

NOTICE: NOT FOR PUBLICATION.
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Marriage of:
IVY M. FRANKEL fka MCGALLIARD, *Petitioner/Appellee*

v.

JAMES MCGALLIARD, *Respondent/Appellant.*

No. 1 CA-CV 12-0746

FILED 11-07-2013

Appeal from the Superior Court in Maricopa County
No. FC2009-094295
The Honorable Paul J. McMurdie, Judge

AFFIRMED

COUNSEL

James McGalliard, Phoenix

Respondent/Appellant In Propria Persona

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MEMORANDUM DECISION

Judge Michael J. Brown delivered the decision of the Court, in which Presiding Judge Andrew W. Gould and Judge Donn Kessler joined.

B R O W N, Judge:

¶1 James McGalliard (Father) appeals the superior court's post-decree order modifying parenting time, child support, and the division of marital property. For the following reasons, we affirm.

¶2 Father and Ivy Frankel (Mother) married in September 1995 and have two minor children. In November 2009, Mother petitioned for dissolution of the marriage in the superior court. In April 2011, the court entered a decree of dissolution (1) allocating the parties' marital property and ordering Father to pay Mother an equalization payment in the amount of \$23,048.13; (2) awarding the parties joint legal custody of their minor children; (3) establishing a parenting time schedule (affording each party weekly parenting time); and (4) ordering Father to pay Mother \$343 per month in child support.

¶3 Approximately two months later, Mother filed motions to enforce both the property allocation and the child support order. Soon thereafter, Father filed a petition to modify parenting time and child support.¹ Father also filed a motion to compel disclosure. In response to the motion to compel, Mother countered that the requested disclosures had been made. Upon Father's filing of another motion to compel disclosure, the superior court entered an order requiring Father to identify with specificity the information requested. Father filed another motion to compel disclosure, primarily referring the court to his earlier motions.

¶4 At a subsequent evidentiary hearing held in August 2012, the superior court considered the pending petitions of both parties as well

¹ In January 2012, as part of a temporary orders hearing, the superior court denied Mother's request to relocate the children to California. The court explained that because the parties had a limited opportunity to present evidence, Mother could re-urge her request at a later date.

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as a renewed request from Mother to relocate the children to California.² After receiving testimony and exhibits, the court (1) reallocated to Mother an insurance settlement check originally ordered to be split equally between the parties which reduced Father's outstanding equalization payment; (2) allowed Mother to relocate with the children to California, reasoning that Father's failure to pay child support created, at least in part, Mother's need to move to obtain greater income to support the children; (3) altered the parenting time schedule to provide Father with parenting time during the children's fall, winter, and spring breaks and six weeks during the summer; (4) reduced Father's child support obligation to \$112.28 per month; (5) ordered Father to pay child support arrearages in the amount of \$6,517 and interest in the amount of \$488.76; and (6) found Father in contempt for willfully failing to make child support payments. Father timely appealed.

¶5 Father's cursory opening brief raises numerous claims, including that the superior court erred by denying his motion to continue, the court improperly struck the testimony of his witness, the court violated the law of the case by modifying the allocation of certain assets and permitting Mother to relocate with the children out of the state, and the judge demonstrated personal bias against him.³

¶6 Father's opening brief is wholly noncompliant with Arizona Rule of Civil Appellate Procedure 13(a), as it does not include any citations to the record or any authority supporting his claims. In addition, Father has failed to provide us with a transcript of the August 22, 2012 hearing. See ARCAP 11(b) (An appellant is responsible for ensuring that the record on appeal contains all transcripts or other documents necessary for consideration of the issues raised on appeal). When a party fails to ensure a complete record, we assume the missing portions would support

² On the day of the hearing, Father filed a motion to continue the hearing, asserting that Mother had failed to comply with his disclosure requests. As reflected in a subsequent minute entry, the court denied the motion.

³ Wife 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. See *Thompson v. Thompson*, 217 Ariz. 524, 526 n.1, ¶ 6, 176 P.3d 722, 724 n.1 (App. 2008).

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the court's findings and conclusions. *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995). Here, the superior court made specific findings and conclusions of law based on the parties' arguments, testimony, and exhibits presented at trial. After referencing and applying the statutory factors set forth in Arizona Revised Statutes § 25-408, the court determined that allowing relocation was in the children's best interests. The court also addressed the parameters of the joint custody arrangement, adopted a parenting plan, and reduced Father's child support obligation. Without the hearing transcript, we must presume that the court's rulings are supported by the record. Accordingly, we affirm the court's order dated August 30, 2012.



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