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: 04-22-2010
PHILIP G. URRY, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:	)	No. 1 CA-CV 09-0259
	)	
MELISSA SUZANN GLEASON,	)	DEPARTMENT A
	)	
Petitioner/Appellee,	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
v.	)	Rule 28, Arizona Rules
	)	of Civil Appellate
KENNETH WILLIAM GLEASON,	)	Procedure)
	)	
Respondent/Appellant.	)	

Appeal from the Superior Court in Maricopa County

Cause No. FN 2008-090969
FN 2008-091079
(Consolidated)

The Honorable Sherry K. Stephens, Judge

AFFIRMED

Kenneth William Gleason, Chandler
Respondent/Appellant *In Propria Persona*

Nirenstein, Garnice, Soderquist, P.L.C. Tempe
By Rachel R. James
Leslie A. W. Satterlee
Attorneys for Petitioner/Appellee

PER CURIAM

¶1 Kenneth William Gleason ("Husband") appeals from orders by the family court in this dissolution proceeding. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY[1]

¶2 Husband and Melissa Suzann Gleason ("Wife") married in May of 2007. Divorce proceedings commenced approximately one year later. During the marriage, the parties shared a home that Wife had purchased twelve years previously and titled in her name. Wife made all mortgage payments. Prior to marriage, Wife established a $100,000 home equity line of credit secured by her home that she used during the marriage for "everything that went into the house," including furniture, appliances, and repairs. Wife alone made payments on the credit line.

¶3 Husband and Wife kept separate bank accounts into which they deposited their respective wages and from which they paid individual debts. Wife paid Husband's health insurance costs. Wife had an employer-provided retirement fund. During the marriage, Wife earned approximately $46,000. Husband, a business owner, earned $65,000; his business generated approximately $100,000 in 2008.

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[1] In reviewing the apportionment of property, we view the evidence in the light most favorable to upholding the family court's ruling. *Gutierrez v. Gutierrez,* 193 Ariz. 343, 346, 972 P.2d 676, 679 (App. 1998).

¶4 Three weeks before the marriage, Husband and Wife purchased and financed a Dodge Nitro; both were listed on the title. Husband traded in a vehicle and made a cash down payment toward the purchase. He also made the car and insurance payments. Wife primarily drove the Dodge. In October 2007, Wife was involved in an accident that injured her and caused extensive damage to the Dodge. Husband received and cashed a $4000 insurance check to reimburse for the deductible and other costs arising from the accident.

¶5 On May 14, 2008, Wife filed a dissolution petition.[2] Trial was set for September 23. On September 15, the parties signed a "Rule 69 Agreement" ("Agreement") that stated each spouse would receive: (1) the personal property in his or her possession, except items on a "particular list" attached to the Agreement; (2) the community property in each spouse's possession, except the Dodge, which was awarded to Wife; and (3) any debts in their own names. The Agreement further stated Wife would receive the home as her sole and separate property, along with responsibility for the mortgage and home equity credit line. Husband waived any claim for financial compensation for work he did on the home. Both parties waived their respective

[2] Husband filed a dissolution petition on May 9, 2008, under a different cause number. The family court consolidated the cases. Throughout the proceedings, the service date of Wife's petition was treated as the effective date of service.

interests in the other spouse's retirement benefits. Wife waived any interest in Husband's business.

¶6 On September 16, 2008, Wife filed a notice of settlement. Three days later, Husband wrote a letter stating that there were outstanding matters and that, "Until these items are dealt with I do not consider our agreements final." Husband wrote another letter dated October 20, stating:

> [T]he agreement of September 15, 2008 does not designate that it is a full settlement. I contend the agreement is only a partial agreement. Therefore, the items specified in my letter to you of September 19, 2008 remain outstanding and need to be addressed as well as the items in the Decree of Dissolution in paragraph 2.g on page 4 and paragraph 4.A.2 on page 5 which are not accurately stated.[3]

¶7 On October 24, 2008, Wife lodged a proposed decree "consistent with the parties' Rule 69 Agreement." In response, Husband filed a "Notice to Court of Improper Notice of Settlement . . . and Respondent's Repudiation of Settlement Agreement Based on Fraud, Misconduct, Undue Influence, Unclean Hands, and Unjust Enrichment." Two days later, he objected to the lodged decree and requested a status conference. During the

[3] Paragraph "2.g." gave Wife 100% interest in the Dodge "subject to any obligations owed thereon, including the loan through the Arizona Federal Credit Union." Paragraph "4.A.2" confirmed that Wife "shall be responsible for any and all debts" associated with the "Lien/Encumbrance from Arizona Federal Credit Union for the 2007 Dodge Nitro currently in Petitioner's possession. Wife has already refinanced said lien on the vehicle and has removed Husband from said lien."

ensuing status conference, Husband claimed the Agreement was only a partial settlement and insisted that the court schedule a hearing to determine its validity. The court did so, but warned Husband he could be liable for "thousands of dollars" of attorneys' fees if the court "determine[s] that these issues are inconsequential." A minute entry set trial for January 30, 2009, and directed the parties to: (1) submit a joint pre-trial statement and trial exhibits by January 23; (2) submit proposed findings of fact and conclusions of law at least 20 days before trial; and (3) complete disclosures by December 30, 2008.

¶8 On December 24, 2008, Husband moved to extend the disclosure deadline, alleging Wife would wait "until the very last day (December 30, 2008) to affect the continuing duty of disclosure." In response, Wife relied on the Agreement and objected to further disclosures because "many of the documents [Husband] is demanding are also irrelevant because they involve assets and/or debts acquired by Wife after the date of service of petition for dissolution." The court denied Husband's request.

¶9 In December and early January, Husband issued subpoenas to Wife's banks and employer. He also filed a motion to compel Wife to produce specified records for the past three, five, and ten years. Wife requested a protective order. During a telephonic conference on January 26, 2009, the court issued a

protective order and limited the scope of Husband's subpoenas to the time period of February 12, 2007 through May 30, 2008. The court affirmed the January 30 trial date and confirmed both parties would be "ready to go" on that date. When Husband reiterated a need for discovery, Wife's counsel stated she had already provided information in her possession to Husband, but would provide "new copies." Later that day, Husband went to counsel's office to obtain the documents. He filed an "emergency motion" relating to documents from Wife's bank and employer.

¶10 At the January 30 hearing, Husband admitted receiving "256 items" of disclosure from Wife, but argued he needed "full disclosure." The court continued the trial to give Husband time to receive and evaluate subpoenaed records, but warned, "[i]f you don't get the records, I'm going to assume that they don't show what you say that they are going to show." The court also heard argument regarding the validity of the Agreement.

¶11 On February 12, 2009, the court granted Husband's motion to set aside the Agreement, finding he did not voluntarily enter into it "because of his emotional and mental state at the time the Agreement was negotiated." Trial proceeded. On February 19, 2009, the trial court entered a signed decree.

¶12 Husband timely appealed. We have jurisdiction pursuant to Arizona Revised Statute ("A.R.S.") section 12-2101(B) (2003).

DISCUSSION

¶13 Husband represents himself on appeal. Parties appearing *in propria persona* are held to the same standards as attorneys. *See Ackerman v. S. Ariz. Bank & Trust Co.,* 39 Ariz. 484, 486, 7 P.2d 944, 944 (1932) (holding that a person who represents himself "must expect and receive the same treatment as if represented by an attorney"); *Copper State Bank v. Saggio,* 139 Ariz. 438, 441, 679 P.2d 84, 87 (App. 1983) (finding that persons representing themselves are "held to the same familiarity with required procedures" as attorneys). Although Husband identifies numerous issues in his opening brief, he fails to adequately develop many of them. Opening briefs must present significant arguments, supported by legal authority and setting forth an appellant's position on the issues raised; failure to so argue a claim usually constitutes abandonment and waiver of that claim. *State v. Moody,* 208 Ariz. 424, 452 n.9, ¶ 101, 94 P.3d 1119, 1147 (2004) (citation omitted). *See also* ARCAP 13(a)(6). Additionally, Husband fails to cite to the record in support of some of his claims. *See Adams v. Valley Nat'l Bank of Ariz.,* 139 Ariz. 340, 343, 678 P.2d 525, 528 (App. 1984) (finding an appellate court is not required to assume the

duties of an advocate and search records and exhibits to substantiate a party's claims).[4] We have limited our review to Husband's assertions that the court erred by: (1) failing to equitably divide property; and (2) awarding attorneys' fees to Wife.

1. Property Division

¶14 We review the distribution of community property for an abuse of discretion. *Boncoskey v. Boncoskey,* 216 Ariz. 448, 451, ¶ 13, 167 P.3d 705, 708 (App. 2007) (citations omitted). An abuse of discretion occurs if there is no evidence to support the decision, *Little v. Little,* 193 Ariz. 518, 520, ¶ 5, 975 P.2d 108, 110 (1999), or the court commits an error of law. *Fuentes v. Fuentes,* 209 Ariz. 51, 56, ¶ 23, 97 P.3d 876, 881

[4] Almost a month after the court issued the decree, Husband filed volumes of additional documents. These documents were not available to the family court when it ruled; we thus do not consider them. *See GM Dev. Corp. v. Cmty. Am. Mortg. Corp.,* 165 Ariz. 1, 4, 795 P.2d 827, 830 (App. 1990) ("An appellate court's review is limited to the record before the trial court.") (citations omitted). For the same reason, we do not consider documents contained in the appendix to Husband's reply brief that were not before the family court when it ruled. Husband also includes substantive discussion in the appendix. Arguments must be presented in the body of a brief. *See* ARCAP 13(a) (defining the contents of a brief); *State v. Bolton,* 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (striking text contained in an appendix). Briefs must also comply with word and page limits. *See* ARCAP 14(b) (limiting a reply brief to "7000 words" or "20 pages," depending upon the type style used). Husband's reply brief contains 6983 words, excluding the appendices. Although he filed a motion to extend the word limit, we denied it. We have not considered arguments contained in the appendix.

(App. 2004). A court is obligated to distribute property "equitably," not "in kind." *See* A.R.S. § 25-318(A) (Supp. 2009).

a. Personal Injury Claim

¶15 Husband argues the family court erred by refusing to award him "one half of all monies recovered by [Wife] from her personal injury claim . . . with respect to her claims for lost wages, expenses for medical care, receipt of medical pay benefits." The court denied Husband's request because no claim or lawsuit had been filed, and any potential community interest was speculative. We agree.

¶16 At the time of trial, no personal injury claim had been filed, and Wife was uncertain whether one ever would be. Even assuming *arguendo* that a community interest existed, Husband presented no evidence for the court to consider in making an award. Discovery in a divorce case is not limited to records held by the other spouse; a variety of methods may be used to gather information. *See* Ariz. R. Fam. L.P. 51(A) (allowing discovery by depositions upon oral examination or written questions, written interrogatories, production of documents or things, physical and mental examinations, and requests for admission). Wife disclosed information within her control on multiple occasions, even though counsel believed production was unnecessary because of the Agreement. *See* Ariz.

R. Fam. L.P. 49(E), (F) (defining records that must be disclosed "[u]nless the parties have entered into a written agreement disposing of all property issues in the case"). Nothing prevented Husband from requesting necessary information before the court-imposed deadline. Husband admitted he forgot about a possible injury claim until early January, at which point he issued procedurally inappropriate subpoenas to Wife's banks and employer.[5]

¶17 When Husband had not received all subpoenaed information by the January 30 trial date, the court granted a continuance. When he failed to mark exhibits before trial, the court allowed him to testify about the content of documents. Even when directly asked about the content of Wife's employment records, Husband's reply was unrelated to any community claim for lost wages or medical expenses. Finally, once the court entered the decree, Husband could have objected to its findings and requested an amendment. *See* Ariz. R. Fam. L.P. 82(B) (allowing a motion for amendment of the court's findings or judgment pursuant to a motion for new trial), 83 (defining the grounds, scope and procedure for filing a motion for new trial).

[5] The subpoenas were issued after the disclosure deadline, copies were not given to Wife, and they were overly broad, resulting in issuance of a protective order. *See* Ariz. R. Fam. L.P. 43 (A) (requiring copies to be provided to opposing party), 49 (defining disclosure procedures and timeframes from which documents may be sought).

He did not do so. On this record, sufficient evidence supports the trial court's ruling.

b. Dodge Vehicle

¶18 Husband claims he was "entitled to an award of one-half of the fair market value of the parties' commonly owned 2007 Dodge Nitro as of the date Wife voluntarily paid off their common, joint pre-marital debt on the vehicle, or, in the alternative . . . the $1200 down-payment he made when the parties' [sic] purchased said vehicle." Husband made the same request below and claimed the vehicle became an "asset" for him once Wife paid off the original loan because "the vehicle has been paid off from my name" so there was "zero debt associated to that vehicle." He claimed Wife's refinance was a "gift" to him and asked the court to award him half of the $16,000 he believed the vehicle was worth immediately before refinancing.

¶19 The family court awarded Wife the vehicle, "subject to any liens, encumbrances, and other obligations," and denied Husband's request. The court found Wife had refinanced the vehicle to remove Husband's name from the loan per the parties' agreement and that there was no equity in the vehicle. The record supports these determinations.

¶20 Although Husband contends he "testified" the vehicle's value was roughly $16,000 at the time it was refinanced, he is incorrect. *See* Black's Law Dictionary 1613 (9th. ed. 2009)

(defining testimony as "[e]vidence that a competent witness under oath or affirmation gives at trial or in an affidavit or deposition."). Husband mentioned the blue book value in a question he posed to Wife on cross-examination, but his questions are not "testimony." When the trial court later asked Husband to state the vehicle's value, he could not do so. Moreover, even if the vehicle had a fair market value of $16,000 when it was refinanced, the record reflects approximately $25,000 was still due on the original loan.

¶21 "So long as the trial court acts equitably, it is allowed great discretion in the apportionment of the community assets and obligations." *Neal v. Neal,* 116 Ariz. 590, 594, 570 P.2d 758, 762 (1977). Accordingly, in *Cadwell v. Cadwell,* 126 Ariz. 460, 462, 616 P.2d 920, 922 (App. 1980), we held that "[a]ssets and obligations are reciprocally related and there can be no complete and equitable disposition of property without a corresponding consideration and disposition of obligations." Sufficient evidence supports the family court's rulings regarding the vehicle.

c. Wife's Retirement Account

¶22 In his opening brief, Husband asserts:

> Prior to trial, Husband timely filed a request for specific findings of fact and conclusions of law. The superior court's failure to award Husband one-half of the increase in value during the parties'

> marriage to Wife's retirement savings plan and its failure to make findings of fact supporting it [sic] ruling constituted reversible legal error.

Husband did request findings of fact and conclusions of law, but he did not submit proposed findings or conclusions as specifically ordered by the family court. Husband states he was "puzzled" by the order that he file proposed findings and conclusions before trial, so he admittedly "did not comply with that order."

¶23 Courts commonly request proposed findings of fact and conclusions of law from litigants before trial. *See* Ariz. R. Fam. L.P. 82. We could treat Husband's admitted failure to comply with the court's order as a waiver of any error arising from the lack of formally designated findings of fact and conclusions of law. We need not do so, however, because the Judgment/Decree entered in this case is sufficiently detailed to articulate the family court's findings and conclusions. *Cf. Miller v. Bd. of Supervisors,* 175 Ariz. 296, 299, 855 P.2d 1357, 1360 (1993) ("A trial court's findings of fact satisfy Arizona law if they are 'pertinent to the issues and comprehensive enough to provide a basis for the decision.'") (citations omitted).

¶24 Husband fails to articulate a legal argument regarding the retirement account. Although he cites cases, he fails to

discuss their relevance to the facts here. It is not this Court's duty to develop a party's argument. *See Ace Auto. Prods. Inc. v. Van Duyne,* 156 Ariz. 140, 143, 750 P.2d 898, 901 (App. 1987). Even if we were to consider this argument on a substantive basis, we would find no abuse of discretion in awarding the retirement account to Wife. The marriage lasted one year. The court was aware of the respective incomes during the marriage. The Agreement waived each spouse's rights to the other's retirement account, and Wife waived any interest in Husband's business. Although the court ultimately set aside the Agreement, the filings leading to its demise demonstrate Husband never objected to waiving any interest in Wife's retirement account.

¶25 More fundamentally, Husband presented no evidence about Wife's retirement account at trial. In a motion titled "Requested Disposition of Property By The Court," Husband sought "one half of the value of [Wife's] retirement plan," without limitation to the community interest and without legal authority to support his request. As we noted *supra,* the family court's obligation is to distribute property equitably, though not necessarily equally or in kind. A.R.S. § 25-318(A). The court properly awarded Wife her retirement fund and Husband his business.

d. Mortgage Payments

¶26 Husband asserts the community has a "right to reimbursement, at a minimum, for the reduction of the principal mortgage balance on Wife's sole and separate ownership of residential real property attributable to the thirteen monthly payments made on said mortgage with earned community income." Husband urged the family court to "utilize an outdated formula -- the dollar in, dollar out formula"--to determine the community interest. He provided no explanation of this formula or the court's authority to apply it.

¶27 When the community contributes capital to separate property, it has the right to an equitable lien against that property. *Drahos v. Rens,* 149 Ariz. 248, 250, 717 P.2d 927, 929 (App. 1985) (citations omitted). Husband presumes that community funds were used to make mortgage payments on Wife's house. However, the evidence below effectively countered that presumption, demonstrating that the parties led a "separate financial life," including depositing their earnings into individual accounts and not mingling those funds. The mortgage was in Wife's name, and she alone made the payments.

¶28 On appeal, Husband agrees that if a community interest exists, *Drahos* would provide the formula for ascertaining that interest. But he notes that *Drahos* contemplates a market in which the value of real property is appreciating--a situation

Husband admits is different here because there was no equity in the house, and its value *decreased* during marriage. We find no error in the family court's treatment of the residence and associated mortgage payments.

e. Home Equity Credit Line

¶29 Husband contends the marital community was entitled to "dollar for dollar reimbursement" for payments Wife made on the line of credit. He again provides no legal authority or developed argument for this claim, except to "incorporate[] his argument" relating to the mortgage payments. We find no error.

2. Attorneys' Fees Award

¶30 Wife requested $30,090.87 in fees and costs pursuant to A.R.S. § 25-324 (Supp. 2009). The court awarded her $9,000, stating:

> Wife claims she is entitled to attorney fees because Husband did not honor the terms of the Rule 69 Agreement as negotiated in September 2008. As a result, Wife incurred substantial attorney fees to litigate the issues. At pre-trial hearings and during the trial, the court repeatedly inquired of Husband about what he wanted the court to order that was different from the terms of the Rule 69 Agreement. Husband was unable to specifically state any term with which he disagreed. A review of the Rule 69 Agreement, as well as the Decree of Dissolution of Marriage prepared by Wife's counsel after the Rule 69 Agreement was signed by both parties, reveals that the terms negotiated by September 2008 are consistent with the reasonable and lawful requests made by Husband during the trial.

> [T]he Rule 69 Agreement entered in September 2008 was a fair and equitable resolution of the debt and assets of the parties. This was a one year marriage. The parties had divided the debt and property appropriately. Husband's insistence on obtaining voluminous discovery materials resulted in Wife incurring substantial attorney fees.

The court specifically stated it had "considered the relative financial condition of the parties and the reasonableness of their positions throughout the proceedings."

¶31 In a dissolution proceeding, the family court may award reasonable attorneys' fees "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings." A.R.S. § 25-324(A). We review an award of fees under A.R.S. § 25-324 for an abuse of discretion. *Breitbart-Napp v. Napp,* 216 Ariz. 74, 83, ¶ 35, 163 P.3d 1024, 1033 (App. 2007). To qualify for an award of fees, a spouse must establish some level of financial disparity with the other party. *Magee v. Magee,* 206 Ariz. 589, 592, ¶ 17, 81 P.3d 1048, 1051 (App. 2004) ("[T]he court is obligated to consider factors such as the degree of the resource disparity between the parties, the ratio of the fees owed to the assets and/or income of each party, and other similar matters that are fairly encompassed within the function of 'considering the financial resources of both parties.'") (citation omitted).

¶32 Husband claims the family court lacked sufficient information to make a fee award. We disagree. Unlike *Breitbart-Napp,* where the parties did not testify about their respective incomes before the court issued a fee award, both spouses here provided such information. Their trial testimony revealed that Wife earned approximately $45,760 per year, while Husband earned an annual income of $65,000. The record establishes a sufficient financial disparity for a fee award.

¶33 Wife's fee request was also based on Husband's actions in "propounding unnecessary and overly burdensome discovery, delaying trial repeatedly, and failing to comply with this Court's orders." There is overwhelming support for the family court's finding that Husband took unreasonable positions that prolonged and expanded the litigation, driving up Wife's attorneys' fees. The family court repeatedly advised Husband about the potential consequences of his approach to the case, but to no avail. Although the Rule 69 Agreement was ultimately set aside, it was nevertheless proper for the court to consider the terms of that Agreement in determining whether Husband acted reasonably in litigating his claims.

CONCLUSION

¶34 We affirm the rulings of the family court. Wife has demonstrated that there is a continuing disparity in financial circumstances, and Husband has not suggested otherwise.

Husband's appeal was neither successful nor objectively reasonable. We thus award Wife her reasonable attorneys' fees incurred on appeal upon compliance with Rule 21, Arizona Rules of Civil Appellate Procedure.

/s/
MAURICE PORTLEY, Presiding Judge

/s/
LAWRENCE F. WINTHROP, Judge

/s/
MARGARET H. DOWNIE, Judge