

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. 31.24



DIVISION ONE
FILED: 08/09/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:) 1 CA-CV 11-0050
)
JERELL DAWN REICHERT,) DEPARTMENT D
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
PHILLIP HOWARD SKIRBOLL,)
)
Respondent/Appellant.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FN2008-002581

The Honorable Daniel J. Kiley, Judge

AFFIRMED

Phillip Howard Skirboll
Respondent/Appellant *In Propria Persona*

Scottsdale

Jerell Dawn Reichert
Petitioner/Appellee *In Propria Persona*

Toronto, Ontario
Canada

B R O W N, Judge

¶1 Phillip Howard Skirboll ("Husband") appeals the trial court's order denying his motion for entry of an amended dissolution decree. He argues the court should have dismissed all of Jerell Dawn Reichert's ("Wife") claims and awarded him

attorneys' fees because Wife failed to disclose pertinent information regarding her interests in a Canadian real estate project. For reasons that follow, we affirm.

BACKGROUND

¶12 Wife petitioned for dissolution in August 2008. Wife moved for temporary orders, requesting \$7500 per month for spousal maintenance. At the subsequent hearing, Wife testified regarding her 25% interest in her parents' real estate development in Canada. She explained it was not much more than "a hole in the ground" and "it might be worth two million dollars and there might be two million dollars owed on it," leading the court to believe there was "little, if any, equity." The court then ordered Husband to pay spousal maintenance of \$2000 per month. Husband unsuccessfully moved for reconsideration, asserting in part that Wife had not been candid about the value of her interest. Husband stated that he had visited the Canadian property three years earlier, but at that time only a few homes had been built and an artificial lake was under construction.

¶13 Husband then moved to dismiss Wife's spousal maintenance claim because she had failed to fully disclose information about the real estate project in Canada. Alternatively, he requested a continuance of the trial date. The trial court denied Husband's requests and the parties

proceeded to trial in April 2009. Among other things, the court ordered Husband to pay spousal maintenance of \$2000 per month for twenty-four months. The court also ordered Husband to pay one-fourth of Wife's attorneys' fees, resulting in an award of \$4,683.13.

¶4 Prior to entry of the decree, Husband moved for a new trial, asserting he had newly discovered evidence on the issues of spousal maintenance and other matters relating to division of marital assets. He argued that because Wife was able to "obtain post-trial records for [the] Court's consideration on property issues," he should be able to "obtain additional records on the value of [Wife's] interest in her Canadian real estate holdings." He also requested an award of attorneys' fees pursuant to Arizona Revised Statutes ("A.R.S.") section 25-324 (Supp. 2011).

¶5 On April 1, 2010, the trial court granted Husband's request for a new trial, but only on the issue of spousal maintenance. The court framed the issue as determining "what funds are available to Wife upon completion of the lots in the real estate development project, after all costs of sale and existing loans have been paid on this project."¹

¹ Husband filed a notice of appeal from the court's April 1 order. At Husband's request, this court suspended the appeal to permit the trial court to enter an amended decree and consider requests regarding attorneys' fees.

¶16 On April 13, Wife filed a notice indicating that she was withdrawing and waiving her claim for Husband to pay "any spousal maintenance." She asserted that a new trial was no longer necessary and that the dissolution decree should be amended to state that neither party was entitled to an award of spousal maintenance.

¶17 In September 2010, after his counsel was permitted to withdraw from the case, Husband filed his motion for entry of an amended decree. He requested (1) dismissal of all of Wife's claims; (2) reversal of the attorneys' fees award previously granted to Wife; and (3) attorneys' fees in his favor in the amount of \$40,000 pursuant to A.R.S. § 25-324(A).

¶18 On November 15, 2010, the trial court filed a signed order denying Husband's motion for entry of amended decree and generally denying all requests for post-judgment relief. The court signed an amended decree eliminating the spousal maintenance provision, but otherwise left the original terms intact. Husband timely appealed.

DISCUSSION

¶19 Husband challenges the denial of his motion for entry of amended decree, which in essence asked the trial court to strike all of Wife's claims as a sanction for her failure to fully disclose information relating to the value of the Canadian real estate project. Husband's motion, however, failed to

recognize the critical fact that after the court's ruling on the motion for new trial, Wife waived her claim to any award of spousal maintenance. Her interests in the Canadian project, as her sole and separate property, were no longer relevant because there were no substantive issues remaining in the case. Unquestionably, Wife should have complied with her disclosure obligations but as a practical matter her failure to do so resulted in the loss of her spousal maintenance claim, including the amounts accrued as part of the temporary orders. Thus, the trial court did not abuse its discretion in denying Husband's request to strike all of Wife's claims.

¶10 Husband also argues the trial court erred in denying his request for attorneys' fees. We review rulings on attorneys' fees for abuse of discretion. *MacMillan v. Schwartz*, 226 Ariz. 584, 592, ¶ 36, 250 P.3d 1213, 1221 (App. 2011). A court abuses its discretion when it commits an error of law in the process of exercising its discretion. *Kohler v. Kohler*, 211 Ariz. 106, 107, ¶ 2, 118 P.3d 621, 622 (App. 2005). Husband's motion for new trial sought an award of attorneys' fees under A.R.S. § 25-324. In partially granting the motion, the trial court did not award fees to Husband and therefore the request was deemed denied. See *Chopin v. Chopin*, 224 Ariz. 425, 431, ¶ 22, 232 P.3d 99, 105 (App. 2010) (stating that when a court fails to make a ruling on a motion it is treated as denied.).

Husband unsuccessfully repeated his request for attorneys' fees pursuant to A.R.S. § 25-324 in his motion for entry of amended decree.

¶11 On appeal, Husband provides no argument as to how the court may have erred in applying § 25-324, which permits fee awards after consideration of the financial resources of the parties and the reasonableness of the positions each party has taken in the litigation. Husband mentions in passing that the court should have awarded fees under Arizona Rule of Family Law Procedure 65; however, he did not request fees on that basis in the trial court. Thus, Husband has waived any argument that the court erred in denying his fee request under Rule 65 or A.R.S. § 25-324. See *Trantor v. Fredrikson*, 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994) (issue may not be brought or argued on appeal that was not first raised before the trial court); *State Farm. Mut. Auto. Ins. Co. v. Novak*, 167 Ariz. 363, 370, 807 P.2d 531, 538 (App. 1990) (declining to consider issues with no supporting reasoning); Ariz. R. Civ. App. Proc. 13(a)(6) (appellant's brief must include the "contentions of the appellant with respect to the issues presented, and the reasons therefore, with citations to the authorities, statutes and parts of the record relied on.").

¶12 Husband also suggests that the court erred in denying the remaining arguments contained in his motion for new trial.

Husband, however, has failed to provide us with a transcript of the trial proceedings. As the appellant, it was Husband's obligation to "mak[e] certain the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised on appeal." *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995); see also ARCAP 11(b)(1). We therefore presume that the missing portions of the record support the trial court's findings and rulings. *Kohler*, 211 Ariz. at 108 n. 1, ¶ 8, 118 P.3d at 623 n. 1. For the portion of the record we do have, Husband has not directed us to any part of it supporting his general assertions that the court erred in allocating the various marital assets or in granting Wife a relatively small portion of her attorneys' fees. Furthermore, Husband's arguments are essentially requests that we re-weigh the evidence, which we will not do. See *Hurd v. Hurd*, 223 Ariz. 48, 52, ¶ 16, 219 P.3d 258, 262 (App. 2009) ("Our duty on review does not include re-weighing conflicting evidence or redetermining the preponderance of the evidence.").

¶13 Both parties request an award of attorneys' fees on appeal; however, because they represented themselves they cannot properly claim entitlement to fees. See *Connor v. Cal-Az Props., Inc.*, 137 Ariz. 53, 56, 668 P.2d 896, 899 (App. 1983) (recognizing that a party filing pro per cannot claim fees due to the absence of the attorney-client relationship). As the

prevailing party, we award costs to Wife upon her compliance with Arizona Rule of Civil Appellate Procedure 21.

CONCLUSION

¶14 For the foregoing reasons, we affirm the trial court's amended decree of dissolution dated November 12, 2010.

/S/

MICHAEL J. BROWN, Acting
Presiding Judge

CONCURRING:

/S/

MARGARET H. DOWNIE, Judge

/S/

JON W. THOMPSON, Judge