

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

DAVID LOFTON,
Appellant,

v.

TABITHA HULSEY,
Appellee.

No. 2 CA-CV 2020-0130-FC
Filed March 18, 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NOT FOR PUBLICATION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 Pinal County
No. S1100DO201701120
The Honorable Dwight P. Callahan, Judge Pro Tempore

AFFIRMED

David Lofton, San Tan Valley
In Propria Persona

MEMORANDUM DECISION

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

BREARCLIFFE, Judge:

¶1 Appellant David Lofton appeals the trial court’s order modifying its custody order to award Appellee Tabitha Hulsey sole legal decision-making authority over and primary parenting time with their three minor children. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(2). We affirm.

Analysis

¶2 Lofton contends that the trial court erred “in granting [Hulsey] with sole legal decision making when there was no evidence of domestic violence.” Although Hulsey did not file a responsive brief, because the matter involves the best interests of minor children, we will not, in our discretion, consider such failure a confession of error. *See Reid v. Reid*, 222 Ariz. 204, ¶ 18 (App. 2009).

¶3 The trial court must assign legal decision-making authority and allocate parenting time in accord with the best interests of the child. A.R.S. § 25-403; *DeLuna v. Petitto*, 247 Ariz. 420, ¶ 11 (App. 2019). In determining a child’s best interests, the court is to consider “all factors that are relevant,” including those listed in § 25-403(A), and make its findings on the record. § 25-403; *see also Hart v. Hart*, 220 Ariz. 183, ¶ 17 (App. 2009) (noting that these specific findings need not be documented). It is an abuse of discretion for the court to fail to make these required findings. *Hurd v. Hurd*, 223 Ariz. 48, ¶ 11 (App. 2009). We review a trial court’s legal decision-making determination for an abuse of discretion. *Nold v. Nold*, 232 Ariz. 270, ¶ 11 (App. 2013). An abuse of discretion exists when the record lacks any competent evidence to support the decision. *Little v. Little*, 193 Ariz. 518, ¶ 5 (1999).

¶4 In its ruling, the trial court addressed each of the best-interests factors set forth in § 25-403(A) and found that “serious domestic violence disqualifies [Lofton] from sole or joint legal decision-making pursuant to

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[§ 25-403].” It further found that it was in the “children’s best interest that [Hulsey] be awarded sole legal decision-making authority.”

¶5 Lofton bears the burden on appeal to provide this court with any transcript necessary to the resolution of the appeal. Ariz. R. Civ. App. P. 11(c)(1)(A). Despite this burden, he did not provide us with a transcript of the custody hearing. In the absence of a complete transcript, we must assume the testimony and other evidence presented supports the trial court’s findings and conclusions. See *Baker v. Baker*, 183 Ariz. 70, 73 (App. 1995). Consequently, we cannot say that the trial court abused its discretion.

¶6 Nonetheless, even if Lofton had provided the necessary, complete transcripts, he fails to provide any legal argument in support of his claim of error, but rather he requests that we reweigh the evidence. “The trial court is given broad discretion in determining what will be the most beneficial for the children” because “it is in the best position to determine what is in the children’s interest.” *Porter v. Porter*, 21 Ariz. App. 300, 302 (1974). “We must give due regard to the trial court’s opportunity to judge the credibility of the witnesses,” and we will not reweigh conflicting evidence. *Hurd*, 223 Ariz. 48, ¶ 16.

Disposition

¶7 We affirm the trial court’s ruling.