

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.34



DIVISION ONE
FILED: 04/24/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:) 1 CA-CV 10-0905
)
BEVERLY FAYE GOODMAN,) DEPARTMENT B
)
Petitioner/Appellant,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules
) of Civil Appellate
JONATHAN GRANADOS,) Procedure)
)
Respondent/Appellee.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FC2005-051267

The Honorable Pamela Gates, Judge

AFFIRMED

Beverly Faye Goodman
In propria persona

Phoenix

Rose Law Group PC
By Keith A. Berkshire
Attorneys for Respondent/Appellee

Scottsdale

J O H N S E N, Judge

¶1 Beverly Faye Goodman ("Mother") appeals the superior court's order modifying custody. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶12 Mother and Jonathan Granados ("Father") have a child, born out of wedlock in September 2004. Child custody and other matters were established by a December 2007 order granting Mother sole legal custody. Pursuant to the parties' agreement and the December 2007 order, Mother was the primary custodial parent and Father had parenting time.

¶13 In March 2011, Father filed a petition seeking modification of custody, parenting time and child support. At a pre-hearing scheduling conference, the court named a Court-Appointed Advisor ("CAA") and ordered Mother to produce her medical and mental health records.

¶14 At trial, the court heard testimony from the CAA, Father and Mother. Based on the evidence, including Mother's mental health records and a parenting conference report issued prior to the 2007 order, the court found a material change in circumstances warranting modification of custody and awarded the parents joint legal custody, with Father designated as the primary residential parent and Mother given parenting time.

¶15 Mother filed a motion to vacate and for a new trial, which Father opposed. The court denied Mother's motion, but supplemented and clarified its factual findings and explicitly described the change in circumstances materially affecting the child.

¶16 Mother timely appealed. We have jurisdiction under Article 6, Section 9, of the Arizona Constitution and pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1) (West 2012).¹

DISCUSSION

¶17 We review a superior court's decision on child custody for an abuse of discretion. *Pridgeon v. Superior Court*, 134 Ariz. 177, 179, 655 P.2d 1, 3 (1982); *Black v. Black*, 114 Ariz. 282, 284, 560 P.2d 800, 802 (1977).

¶18 On appeal, Mother argues the court's finding of a material change in circumstances is not supported by the evidence. The court explicitly designated three changes it found had "an ongoing, substantial and detrimental [e]ffect on the welfare of the child." First, the court found that, after the child experienced a significant trauma in April 2009, Mother failed to obtain therapeutic services for her that would have been in the child's best interests. On appeal, Mother does not dispute this finding. Next, the court noted the 2007 parenting conference report recounted "that Mother was receiving appropriate [mental health] treatment and was not exhibiting symptoms that would raise questions about her ability to parent." At the time of the modification hearing, however, the

¹ Absent material revision after the date of the events at issue, we cite a statute's current version.

court found on the basis of Mother's testimony and her medical records that she "has not consistently pursued therapy and treatment for her mental health issues" and that this caused "concern regarding Mother's ability to transport the child and focus on the child's educational needs and requirements."² This finding by the court is well supported by the evidence.

¶19 Third, the court found Mother lacks indicia of stability that were present at the time of the original custody order. The 2007 parenting report indicated stability based on, for instance, Mother's ability to hold a job that "appear[ed] to be a position of some responsibility." By her own admission, however, Mother has been unemployed since November 2007. Mother now argues her employment status has no bearing on the child's welfare because her disability income allows her "to meet her financial obligations to the Child." The court's finding regarding "stability," however, reflects a general concern about factors that we infer include but are not limited to Mother's

² Mother argues the court improperly considered the October 2007 parenting conference report because it predated the original custody order and argues the medical records were not properly in evidence. But the court may consider circumstances prior to the original custody decree if they are relevant to current issues. See *Hendricks v. Mortensen*, 153 Ariz. 241, 243-44, 735 P.2d 851, 853-54 (App. 1987) ("The admissibility of specific items of evidence is to be determined not by whether that evidence relates to circumstances predating an earlier order but by its relevancy to the issues raised in the subsequent proceeding." (quotation omitted)). Moreover, Mother offered no objection at trial to the documents she now argues the court improperly considered.

income. Given its concern about Mother's emotional stability, the court did not abuse its discretion in coming to this conclusion. Taken together, these three factors sufficiently constitute "a change in circumstances materially affecting the welfare of the child." See *Hendricks*, 153 Ariz. at 243, 735 P.2d at 853.

¶10 Mother also argues the court's ruling is inconsistent with and not supported by its factual findings. She contends the court's decision to grant her joint legal custody and to give her final decision-making authority about medical decisions, and its comment that equal parenting time, if feasible, would be "ideal," fly in the face of its findings with respect to her mental health and stability.

¶11 A change in custody, however, is not a matter of all or nothing; it is within the superior court's sound discretion, having considered all factors relevant to the child's best interests, to reduce but not eliminate Mother's authority. See, e.g., *Pridgeon*, 134 Ariz. at 179, 655 P.2d at 3 (court's custody determination reversed only if there is "a clear absence of evidence to support its actions"). Here, although the court expressed concern about Mother's ability to focus on the child's needs due to her own mental health issues, the court also noted that both Mother and Father "are [] capable and loving parents capable of making joint decisions" about their child.

¶12 Mother next argues the court "failed to provide reasons why the modification was in the child's best interest[s]." When determining custody on a contested petition for modification, the court must consider and "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." A.R.S. § 25-403(B) (West 2012). The court's order in this case included detailed findings on each of the § 25-403(A) factors and included substantial explanations of the facts supporting the findings. Although Mother argues the "court did not explain why the modification was in the child's best interests," the court's detailed findings support its best-interests conclusion. *Compare Reid v. Reid*, 222 Ariz. 204, 207, ¶¶ 11-13, 213 P.3d 353, 356 (App. 2009) (findings insufficient where appellate court "cannot ascertain from the court's orders and ruling how the court weighed the statutory factors").

¶13 Additionally, Mother contends the court improperly performed its best-interests analysis before it concluded whether a material change in circumstances had been proven. The law requires that a court may grant a petition to modify custody only if it finds both a material change in circumstances and that modification would serve the child's best interests. *Black*, 114 Ariz. at 283, 560 P.2d at 801. "While the factors that establish a change of circumstances materially affecting a

child's welfare are not always completely dispositive of the question of what will be in the child's best interests, they are highly relevant." *Id.* at 284, 560 P.2d at 802. We discern no error when, as here, the court considers relevant best-interests factors in determining whether a material change in circumstances exists.

¶14 Mother also argues the court's order and supplemental order are factually inconsistent with each other. But what Mother calls "gross differences" reflected in the supplemental order are nothing more than clarifications of the original order, not contradictions.

CONCLUSION

¶15 For the foregoing reasons, we affirm the court's order. Father requests attorney's fees on appeal under A.R.S. § 25-324 (West 2012). In our discretion, having considered the statutory factors, we decline Father's request, although we grant him his costs on appeal, contingent on compliance with Arizona Rule of Civil Appellate Procedure 21.

/s/
DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/
DONN KESSLER, Judge

/s/
JON W. THOMPSON, Judge