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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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In re the Matter of:

MARTIN PETROCELLI, *Petitioner/Appellee*,

*v.*

IZABELA ANDERSON, *Respondent/Appellant*.

No. 1 CA-CV 14-0328 FC

FILED 4-21-2015

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Appeal from the Superior Court in Maricopa County

No. FC2009-007479

The Honorable Christopher A. Coury, Judge

**AFFIRMED**

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COUNSEL

Best Law Firm, Scottsdale  
By Cynthia L. Best, Tali Collins, Stephen Vincent, Robert Hendricks  
*Counsel for Petitioner/Appellee*

Broening, Oberg, Woods & Wilson, PC, Phoenix  
By Kevin R. Myer  
*Counsel for Respondent/Appellant*

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**MEMORANDUM DECISION**

Presiding Judge Margaret H. Downie delivered the decision of the Court, in which Judge Patricia K. Norris and Judge Randall M. Howe joined.

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**D O W N I E**, Judge:

¶1 Izabela Anderson (“Mother”) appeals an order of the family court that modified her parenting time, changed the parties’ son’s surname, and altered the child’s school attendance. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 Mother and Martin Petrocelli (“Father”) are the parents of a child born in November 2009. After Father’s paternity was established in 2010, the superior court ordered the parties to share joint legal decision-making,<sup>1</sup> with Father having parenting time two afternoons per week and overnight on Saturdays. Numerous parenting disputes arose thereafter, and in December 2011, the court denied Mother’s request for sole legal decision-making authority and increased Father’s parenting time.

¶3 The parties’ relationship remained acrimonious, and in 2013, both parents petitioned to modify legal decision-making authority and parenting time. After an evidentiary hearing, the court affirmed the award of joint legal decision-making, but ordered that Father would have final decision-making authority. The court also modified the parenting time schedule to reduce Mother’s time to one mid-week overnight and every other weekend for three nights. The court granted Father’s request to change the child’s surname from “Anderson” to “Petrocelli-Anderson.”

¶4 Mother timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (“A.R.S.”) section 12-2101(A)(2).

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<sup>1</sup> Effective January 1, 2013, the term “custody” was replaced with “legal decision-making and parenting time.” See A.R.S. § 25-403.

## DISCUSSION

### I. Parenting Time Modification

#### A. Change in Circumstances

¶5 To modify a parenting time order, the court must first determine whether there has been a material change in circumstances affecting the welfare of the child. *Owen v. Blackhawk*, 206 Ariz. 418, 422, ¶ 16, 79 P.3d 667, 671 (App. 2003). Only after the court finds such a change has occurred does it reach the question of whether a change in parenting time would be in the child's best interests. *Hoffman v. Hoffman*, 4 Ariz. App. 83, 84, 417 P.2d 717, 718 (1966). The superior court has broad discretion in determining whether a change of circumstances has occurred, and we will not reverse its decision absent a clear abuse of discretion. *Pridgeon v. Superior Court*, 134 Ariz. 177, 179, 655 P.2d 1, 3 (1982).

¶6 At oral argument before this Court, Mother stated she is not disputing that a change in circumstances existed. Indeed, ample evidence was presented regarding changed circumstances. Since before paternity was established, Mother has repeatedly denied or interfered with Father's parenting time, questioned his judgment and ability to care for the child, and refused to involve him in decisions regarding the child's medical care. Evidence presented at the 2014 hearing established that the situation had further deteriorated and that the parties could not agree on a preschool for the child or a course of care for a medical issue. And in February 2013, the parties' ineffective communication resulted in duplicate dental appointments and x-rays for the child. Mother continued to refuse Father parenting time, excluded him from his son's medical appointments, and accused Father of sexually abusing the child — an allegation unsubstantiated by CPS or law enforcement.

¶7 Mother places almost singular reliance on one additional ground that the superior court cited as a change in circumstances: the need for the child to attend "a consistent pre-Kindergarten program" because of travel time concerns and "delays in his speech." According to Mother, the court's brief reference to speech delays in its 19-page ruling is not supported by substantial evidence. But even if we were to disregard the reference to speech delays, substantial evidence nonetheless supports the determination that material changes in circumstances affecting the welfare of the child existed.

**B. Best Interests**

¶8 When modifying parenting time, the court must determine the best interests of the child by considering the factors enumerated in A.R.S. § 25-403(A). In a contested case, the court must 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).

¶9 The family court addressed each statutory factor, explaining the evidence it deemed significant and the rationale for its findings. Contrary to Mother’s suggestion, the child’s purported speech delays do not form the basis for the superior court’s best interest determinations. The record amply supports the best interest findings, and we therefore find no abuse of discretion.

**II. Name Change**

¶10 Mother next challenges the order that the child’s surname be changed from “Anderson” to “Petrocelli-Anderson.” We will uphold an order changing a child’s surname if there is reasonable evidence to support the determination that the change is in the child’s best interests. *Pizziconi v. Yarbrough*, 177 Ariz. 422, 425-26, 868 P.2d 1005, 1008-09 (App. 1993).

¶11 We disagree with Mother’s contention that the court could not consider Father’s request because it had previously refused to change the child’s name. During a 2010 hearing regarding legal decision-making and parenting time, Father asked the court to change the child’s surname to “Petrocelli.” The court denied the request because Father offered no authority to support the change. In 2011, when the parties were again in court regarding legal decision-making and parenting time, Father asked the court to change the child’s surname to “Anderson-Petrocelli.” The court ruled that Father had not established the change was in the child’s best interests.

¶12 We disagree with Mother that once the court denied Father’s name-change request, it could not revisit the issue, as this is a decision controlled by the child’s best interests, which may change over time. *See Pizziconi*, 177 Ariz. at 425, 868 P.2d at 1008. The earlier determination that Father had not presented sufficient evidence that a name change was in the child’s best interests did not preclude the court from later determining that evidence demonstrated the change was in the child’s best interests. *Cf.* A.R.S. § 25-408(G) (implicitly acknowledging a child’s best interests may change over time by permitting the court to deviate from a previous

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parenting agreement to allow or prohibit relocation when it finds the agreement is no longer in the child's best interests). Further, although Mother states she did not present a "significant challenge" to Father's request because she presumed the issue had already been resolved, Father included the issue in his counter-petition to modify legal decision-making and parenting time and his prehearing statement. Thus, Mother had notice of the issue and ample opportunity to present evidence about it. We therefore reject Mother's request that we remand this issue for an evidentiary hearing.

¶13 We turn, then, to the court's determination that changing the child's surname was in his best interest. Arizona recognizes several factors that may be relevant in resolving whether a name change is in a child's best interest: (1) the child's preference; (2) the effect of the change on the preservation and development of the child's relationship with each parent; (3) the length of time the child has borne a given name; (4) the difficulties, harassment, or embarrassment that the child may experience from bearing the present or proposed name; and (5) the motive of the parents and the possibility that use of a different name will cause insecurity or a lack of identity. *Pizziconi*, 177 Ariz. at 425, 868 P.2d at 1008.

¶14 The family court appropriately considered these factors in reaching its decision.<sup>2</sup> It ruled that, given the parties' animosity, the change would preserve the child's relationship with both parents and promote his identity as a child of each. Noting that the child had borne his surname only a short time and had not yet begun his formal education, the court concluded it was beneficial to change his name at this time so as to mitigate any difficulties he might experience if he were to change his name after teachers and classmates knew him. The evidence supports these findings and the conclusion that the name change was in the child's best interests.<sup>3</sup>

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<sup>2</sup> As the child was only four years old at the time of the hearing, his wishes were not in evidence, and the court did not address that factor.

<sup>3</sup> Mother waived her argument that the court erred by placing Father's name first in the hyphenated surname by failing to raise it in the superior court. *Trantor v. Fredrikson*, 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994) ("absent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal").

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CONCLUSION<sup>4</sup>

¶15 For the foregoing reasons, we affirm the orders of the superior court. Father requests an award of attorneys' fees on appeal pursuant to A.R.S. § 25-324. In the exercise of our discretion, we deny his request. As the prevailing party on appeal, however, Father is entitled to an award of costs upon compliance with ARCAP 21.



Ruth A. Willingham · Clerk of the Court  
FILED : ama

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<sup>4</sup> Mother also contends the court erred by requiring her to post a \$3,000 supersedeas bond. However, Mother did not file a notice of appeal from the order setting the supersedeas bond, *see James v. State*, 215 Ariz. 182, 185, ¶ 11, 158 P.3d 905, 908 (App. 2007) (timely perfecting an appeal is jurisdictional), and we decline to accept special action review. Even assuming the bond was erroneously set, we have reviewed the name-change order on the substantive merits and found no error, vitiating any potential prejudice.