruling backdated child support to May 2020, "not February when the hearing took place," he could not "have received improper credit" for N.C.'s insurance "because he was already incurring expenses for insurance coverage." Moreover, Cruz argues the court's calculations are correct pursuant to testimony and evidence presented to the court regarding the available insurance plans for N.C.

¶38 Vargas has not cited any authority, and we find none, supporting her contention that Cruz should not have received credit for payment of N.C.'s prospective insurance premiums because he was not enrolled under Cruz's insurance at the time of trial. *See* Ariz. R. Civ. App. P. 13(a)(7)(A) (argument must contain "citations of legal authorities"). And, Vargas does not point to evidence in the record supporting her claim that

Cruz never provided N.C. with insurance. *See id.* (argument must contain "references to the portions of the record on which the appellant relies").

¶39 Cruz testified at trial that he had not yet enrolled N.C. in a health insurance plan through his employer and was "waiting until after a court hearing" to ensure he would "be assessed the correct amount" of credit for any such payments. He provided the trial court with a range of insurance premiums and indicated he planned to utilize the "Buy-Up Plan," which, after subtracting the employee portion of the premium, would contribute to a cost of $502.06 per month solely for N.C.'s coverage. Vargas's assertion that N.C.'s health coverage only costs $414.05 per month is based on the amount required to cover N.C. under the "Base Plan" rather than the "Buy-Up Plan," and, on the record before us, her argument that Cruz "is not paying $502.06 per month for the child only" fails.

Childcare Expenses

¶40 Next, Vargas contends the trial court abused its discretion in failing to credit her for payment of N.C.'s childcare expenses and crediting Cruz for childcare expenses he had not yet paid. Under § 25-320 app. § 9(B)(1), a court may add annualized "[c]hildcare expenses that would be appropriate to the parents' financial abilities" to the basic child support obligation amount. Here, the court noted that Vargas testified she "pays $50.00 per week for [N.C.]'s day-care expenses" and that Cruz "has proposed to have [N.C.] attend [the] Boys and Girls Club and offered to pay the $65.00 per month fee." As discussed above, the parties could not agree on where N.C. should receive after-school care, and the court granted Cruz final decision-making authority as to educational issues, including "what after-school program [N.C.] should attend." Accordingly, the court credited Cruz for payment of childcare expenses in the amount of $65 per month but did not credit Vargas for any such expenses.

¶41 Vargas argues the trial court should have credited her for payment of childcare expenses while N.C. is in her care based on the "actual, current proof of payment of child care expenses" she provided to the court. Vargas points to evidence that she pays $200 per month for N.C.'s daycare services, which are necessary because "she attends school full-time." And, she asserts that "[o]ver the years," Cruz has used her daycare services for N.C. during his parenting time. Further, Vargas contends the court erred in crediting Cruz for "paying $65.00 for [N.C.] to attend the Boys and Girls Club for [his] after-school care services" in light of the fact that she "ha[d] been the party handling all child care expenses up until the time of [the t]rial." And, she argues, because Cruz's testimony indicated N.C.

had not yet been enrolled at the Boys and Girls Club "when this matter was before the trial court for final orders," the court improperly credited Cruz for "another anticipatory expense."

¶42 Cruz counters that under § 25-320 app. § 9(B)(1), the trial court has discretion, but is not required, to credit a party for childcare expenses, and the court did not err in failing to credit Vargas for such expenses "because there is no way that her unemployment and two school days [per week] could realistically rise to the level of requiring daycare expenses on all days she had [N.C.]." Cruz further argues Vargas's testimony does not support crediting her for childcare expenses, pointing to her inability at trial to provide a "correct daycare calculation" accounting for holidays, her summer school schedule, and the court's modification of parenting time to a week on, week off schedule. Moreover, he contends, because N.C. would be attending the Boys and Girls Club for after-school care, there is no reason Vargas would also "need to use her own daycare." We agree.

¶43 Again, Vargas cites no authority in support of her argument that the trial court erred in crediting Cruz for prospective childcare expenses when N.C. had not yet been enrolled at the Boys and Girls Club. *See* Ariz. R. Civ. App. P. 13(a)(7)(A). And, as Cruz argues, because he was granted final decision-making authority as to after-school care, and his preference was for N.C. to attend the Boys and Girls Club, the court did not abuse its discretion in crediting him $65 per month for such services and determining Vargas was not entitled to a similar credit for N.C. to attend a different after-school program.

Tax Exemptions

¶44 Finally, Vargas contends the trial court erred in allowing Cruz to claim N.C. as a tax dependent for more than five consecutive years in violation of § 25-320 app. § 27, which provides:

> All the federal and state tax exemptions applicable to the minor children shall be allocated between the parents as they agree, or, in the absence of their agreement, in a manner that allows each parent to claim allowable federal dependency exemptions proportionate to adjusted gross income in a reasonable pattern that can be repeated in no more than 5 years.

> This may be done by allocating claiming of the children or claiming of specific years.

¶45 The trial court's 2017 order stated Vargas "shall have the right to claim [N.C.] on her tax return one out of every five years." Further, it provided that Cruz "shall claim [N.C.] in 2017, 2018, 2019, and 2020," Vargas "shall claim [him] in 2021," and "[t]he cycle shall then continue." The child support order currently at issue provides that Cruz is entitled to claim N.C. as a dependent in 2020, 2021, and 2022, Vargas is entitled to claim him in 2023, and the pattern will then repeat.

¶46 Vargas contends that if Cruz is permitted to claim N.C. as a tax dependent for 2021, "it would at least be his sixth year of claiming him, in violation of the [Guidelines]," and she would not be able to claim N.C. on her taxes until 2023, and therefore we should "adjust[] the orders regarding tax dependency." Cruz responds that because the trial court recalculated child support, "tax dependent years must be modified accordingly." Moreover, he asserts, following the recalculation, "the court did provide a yearly list for tax dependent years to take place over a five-year recurring time period, as required," and the "guidelines do not state that the court must account for previous orders and dependency claims before making new five-year recurring dependency claims."

¶47 Neither party cites law directly on point regarding this issue, and we find none. Looking to the statute's plain language, tax exemptions "shall be allocated . . . in a manner that allows each parent to claim allowable federal dependency exemptions . . . in a reasonable pattern that can be repeated in no more than 5 years." § 25-320 app. § 27; *see Milinovich*, 236 Ariz. 612, ¶ 10 (we look to the plain language of the Guidelines as "the most reliable indicator of the supreme court's intent"). Because the current child support order permits Cruz to claim N.C. as a dependent for three consecutive years and permits Vargas to claim him for the fourth year, the pattern can be repeated in less than five years. Vargas fails to show the trial court abused its discretion in modifying Cruz's child support obligation.

Attorney Fees

¶48 Cruz requests attorney fees and costs on appeal pursuant to Rule 21, Ariz. R. Civ. App. P., but fails to specify a statutory basis for the award. We therefore deny his request for fees. *See Bed Mart, Inc. v. Kelley*, 202 Ariz. 370, ¶ 24 (App. 2002) (denying fee request pursuant to Rule 21 because "it does not provide a substantive basis for a fee award"). As the

prevailing party, however, Cruz is entitled to recover his costs on appeal upon compliance with Rule 21. *See* A.R.S. § 12-341.

Disposition

¶49 For the foregoing reasons, we affirm the trial court's order granting Cruz final decision-making authority on matters related to N.C.'s education and modifying his child support obligation.