DIVISION ONE
FILED: 08/07/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:	)	1 CA-CV 11-0524
	)	
JAMES J. SIKORA,	)	DEPARTMENT E
	)	
Petitioner/Appellee,	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
v.	)	Rule 28, Arizona Rules of
	)	Civil Appellate Procedure)
SUZANNE C. SIKORA,	)	
	)	
Respondent/Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. FC2008-053263

The Honorable Douglas Gerlach, Judge

AFFIRMED

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by Sandra Burt
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by Leonce A. Richard III
Attorneys for Petitioner/Appellee

P O R T L E Y, Judge

¶1 Suzanne Sikora ("Mother") appeals the denial of her petition to modify child support, and argues that the family

court should have imputed more income to James Sikora ("Father"). For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Father and Mother were married in March 1994, and have two minor children. Father filed for divorce in November 2008. The parties participated in a private mediation, and entered into a Memorandum of Understanding that described their agreements on spousal maintenance, property settlement, and an equal time-share parenting plan. They then agreed to binding arbitration to resolve the remaining issues, including child support. The arbitrator resolved the issues but denied Mother's request for child support.[1]

¶3 The court signed the final decree in February 2011, after Mother had filed a petition to modify child support. The court held an evidentiary hearing and subsequently found that Mother proved a substantial and continuing change of circumstances and that Father was "voluntarily unemployed or working below his earning capacity." As a result, the court

[1] The arbitrator found that there was "no basis for child support, retroactively or in the future," and denied Mother's request. Mother challenged that decision, and argued that the arbitrator exceeded her power by declaring that there was no basis for future child support. The court ruled that future child support could not be precluded by the arbitration award pursuant to Arizona Revised Statutes ("A.R.S.") section 12-1512 (West 2012).

imputed Father's annual income to be $75,000. The court, however, denied Mother's modification petition.

DISCUSSION

¶4 Mother argues that the family court erred when it determined that she had "the burden of proving Father's income and employment opportunities" and ruled that she had not met her burden. We review the denial of a modification petition for an abuse of discretion. *Jenkins v. Jenkins*, 215 Ariz. 35, 37, ¶ 8, 156 P.3d 1140, 1142 (App. 2007) (citation omitted); *Guerra v. Bejarano*, 212 Ariz. 442, 443, ¶ 6, 133 P.3d 752, 753 (App. 2006) (citation omitted). "An abuse of discretion exists when the record, viewed in the light most favorable to upholding the trial court's decision, is 'devoid of competent evidence to support' the decision." *Jenkins*, 215 Ariz. at 37-38, ¶ 8, 156 P.3d at 1142-43 (citations omitted). We review de novo the court's interpretation of the Child Support Guidelines. *Guerra*, 212 Ariz. at 443, ¶ 6, 133 P.3d at 753 (citations omitted).

¶5 It is axiomatic that a parent has to support his or her children. Moreover, § 25-320(5)(E) (West 2012) provides, in part, that:

> If a parent is unemployed or working below full earning capacity, the court may consider the reasons. If earnings are reduced as a matter of choice and not for reasonable cause, the court may attribute income to a parent up to his or her earning capacity. If the reduction in income is

> voluntary but reasonable, the court shall balance that parent's decision and benefits therefrom against the impact the reduction in that parent's share of child support has on the children's best interest.

The statute does not assign any burden of proof with respect to a parent's earning capacity. Instead, the statute allows the court to "consider the reasons" for unemployment and "balance" the consequences of a parent's decision regarding his or her work. *Id.* The court must, therefore, consider all of the relevant and competent evidence as part of its analysis when deciding whether to order a child support modification.

¶6 Even if we assume that the court erred by finding that Mother had failed to carry her burden of proof, it is clear that substantial evidence supported the court's decision. Mother submitted tax returns filed during the marriage that reflected Father's earnings of over $900,000 in 2004 and 2005, including approximately $400,000 in capital gains for each of those years.[2] She also testified that two years before Father filed for divorce, he voluntarily left his job after eighteen years of employment. She acknowledged that she had supported his decision because he had planned to relax for a few months and

[2] Additionally, the 2006 tax return reflected earnings of almost $650,000, including approximately $334,000 in capital gains.

then start a new business, but the latter never occurred.[3] As a result, she thought it was reasonable for the court to impute an annual income of $250,000 to Father.

¶7 Father testified that he had been a partner in his former company, Accenture, before it went public. His former position at Accenture, however, no longer existed at the time of trial because his principal client had been absorbed by a large bank. He testified that the fallout from the economic recession had led to a credit meltdown, and that there were few available jobs in the financial services sector in Phoenix. He also testified that he was behind in the industry from a technological standpoint because it "tends to refresh itself every 18 months to 24 months." Based on his skills, he believed that he might be able to obtain a project management job in Phoenix that would pay between $50,000 and $75,000.

¶8 After finding that Mother had demonstrated "a substantial and continuing change [in] circumstances" by becoming employed, *see* A.R.S. § 25-320(24)(A), the court found that Father did not have a reasonable justification for remaining unemployed. The court then found that Father had "offered credible and unrefuted testimony that, because he ha[d] been out of the work force for [five years], he could not

[3] Mother had informed the arbitrator that, before Father filed for divorce, they had hoped to retire and live off of the assets in their sizeable estate.

realistically obtain employment at a level that paid much above $50,000 - $75,000 annually." The court reached its conclusion after considering the fact that Mother had not shown that there were jobs in Phoenix that would pay Father an annual salary of $250,000.

¶9 Although the court stated that Mother had not satisfied her burden of proof, the reality is that the court was not persuaded that the imputed income attributed to Father should exceed $75,000. Despite the fact that Mother thought Father could secure a job that paid approximately $250,000, she did not demonstrate that there were financial services sector jobs available in Phoenix that would pay him such a salary. Because the court, as the trier of fact, had to determine the credibility of witnesses and the weight to be given to evidence in reaching its conclusion, *see Pima Cnty. Juv. Action No. 63212-2*, 129 Ariz. 371, 375, 631 P.2d 526, 530 (1981) (citations omitted), we defer to its assessments and find no abuse of discretion in its ultimate determination. *See Williams v. Williams*, 166 Ariz. 260, 266, 801 P.2d 495, 501 (App. 1990) (court may attribute income to a litigant based on testimony concerning past earnings and future earning capacity).

¶10 Mother also argues that the family court erred by characterizing her "child support award as a modification of a previous award of child support." She, however, fails to

develop the argument or cite supporting authority in the opening brief as required by Arizona Rule of Civil Appellate Procedure 13(a)(6). Consequently, we do not address it. *Cullum v. Cullum*, 215 Ariz. 352, 355 n.5, ¶ 14, 160 P.3d 231, 234 n.5 (App. 2007) (citing *Phelps Dodge Corp. v. Ariz. Elec. Power Co-op., Inc.,* 207 Ariz. 95, 122, ¶ 117, 83 P.3d 573, 600 (App. 2004) ("We will not consider arguments posited without authority.").

¶11 Both parties request attorneys' fees on appeal. Because there is no financial disparity between them, we exercise our discretion and decline both requests.

CONCLUSION

¶12 Based on the foregoing reasons, we affirm the denial of the petition to modify child support.

/s/
_____
MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/
_____
PHILIP HALL, Judge

/s/
_____
DIANE M. JOHNSEN, Judge