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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re the Marriage of:	2 CA-CV 2010-0129
	DEPARTMENT B
ERIC LINDEN,	
	MEMORANDUM DECISION
Petitioner/Appellant,	Not for Publication
	Rule 28, Rules of Civil
and	Appellate Procedure
TANYA LINDEN,	
Respondent/Appellee.	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. D20021414

Honorable Deborah Ward, Judge Pro Tempore

AFFIRMED

Mark C. Bockel
Tucson
Attorney for Petitioner/Appellant

Law Office of Peter Axelrod
By Peter Axelrod
Tucson
Attorney for Respondent/Appellee

K E L L Y, Judge.

¶1 Appellant Eric Linden appeals from the trial court's order awarding his former spouse, Tanya Linden, sole legal custody of their minor children and modifying the previous physical custody and parenting time arrangement. Finding no abuse of discretion, we affirm.

Background

¶2 Eric and Tanya Linden's marriage was dissolved in 2002. They had two minor children at the time of dissolution—Harley, born in 1994, and Briar, born in 1996. Shortly after dissolution, the parties agreed to a joint custody parenting plan in which the children would stay with Tanya one week and Eric the next.

¶3 In October 2006, both Eric and Tanya filed motions to modify custody. After a trial, the court awarded sole legal custody of the children to Tanya. The court left the previous custody and parenting time schedule in place as to Harley, but granted Tanya primary physical custody of Briar. This appeal followed.

Discussion

¶4 Preliminarily, the transcripts of the proceedings have not been made part of the record on appeal. As the appellant, Eric was obligated to "mak[e] certain the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised. . . ." *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995). We will presume the absent transcripts support the trial court's order, *Kohler v. Kohler*, 211

Ariz. 106, n.1, 118 P.3d 621, 623 n.1 (App. 2005), and we address Eric's claims accordingly.

¶5 In deciding child custody issues, "[t]he trial court is given broad discretion in determining what will be the most beneficial for the child[], and it is in the best position to determine what is in the child[]'s interest." *Porter v. Porter*, 21 Ariz. App. 300, 302, 518 P.2d 1017, 1019 (1974) (citation omitted). We therefore review the court's custody and parenting-time decisions for an abuse of discretion. *See Owen v. Blackhawk*, 206 Ariz. 418, ¶ 7, 79 P.3d 667, 669 (App. 2003). We will not disturb those decisions unless it clearly appears that the court has mistaken or ignored the evidence. *Armer v. Armer*, 105 Ariz. 284, 289, 463 P.2d 818, 823 (1970). For this court to find there has been an abuse of discretion, "the record must be devoid of competent evidence to support the decision of the trial court." *Borg v. Borg*, 3 Ariz. App. 274, 277, 413 P.2d 784, 787 (1966), *quoting Fought v. Fought*, 94 Ariz. 187, 188, 382 P.2d 667, 668 (1963). Based on the scant record with which we have been provided, we cannot say the court abused its discretion.

¶6 "Arizona's public policy makes the best interests of the child the primary consideration in awarding child custody." *Downs v. Scheffler*, 206 Ariz. 496, ¶ 7, 80 P.3d 775, 778 (App. 2003). Section 25-403(A), A.R.S., provides that, in determining the child's best interests, the court must "consider all relevant factors," including: (1) the parents' wishes; (2) the child's wishes; (3) the child's relationship with his parents,

siblings, and other persons "who may significantly affect the child's best interest"; (4) "[t]he child's adjustment to home, school and community"; (5) "[t]he mental and physical health of all individuals involved"; (6) "[w]hich parent is more likely to allow the child frequent and meaningful continuing contact with the other"; (7) "[w]hether one parent, both parents or neither parent has provided primary care of the child"; (8) "[t]he nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody"; and (9) whether a parent has complied with domestic education program requirements.

¶7 Eric asserts that for over fifteen years, he and Tanya "jointly successfully" cared for the children. He argues that the trial court based its ruling on "only a few disagreements" between the parties and that this constitutes an insufficient factual basis on which to amend the previous custody arrangement. Without a transcript of the trial, however, we must assume that the evidence presented to the court was sufficient to support its findings. *See Kohler*, 211 Ariz. 106, n.1, 118 P.3d at 623 n.1.

¶8 Eric also contends the court failed to consider certain evidence and did not place appropriate weight on particular facts. But, in its minute entry order the court made clear it had considered the factors set forth in § 25-403(A). And again, in the absence of a transcript of the hearing we assume the evidence presented to the court supported its ruling. *See Kohler*, 211 Ariz. 106, n.1, 118 P.3d at 623 n.1. We therefore cannot say the

court abused its discretion in awarding Tanya sole legal custody of the children and primary physical custody of Briar. *See Owen*, 206 Ariz. 418, ¶ 7, 79 P.3d at 669.

Disposition

¶9 The judgment of the trial court is affirmed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge