IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE THE MARRIAGE OF

LINDA X. SPAHR,
Appellant,

and

STEVEN C. REAUME,
Appellee.

No. 2 CA-CV 2023-0228-FC
Filed April 19, 2024

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NOT FOR PUBLICATION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 Maricopa County
No. FC2017050355
The Honorable Julie Mata, Judge

VACATED AND REMANDED

COUNSEL

Riley Law Firm PLC, Phoenix
By Daniel Riley
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By Hershel Ber
Counsel for Appellee

MEMORANDUM DECISION

Presiding Judge Eppich authored the decision of the Court, in which Chief Judge Vásquez and Judge Gard concurred.

E P P I C H, Presiding Judge:

¶1 Linda Spahr appeals from the superior court's order granting Steven Reaume's petition to modify parenting time and child support and to prevent their child's relocation. Spahr argues the court violated her right to due process by "setting an arbitrarily short trial on an accelerated schedule over [her] objections." She also contends the court erred by not addressing whether Reaume had good cause to delay his petition and by not making written findings as to a majority of the statutory relocation factors. For the following reasons, we vacate the superior court's order and remand for further proceedings consistent with this decision.

Factual and Procedural Background

¶2 In March 2018, Spahr and Reaume entered into a consent decree dissolving their marriage. At the time of their divorce they agreed that Spahr would be the primary residential parent for their eight-year-old child and that Reaume would have parenting time every other weekend and one evening each week. They shared legal decision-making authority, and Reaume paid child support to Spahr.

¶3 In October 2022, Spahr told Reaume she wanted to relocate with their child from Phoenix to Tucson. The parties verbally agreed their child would complete the school year in Phoenix and then join Spahr in Tucson. In November, Reaume received a "letter of intent" from Spahr providing "official written notice to relocate" with their child.

¶4 In May 2023, Reaume filed a motion for temporary orders and a petition to modify parenting time and child support. In both he sought to prevent the relocation. The superior court set a one-hour evidentiary hearing in August. By the time of the hearing, the child had relocated to Tucson with Spahr and had begun school there.

¶5 At the hearing, the superior court denied Reaume's motion for temporary orders and denied both parties' attorney fee requests. The court took Reaume's petition under advisement, and subsequently entered

a final judgment in which it affirmed joint legal decision making but found it was in the child's best interests for Reaume to be his primary residential parent. The court ordered that Spahr have parenting time every other weekend and one evening each week. The court additionally ordered Spahr to pay Reaume child support. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Discussion

I. Due Process

¶6 Spahr first asserts that the superior court violated her right to due process by "setting an accelerated and arbitrarily short trial." We review due process claims de novo. *Backstrand v. Backstrand*, 250 Ariz. 339, ¶ 28 (App. 2020).

¶7 Before the hearing, Spahr moved for more time for the hearing and to continue it, arguing that "one hour is insufficient to present evidence concerning the 11 best-interest-of-the-child factors, the 8 relocation factors, the child support factors, and the facts regarding [her] request for an award of fees and costs." The superior court denied the motion without explanation and held the hearing as scheduled.

¶8 At the conclusion of the hearing, Spahr asked the superior court for at least another hour to present additional evidence asserting there were "several things that [she was] not able to cover as far as the best interest factors and the relocation factors." Spahr asked that, in the alternative, the court take her pretrial statement as an offer of proof. The court, again, without explanation, did not expand the hearing but accepted the offer of proof.

¶9 On appeal, Spahr asserts that neither party was able to fully present their case and that she "had to forego the opportunity to cross-examine [Reaume] altogether."[1] Reaume argues that even assuming the court erred, Spahr has made "no showing of prejudice" and is not entitled to a new hearing.

[1]To the extent Spahr argued below that the superior court's "25-day turnaround" precluded timely disclosure of witnesses and discovery, she has not developed this argument on appeal, and we do not address it. *See Ritchie v. Krasner*, 221 Ariz. 288, ¶ 62 (App. 2009).

¶10 "[D]ue process requires that litigants be heard 'at a meaningful time and in a meaningful manner.'" *Id.* ¶ 29 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)); *see also Volk v. Brame*, 235 Ariz. 462, ¶ 19 (App. 2014) ("Procedural due process . . . requires the court to afford litigants adequate time to present their evidence."). But this due process right "must be balanced against the superior court's broad discretion" to manage its docket and to impose reasonable time limits on proceedings. *Backstrand*, 250 Ariz. 339, ¶ 29 ("[W]hether additional time is necessary remains committed to the court's discretion."); *see also* Ariz. R. Fam. Law P. 22(a). Time limits "become unreasonable if they prove insufficient to allow a substantive hearing." *Volk*, 235 Ariz. 462, ¶ 21. We will not reverse a due process error absent prejudice. *Id.* ¶ 26.

¶11 Spahr argues the hearing here was comparable to the one in *Volk*. There, the superior court allotted fifteen minutes for a hearing on a petition to modify child support. *Id.* ¶¶ 3-4. Both parties requested more time, but the court denied the motions. *Id.* ¶¶ 4-6. The hearing ultimately lasted thirty-one minutes, during which the court admitted exhibits and heard argument from counsel. *Id.* ¶¶ 7-11. No testimony was taken. *Id.* ¶ 11.

¶12 We concluded the superior court's approach "categorically violate[d] due process" because "the court recognized that credibility was central to the issue before it but expressly rejected the parties' efforts to testify, choosing instead to rely on a 'paper view' to decide the petition." *Id.* ¶ 14. "When the court allows *no* time to hear testimony, or when the time available for each necessary witness does not allow for meaningful direct testimony and efficient but adequate cross-examination, the court violates the parties' due process rights." *Id.* ¶ 21.

¶13 The hearing in *Volk*, however, is distinguishable from the hearing here. Here, both parties testified. Although on appeal Spahr asserts she had to forego cross-examination of Reaume, the record shows she was given the opportunity, but asserted she "ha[d] no questions" for him. The superior court did stop Reaume's cross-examination of Spahr, stating he "had run out of time," but Spahr had time to give a closing statement. Spahr objected to the time limits both before and at the hearing, but did not at any point request an explanation from the court as to why it was setting the time limits.

¶14 We do not endorse the specific time limits set in this case as a general matter. And we remind the superior court that time limits can "become unreasonable if they prove insufficient to allow a substantive

hearing," *id.* ¶ 21, even if the court is burdened with a heavy caseload and a congested calendar. Nevertheless, on the record before us, we cannot say that the time limits were unreasonable or that the court abused its broad discretion. *See id.* ¶ 20; *see also Backstrand*, 250 Ariz. 339, ¶ 29; Ariz. R. Fam. Law P. 22(a).

¶15 Spahr argues the superior court's order itself is the "best indicator that the court neglected to provide adequate time" because the court failed to make necessary findings. As explained further below, we agree that the court erred regarding certain findings. But it is speculative that the lack of these findings was related to the court's time limits. It appears the court had before it sufficient evidence from which it could make the challenged findings. Moreover, the court issued a detailed seventeen-page order in which it thoroughly considered the child's best interests pursuant to A.R.S. § 25-403. Should the court determine it needs additional evidence to make the required findings discussed in the remainder of this decision, it should, accordingly, hold additional proceedings on remand. *See Volk*, 235 Ariz. 462, ¶ 21 (if it "becomes apparent" there was insufficient time for adequate testimony, court "must allow reasonable additional time . . . to perform its essential tasks").

¶16 Even were we to conclude the time limits were unreasonable, Spahr has not shown she was prejudiced. For the first time in her reply brief, Spahr argues she was prejudiced because if she had been provided additional time to testify, she "could have corrected [the court's] misperception" that the child's only friends were in Phoenix because many of his friends were "through online gaming"; she would have explained further how she "diligently maintain[ed] [his] friendships"; she would have "explained the importance of [his] relationships with his Tucson family members"; and she would have discussed "the improved educational opportunities in . . . Tucson." She further asserts her offer of proof encompasses relevant information, but that evidence excluded by the court's time limits could have altered the outcome.

¶17 We typically do not consider arguments raised for the first time in reply, *Tripati v. Forwith*, 223 Ariz. 81, ¶ 26 (App. 2009), but the superior court received testimony on each of the specific points Spahr has identified. Spahr testified that the child has out-of-state friends who he maintains contact with through online gaming and cell phone use. She additionally testified that the child's Phoenix-based friendships continued in Tucson and that she would facilitate sleepovers and visits with his friends in Phoenix. Regarding his family bonds, Spahr testified that the

child is "very close" with his family, specifically his sister, and that her household is a place of "trust and feeling safe, and growth." She testified that the child had been with her and his sister "since he's been born" and that she had been the "primary parent," providing clothing, food, and taking him to medical appointments.

¶18 As to his educational opportunities, Spahr testified that the Tucson school offered courses unavailable at the child's prior school in Phoenix and that he had become interested in courses in which he was not previously interested. In addition, she provided, and testified about, an exhibit showing ratings of the Tucson school. Ultimately, Spahr testified that the move would "improve [the child's] life because he is with his Mom and his sister. He's experiencing something new. He's in a bigger environment for school, he has room to exceed."[2] The superior court considered this evidence, and Spahr has not demonstrated prejudice from the imposed time limits.

II. Written Findings on Relocation Factors

¶19 Spahr also argues the superior court erred because it "fail[ed] to enter written findings as to the relocation factors." We review the court's relocation order for an abuse of discretion, but review applicable statutes de novo. *Murray v. Murray*, 239 Ariz. 174, ¶ 5 (App. 2016). A court's failure to make required findings is an abuse of discretion. *Hurd v. Hurd*, 223 Ariz. 48, ¶¶ 11, 26 (App. 2009).

¶20 In ruling on a relocation petition, A.R.S. § 25-408(I) requires the superior court to consider "all relevant factors," including the § 25-403 factors to evaluate a child's best interests and seven additional factors specific to relocation. *See also Layne v. LaBianca*, 249 Ariz. 301, ¶ 6 (App. 2020). If the relocation petition involves a dispute over parenting time or legal decision making, the court "must make specific findings on the record" as to all relevant factors in § 25-408(I). *Hurd*, 223 Ariz. 48, ¶ 20; *see also Owen v. Blackhawk*, 206 Ariz. 418, ¶¶ 8-12 (App. 2003); § 25-403(B).

[2]Moreover, the superior court stated it would consider the "offer of proof for purposes of additional time for a closing." Spahr argues this is similar to *Volk*, in which the court relied on attorney avowals in place of testimony. 235 Ariz. 462, ¶¶ 22-23. While the court here agreed to consider the offer of proof, as explained above, this was not in lieu of all testimony, as in *Volk*. *See id.* ¶ 11.

Statutory findings "cannot be satisfied by inference from a court's order." *Olesen v. Daniel*, 251 Ariz. 25, ¶ 17 (App. 2021).

¶21 Here, the superior court made findings concerning the best-interest factors in § 25-403, but it did not make any findings on the additional seven factors specific to relocation, *see* § 25-408(I)(2)-(8). Reaume concedes this, but argues that remand is not required because evidence in the record supported the court's grant of his petition as to each § 25-408 factor.

¶22 We conclude the superior court abused its discretion by failing to make any findings on the record under § 25-408(I)(2)-(8). *See Hurd*, 223 Ariz. 48, ¶ 26**.** Although the court made best-interests findings, "[t]he § 25-408(I) factors include—but require more than—the factors prescribed by § 25-403." *Berrier v. Rountree*, 245 Ariz. 604, ¶ 9 (App. 2018); *see also Woyton v. Ward*, 247 Ariz. 529, ¶ 12 (App. 2019) (vacating and remanding because court considered best-interests under § 25-403 but did not apply § 25-408 as required).

¶23 As Reaume argues, we do not reweigh conflicting evidence on appeal. *See Hurd*, 223 Ariz. 48, ¶ 16. Therefore, even if he presented evidence that arguably supports the petition under § 25-408(I)(2)-(8), the superior court has not yet weighed that evidence as it relates to those factors on the record, and we do not substitute our judgment for that of the superior court. *See Hurd*, 223 Ariz. 48, ¶¶ 16, 26 (vacating and remanding for lack of findings even though evidence existed supporting court's relocation decision); *Olesen*, 251 Ariz. 25, ¶ 17. Accordingly, we vacate the order granting Reaume's petition and remand for the court to make the relevant § 25-408(I)(2)-(8) findings.

III. Good Cause for Delayed Petition

¶24 Spahr additionally contends the superior court erred by "failing to determine as a threshold question whether [Reaume] had shown good cause for filing his petition five months late." As explained above, we review the court's relocation order for an abuse of discretion, but review applicable statutes de novo. *Murray*, 239 Ariz. 174, ¶ 5.

¶25 Section 25-408(A)(2) provides that a parent may not relocate a child more than one hundred miles within Arizona without providing forty-five days' advance written notice to the other parent who shares joint legal decision making or parenting time by written agreement or court order. The non-relocating parent may then petition the court to prevent

relocation of the child "[w]ithin thirty days after notice is made." § 25-408(C). A petition filed beyond this time may not be granted unless the petitioning party shows good cause. *Id.*

¶26 Reaume concedes the superior court failed to make a finding of good cause even though he filed his petition more than thirty days after Spahr gave notice. He again argues, however, that the evidence presented supported a finding of good cause. He suggests, if anything, we need only revest the superior court with jurisdiction to make the finding.

¶27 Reaume testified that Spahr had relocated to Tucson in March 2023. He stated that their child had lived with him for a period of time after Spahr relocated, and it was during this time that he had learned from the child's older sister that the child did not want to relocate to Tucson. He did not specify when exactly he had learned this information. Spahr testified that she had sold her home in April 2023, and would not have done so had the parties not been in agreement that the child would relocate with her. She further agreed that the child had vacillated depending on where he is at, that she and Reaume had discussed that the child would need time to adjust to a new school, and that Reaume would support and encourage the child in the transition from Phoenix to Tucson.

¶28 The superior court erred by failing to enter a finding as to whether Reaume had shown good cause for his delayed petition. *See* § 25-408(C). It is the role of the superior court, not this court, to weigh conflicting evidence and to judge the credibility of the witnesses. *See Hurd*, 223 Ariz. 48, ¶ 16. On remand, the superior court must determine whether there was good cause for Reaume's delayed petition, and, as explained above, if the court determines it needs additional evidence, it should hold additional proceedings.

Disposition

¶29 We express no opinion as to the ultimate result in this case. We vacate the order granting Reaume's petition and remand for further proceedings consistent with this decision. As the prevailing party, Spahr is entitled to her reasonable costs on appeal upon compliance with Rule 21, Ariz. R. Civ. App. P. *See* A.R.S. § 12-341.