

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: 10/1/2013  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA ex rel. ARIZONA ) No. 1 CA-CV 12-0529  
DEPARTMENT OF ECONOMIC SECURITY, )  
) DEPARTMENT D  
Petitioner/Appellee, )  
)  
and ) **MEMORANDUM DECISION**  
) (Not for Publication -  
) Rule 28, Arizona Rules of  
MINNIE MYLINA POTTER, ) Civil Appellate Procedure)  
)  
Petitioner/Appellant, )  
)  
v. )  
)  
ALEXIS DE JESUS GIL, )  
)  
Respondent/Appellee. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. FC2007-004913

The Honorable Casey J. Newcomb, Judge *Pro Tempore*

**AFFIRMED**

Minne Mylina Potter  
Petitioner/Appellant *In Propria Persona*

Phoenix

**B R O W N**, Judge

¶1 Minnie Mylina Potter ("Mother") appeals the trial court's order modifying Alexis Gil's ("Father") child support obligation. For the following reasons, we affirm.

¶12 Mother and Father are the unmarried parents of a child born in 2003. In June 2007, Mother filed a petition in the trial court to establish paternity, parenting time, and child support. After a hearing, the court awarded sole legal custody to Mother and ordered Father to pay child support in the amount of \$811.54 per month. The court determined that for child support calculation purposes, Mother's income was \$36,000 per year and Father's income was \$64,000 per year.

¶13 In November 2011, Father petitioned for modification of his child support obligation to \$278.27 based on a substantial reduction in his income. Following an evidentiary hearing in June 2012, the court reduced Father's obligation from \$811.54 to \$608.00. In doing so, the court found it appropriate to attribute annual income to Mother of \$38,000, notwithstanding she had recently changed to a lower-paying job. The court explained that insufficient time had passed to determine whether Mother's underemployment was sufficiently permanent in nature to warrant a change in her support obligations. The court also noted that if Mother was unable to find employment in the near future that paid a salary "comparable to her previous salary," she could petition for modification based on a substantial and continuing change of circumstances. Mother appealed and we have

jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") § 12-2101.<sup>1</sup>

¶4 A prerequisite to the modification of an award of child support is a showing of changed circumstances that are substantial and continuing. A.R.S. § 25-327. The individual seeking modification of child support has the burden of establishing changed circumstances with competent evidence. See *Scott v. Scott*, 121 Ariz. 492, 494, 591 P.2d 980, 982 (1979). The question whether there has been a sufficient change in circumstances to modify an award of child support lies within the sound discretion of the trial court and will not be interfered with absent an abuse of discretion. See *MacMillan v. Schwartz*, 226 Ariz. 584, 588, ¶ 12, 250 P.3d 1213, 1217 (App. 2011). An abuse of discretion exists when the record, viewed in the light most favorable to upholding the trial court's

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<sup>1</sup> Mother filed her notice of appeal after the trial court issued its unsigned minute entry dated June 26, 2012 but before the signed order dated July 2, 2012. As a general rule, a notice of appeal filed in the absence of a final judgment is premature. *Barassi v. Matison*, 130 Ariz. 418, 421, 636 P.2d 1200, 1203 (1981). However, in *Barassi*, the Arizona supreme court held "that a premature appeal from a minute entry order in which no appellee was prejudiced and in which a subsequent final judgment was entered over which jurisdiction may be exercised need not be dismissed." *Id.* at 422, 636 P.2d at 1204. Subsequently, in *Baker v. Bradley*, we held that jurisdiction existed when a notice of appeal was filed prior to entry of a signed judgment but no substantive motions or issues were pending or subsequently filed. 231 Ariz. 475, 481, ¶ 19, 296 P.3d 1011, 1017 (App. 2013). Therefore, pursuant to *Barassi* and *Baker*, we have jurisdiction over Mother's appeal.

decision, is "devoid of competent evidence to support" the decision. *Jenkins v. Jenkins*, 215 Ariz. 35, 37, ¶ 8, 156 P.3d 1140, 1142 (App. 2007) (internal quotation omitted).

¶5 Mother asserts that the trial court erred when it declined to reduce the amount of income attributed to her for purposes of calculating child support.<sup>2</sup> She argues that the court should have used a lower amount because she was unable to continue working at her prior job due to health reasons and her income dropped when she took a new job as a food server. Mother has failed, however, to provide us with a transcript of the modification hearing. See ARCAP 11(b) (explaining an appellant is responsible for making certain that the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised on appeal). When a party fails to ensure a complete record, we assume the missing portions would support the trial court's findings and conclusions. *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995). As such, we conclude the trial court did not abuse its discretion

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<sup>2</sup> We note that Father failed to file an answering brief, which may constitute a confession of reversible error. *Bugh v. Bugh*, 125 Ariz. 190, 191, 608 P.2d 329, 330 (App. 1980). We are reluctant, however, to reverse a decision based on an implied confession of error. See *Nydam v. Crawford*, 181 Ariz. 101, 101, 887 P.2d 631, 631 (App. 1994). Therefore, in our discretion, we decline to regard this as a confession of error; instead, we review the merits of Mother's arguments based on the record and the proper standard of review. See *Thompson v. Thompson*, 217 Ariz. 524, 526 n.1, ¶ 6, 176 P.3d 722, 724 n.1 (App. 2008).

in attributing income to Mother in the amount of \$38,000 per year.

¶16 Accordingly, we affirm the court's order modifying Father's child support obligation.<sup>3</sup>

\_\_\_\_\_/s/\_\_\_\_\_  
MICHAEL J. BROWN, Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
ANDREW W. GOULD, Presiding Judge

\_\_\_\_\_/s/\_\_\_\_\_  
DONN KESSLER, Judge

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<sup>3</sup> Consistent with the trial court's ruling, nothing in our decision precludes Mother from filing a new petition to modify child support if there is a substantial change in circumstances and she is still underemployed. See A.R.S. § 25-327.