IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

JOHNATHAN JORDAN O'FARRELL,
Petitioner/Appellant,

v.

KALA GOODMAN,
Respondent/Appellee.

No. 2 CA-CV 2024-0105-FC
Filed November 26, 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NOT FOR PUBLICATION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. FC2022092731
The Honorable Michael Valenzuela, Judge

REMANDED

COUNSEL

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By Keith Berkshire and Alexandra Sandlin
Counsel for Petitioner/Appellant

Modern Law, Mesa
By Kylie Bigelow
Counsel for Respondent/Appellee

MEMORANDUM DECISION

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

E C K E R S T R O M, Judge:

¶1 Johnathan O'Farrell ("Father") appeals from a trial court order on legal decision-making, parenting time, and child support that designated Kala Goodman ("Mother") as A.O.'s primary residential parent. For the following reasons, we remand to allow the trial court to comply with A.R.S. § 25-408.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the trial court's order. *In re Marriage of Downing*, 228 Ariz. 298, ¶ 2 (App. 2011). The parties met in Washington state in February 2016 and became romantically involved soon thereafter. The parties never married. They have a daughter in common, A.O., who was born in November 2019 in Washington.

¶3 In April 2020, Father moved to Arizona with the expectation that Mother and A.O. would follow him there. By February 2022, Mother and A.O. had spent approximately thirteen months in Washington and nine months in Arizona. In early 2022, Father assisted Mother in finding a residence for her and A.O. in Washington and provided ongoing financial assistance. Mother and A.O. last visited Arizona in May 2022.

¶4 In June 2022, Mother filed for a protective order in Washington, covering herself and A.O. based on incidents that had occurred in May and June. Shortly thereafter, the parties filed separate petitions for parenting time, legal decision-making, and child support, with Mother filing in Washington and Father filing in Arizona. Though the Washington court granted the protective order, the Arizona court assumed jurisdiction of the parentage petition under the Universal Child Custody Jurisdiction and Enforcement Act.[1] The Arizona court found neither party

[1]A.R.S. §§ 25-1001 to 25-1067; *see also* 28 U.S.C. § 1738A.

had presented conclusive evidence to prove A.O.'s home state and determined Arizona to be the most convenient forum.

¶5 The Arizona court then held proceedings on Father's petition for legal decision-making, parenting time, and child support. In the resulting order, the trial court repeated its prior jurisdictional finding that A.O. had no home state. On the merits, the court ordered, among other things, that A.O. reside with Mother as the primary residential parent in Washington.

¶6 Father's appeal followed. Mother did not file a notice of appeal or file a cross-appeal. We have jurisdiction pursuant to A.R.S. §§ 12-120.21 and 12-2101(A)(1).

Discussion

I. Relocation

¶7 Father argues the trial court's order on parenting time failed to address the relocation factors under A.R.S. § 25-408. Specifically, he argues the court failed to assign the burden to Mother to prove the factors and failed to make specific findings on the record regarding relocation.

¶8 "We review parenting time orders for an abuse of discretion." *Woyton v. Ward*, 247 Ariz. 529, ¶ 5 (App. 2019). The trial court abuses its discretion when the record is devoid of competent evidence to support the court's decision or when it commits legal error. *Id.* We review legal conclusions, including the interpretation of statutes, de novo. *Id.*

¶9 Parenting time is "the schedule of time during which each parent has access to a child" and can be requested by a parent in a proceeding for paternity. A.R.S. §§ 25-401(5), 25-402(B)(1). Relocation is not defined in § 25-401, and § 25-408(A) does not limit the court's authority to define what constitutes a relocation. *Woyton*, 247 Ariz. 529, ¶ 8. When a court makes a parenting time decision that "establish[es] a single primary home (and a home state)," it effectively makes a relocation determination. *Berrier v. Rountree*, 245 Ariz. 604, ¶ 8 (App. 2018); *Woyton*, 247 Ariz. 529, ¶ 10. This is so even if the order does not specify a new home state for the child.[2] *See Owen v. Blackhawk*, 206 Ariz. 418, ¶¶ 2, 5, 12 (App. 2003)

[2]Section 25-408(A) requires a parent to give notice when relocating a child (1) outside the state or (2) more than one hundred miles within the state. § 25-408(A)(1)-(2). Although this case and other relevant authority

(requiring trial court to make specific findings when changing primary residential parent in order to prevent former primary residential parent from relocating child out of Arizona).[3]

¶10 Trial courts must determine parenting time and relocation in accordance with the best interests of the child, considering all relevant factors. A.R.S. § 25-403(A) (listing eleven factors); § 25-408(G), (I) (listing eight factors). The parent seeking relocation bears the burden of proof. § 25-408(G).

¶11 Here, Father's parenting time petition effectively presented the trial court with a relocation question. *See Berrier*, 245 Ariz. 604, ¶ 8; *Woyton*, 247 Ariz. 529, ¶ 10. At the time of the filing of the petitions, Mother lived with A.O. in Washington. Although Father's petition did not specifically mention relocation, he requested that A.O. primarily reside with him in Arizona. In the parties' joint pretrial statement, Mother included a section on relocation, providing specific facts for each factor listed under § 25-408. After the Arizona and Washington courts held the evidentiary hearing on jurisdiction, the Arizona court determined there was inconclusive evidence of the home state.[4] By deciding the primary residential parent for A.O. between two parents living in separate states, the court effectively faced a relocation question.

¶12 In resolving a relocation question that, as here, was contested, the trial court was required to make specific findings on the record and to provide reasons for why the decision is in the best interests of the child. § 25-403(B); *Woyton*, 247 Ariz. 529, ¶¶ 10, 12 (holding § 25-403(B)'s "all relevant factors" includes the relocation factors in § 25-408(I)). It failed to

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involve relocations out of state, nothing in this case should be construed as not applying to relocations of more than one hundred miles within the state.

[3]Although *Owen*, 206 Ariz. 418, ¶ 12, remanded for additional findings under § 25-403 and not § 25-408, *Berrier*, 245 Ariz. 604, ¶ 11, and *Woyton*, 247 Ariz. 529, ¶ 10, have since held specific findings on the record are required for "all relevant factors," which include the factors in § 25-408(I) for relocation.

[4]Although the temporary order indicated in conclusory language that Arizona was A.O.'s home state, the trial court had previously found based on specific facts that the home state was inconclusive, which the final order referenced.

do so. The court's order does contain a section entitled, "Best Interest Findings: A.R.S. § 25-403," which detailed every factor in § 25-403(A). The order also includes other sections with statutorily required findings. However, the order does not assign the burden of proving the relocation served the child's best interests. Nor does it include specific findings on all relevant factors, which include the relocation factors. *See Woyton*, 247 Ariz. 529, ¶ 10; *see also* § 25-403(B).

¶13 Mother argues that even if the trial court failed to make specific findings under § 25-408, its findings under § 25-403 show that it implicitly considered the relocation issue. But we have previously held that consideration of the child's best interests under § 25-403 does not replace proper consideration of the relocation factors under § 25-408. *See Woyton*, 247 Ariz. 529, ¶ 12. The court erred in failing to do the latter.

II. Legal Decision-Making

¶14 Mother's answering brief argues the trial court incorrectly applied A.R.S. § 25-403.03 when it awarded joint legal decision-making. Specifically, she argues the court erred in failing to find Father's acts of domestic violence sufficiently "significant" to preclude joint decision-making. Instead, Mother contends that the court should have awarded her sole legal decision-making based on those acts.

¶15 Under Rule 13(b)(2), Ariz. R. Civ. App. P., an appellate court may modify a judgment to enlarge the rights of the appellee "only if the appellee has filed a notice of cross-appeal." Here, Mother's answering brief seeks to enlarge her right from joint to sole legal decision-making, but she has filed no cross-appeal. Therefore, we may not modify the judgment on this basis.

III. Attorney Fees and Costs

¶16 Mother requests attorney fees and costs on appeal pursuant to Rule 21(a), Ariz. R. Civ. App. P., A.R.S. § 25-324(A), and A.R.S. § 25-809(G), asserting Father's positions are unreasonable. Although Father's position is legally correct and therefore not unreasonable, we nonetheless award reasonable attorney fees to Mother due the disparity in income between the parties. *See Amadore v. Lifgren*, 245 Ariz. 509, ¶¶ 32-34 (App. 2018) (justifying attorney fees because father's income was three times that of mother's); *Goodell v. Goodell*, ___ Ariz. ___, ¶ 41, 551 P.3d 1177, 1186 (App. 2024) (reasoning that although court must consider both reasonableness and financial disparity when awarding attorney fees,

"either is sufficient to support a fee award"); *Edsall v. Superior Court*, 143 Ariz. 240, 248-49 (1984) ("The primary focus of [§ 25-324] is on the relative ability of the parties to pay costs incurred in the proceedings and does not require the party requesting attorneys fees to have prevailed on appeal.").

Disposition

¶17 For the foregoing reasons, we remand to allow the trial court to state on the record its findings pursuant to A.R.S. § 25-408(G) and (I) and for any other proceedings consistent with this decision.[5]

[5]To the extent that the trial court determines the current record is insufficient to make those findings, it may conduct further proceedings to receive the evidence necessary to do so.