IN THE
# ARIZONA COURT OF APPEALS
DIVISION TWO

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IN RE THE MARRIAGE OF

PAUL RANDALL BAYS,
*Appellee,*

*and*

GINA MARIE BAYS,
*Appellant.*

No. 2 CA-CV 2020-0155-FC
Filed September 7, 2021

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Appeal from the Superior Court in Cochise County
No. DO201500524
The Honorable Monica L. Stauffer, Judge

**VACATED IN PART AND REMANDED**

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COUNSEL

Paul Randall Bays, Sierra Vista
*In Propria Persona*

Berkshire Law Office P.L.L.C., Tempe
By Keith Berkshire and Alexandra Sandlin
*Counsel for Appellant*

**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** Gina Bays ("Mother") appeals from the trial court's ruling on Paul Bays's ("Father") petition for relocation and to modify legal decision-making, parenting time, and child support. She argues the court erred by failing to enter specific findings as required by the governing family law statutes. For the following reasons, we vacate portions of the court's order and remand for further proceedings.

**Factual and Procedural Background**

**¶2** We view the facts in the light most favorable to upholding the trial court's judgment. *Boyle v. Boyle*, 231 Ariz. 63, ¶ 8 (App. 2012). Mother and Father, who share two minor children, C.B. and G.B., were divorced in 2016. The decree provided for joint legal decision-making and alternating-week parenting time. In June 2020, Father filed a petition to modify legal decision-making authority, residential custody, parenting time, and child support. He also requested relocation with both children to the state of Washington. Mother opposed the petition, except as to the conditional relocation of C.B. Following mediation, the parties agreed that Father could relocate with C.B., who had been living with Father since late 2018, to Prescott, Scottsdale, or Washington. They disagreed, however, as to legal decision-making for the children and whether Father could relocate with G.B.

**¶3** At the September 2020 trial, the parties primarily presented evidence of the other parent's domestic violence. The trial court thereafter entered a final ruling granting Father sole legal decision-making and primary physical custody of both children. The court further ordered that Father "may relocate with the minor children." Mother appealed, and we have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

**Relocation Findings**

**¶4** Mother argues the trial court erred by failing to make requisite factual findings as to Father's relocation request.[1] We review a court's decision granting relocation for an abuse of discretion. *Hurd v. Hurd*, 223 Ariz. 48, ¶¶ 18-19 (App. 2009). An abuse of discretion occurs when the court makes an error of law or a discretionary ruling unsupported by the record. *See Boyle*, 231 Ariz. 63, ¶ 8.

**¶5** The trial court is required to decide relocation requests in accordance with the child's best interests, and the parent seeking to relocate has the burden of proof. A.R.S. § 25-408(G). The court must consider all relevant factors pertaining to the child's best interests, including those enumerated in § 25-408(I), which incorporates the factors found in A.R.S. § 25-403(A).[2] Further, the court is required to make specific findings on the record with respect to all relevant factors and the reasons why its decision is in the best interests of the child. *Hurd*, 223 Ariz. 48, ¶ 20; *Woyton v. Ward*, 247 Ariz. 529, ¶ 10 (App. 2019).

**¶6** Here, the trial court's order approving Father's request to relocate with G.B. failed to include any specific findings with respect to the § 25-408(I) factors, with the exception of the incorporated § 25-403(A) factors. Father argues the court was not required to make specific findings

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[1]Father argues Mother waived this issue by failing to raise it below. But we have previously declined to apply waiver "when the family court makes no findings on the record because to do so 'would inappropriately deprive the family court and all parties of the baseline information required for future petitions involving a child's or children's best interests.'" *Nold v. Nold*, 232 Ariz. 270, ¶ 9 (App. 2013) (quoting *Reid v. Reid*, 222 Ariz. 204, ¶ 19 (App. 2009)). We thus consider Mother's argument. *See id.* ¶ 10.

[2]Mother also argues the trial court erred by not requiring Father to provide a specific location for G.B.'s relocation. The record does not entirely support her argument. Father's petition requested permission to relocate to Washington, and at mediation the parties agreed Father could relocate C.B. "to the state of Washington, Prescott, Arizona or North Scottsdale, Arizona." Thus, the potential destination of Father's move was provided to Mother. Nevertheless, to the extent she argues more definite information was required, we agree with Mother's basic premise that in order to evaluate whether relocation is in the child's best interests, the court must necessarily consider the location of the prospective move. *See* § 25-408(I).

under § 25-408(I) because Mother agreed to Father's relocation of C.B. But the parties made no agreement regarding the relocation of G.B., and the court was thus required to determine whether relocation was in G.B.'s best interests, with Father bearing the burden of proof. *See* § 25-408(G). The court's failure to make specific findings with respect to the relevant factors when deciding relocation constitutes an abuse of discretion. *See Woyton*, 247 Ariz. 529, ¶ 12. Accordingly, we vacate the portion of the court's order granting relocation of G.B.

**Domestic-Violence Findings**

**¶7** Mother also challenges the sufficiency of the trial court's domestic-violence findings to support its legal decision-making and parenting-time orders.[3] We review such orders for an abuse of discretion. *DeLuna v. Petitto*, 247 Ariz. 420, ¶ 9 (App. 2019).

**¶8** We agree with Mother that the trial court abused its discretion by failing 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." § 25-403(B). Whether domestic violence has occurred is one such potentially relevant factor about which the court must make detailed findings. *See* § 25-403(A)(8), (B); *Christopher K. v. Markaa S.*, 233 Ariz. 297, ¶ 19 (App. 2013) ("[A] finding of domestic violence must be justified by specific findings on the record demonstrating the reasons for the court's decision."); *Engstrom v. McCarthy*, 243 Ariz. 469, ¶¶ 15-16 (App. 2018) (trial court must make appropriate factual findings and apply statutory

[3]Father, citing *Banales v. Smith*, argues Mother waived this issue by failing to raise it below. 200 Ariz. 419 (App. 2001). Despite similarities between *Banales* and the present dispute, in our discretion, we address Mother's argument because specific factual findings pertaining to domestic violence and its effects on a child's best interests, factors not involved in *Banales*, are mandated by statute and essential to the trial court's core responsibilities. *See Reid*, 222 Ariz. 204, ¶ 20 (declining to apply waiver where court failed to make specific best interests findings, stating that waiver not mandated "in all instances"); *Olesen v. Daniel*, 251 Ariz. 25, ¶ 17 (App. 2021) (findings requirement under § 25-403(B) "cannot be satisfied by inference from a court's order or waived by a party"); *cf. Francine C. v. Dep't of Child Safety*, 249 Ariz. 289, ¶¶ 21, 25 (App. 2020) (party cannot waive specific-findings requirement legislature imposed for primary purpose of aiding appellate review).

definitions of domestic violence so appellate court can review court's legal conclusions).

**¶9** The trial court's sole domestic-violence finding here was conclusory rather than specific, stating only that "both parties have committed [d]omestic [v]iolence, therefore, there is no presumption" that a legal decision-making award is contrary to the children's best interests pursuant to A.R.S. § 25-403.03(D). *Cf. Miller v. Bd. of Supervisors*, 175 Ariz. 296, 300 (1993) (purported findings of fact actually legal conclusions because trial court failed to set forth particular facts and legal reasoning so appellate court unable to determine whether court correctly applied law). And while the court's conclusions that domestic violence occurred appear to be supported by the record, its findings are insufficient because it failed to state the ultimate facts which led to its legal conclusions and did not share its reasoning with respect to how domestic violence factored into its best interests analysis. *See Logan B. v. Dep't of Child Safety*, 244 Ariz. 532, ¶ 15 (App. 2018) (factual findings must include ultimate facts, which are those necessary to resolve disputed issues).

**¶10** Specific findings are required under § 25-403(B) not only because they aid in appellate review but also because they assist the parties, as well as the trial court, in determining the best interests of a child. *See Gutierrez v. Fox*, 242 Ariz. 259, ¶ 34 (App. 2017); *cf. Logan B.*, 244 Ariz. 532, ¶ 18 (heightened findings requirements prompt judges to consider issues more carefully because they must show how they arrived at their conclusions). Additionally, a detailed recitation of findings and reasoning provides a baseline against which any future petitions for modification based on changed circumstances can be measured. *See Reid v. Reid*, 222 Ariz. 204, ¶ 18 (App. 2009). Finally, specific findings are useful because the trial court is in the best position to weigh the evidence and resolve factual disputes and "there is simply no substitute for the court's evaluation of the credibility of witness testimony." *Christopher K.*, 233 Ariz. 297, ¶¶ 22-23.

**¶11** Here, the trial court's conclusory domestic-violence findings fall short of furthering any of the policy rationales undergirding the § 25-403(B) findings requirement and fail to convey the court's reasoning as it relates to domestic violence, a factor which "carries substantial weight in the [best interests] calculus." *Id.* ¶ 16. Without the required findings and associated reasoning with respect to G.B.'s best interests, we cannot say whether the court focused too much attention on some factors to the exclusion of other relevant considerations. *See Owen v. Blackhawk*, 206 Ariz. 418, ¶ 12 (App. 2003). We also cannot determine whether the acts which the court relied on as constituting domestic violence were appropriate in

light of the statutory definitions of that term. *See Christopher K.*, 233 Ariz. 297, ¶ 17. We thus conclude the lack of specific findings addressing domestic violence was an abuse of discretion,[4] *see id.* ¶ 19; *Hurd*, 223 Ariz. 48, ¶ 11, and we vacate the court's legal decision-making and parenting-time orders.

**Attorney Fees and Costs on Appeal**

**¶12** Mother requests an award of attorney fees and costs on appeal pursuant to A.R.S. § 25-324. That statute states that the court, "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount to the other party for the costs and expenses" of the proceeding. § 25-324(A). In our discretion, we deny Mother's request. However, as the prevailing party on appeal, Mother is entitled to her costs upon compliance with Rule 21, Ariz. R. Civ. App. P. *See* A.R.S. § 12-341.

**Disposition**

**¶13** For the foregoing reasons, we vacate the trial court's October 2020 order with respect to legal decision-making, parenting time, and relocation of G.B., and we remand for further proceedings consistent with this decision.

[4]We agree with Father, however, that a court is not required to make findings addressing the factors in § 25-403.03(E) if the presumption in § 25-403.03(D) (awarding legal decision-making to parent who committed domestic violence contrary to child's best interests) is inapplicable.