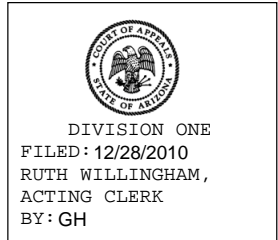


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



IN RE THE MARRIAGE OF: ) No. 1 CA-CV 09-0655  
)  
VINITA PAUL SETHI ) DEPARTMENT A  
)  
Petitioner/Appellee ) **MEMORANDUM DECISION**  
)  
v. ) Not for Publication  
) (Rule 28, Arizona Rules  
NETOO SINGH SETHI, ) of Civil Appellate Procedure)  
)  
Respondent/Appellant. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. FC2008-091278

The Honorable Jo Lynn Gentry-Lewis, Judge

**AFFIRMED IN PART; REVERSED IN PART AND REMANDED**

Vinita Paul Sethi Chandler  
In *Propria Persona*  
Petitioner/Appellee

Netoo Singh Sethi Tempe  
In *Propria Persona*  
Respondent/Appellant

**B A R K E R**, Judge

¶1 Netoo Sethi ("Husband") appeals from the denial of his motion to correct and amend the decree dissolving his marriage to Vinita Sethi ("Wife"). Husband raises several issues

concerning property division, valuation, and temporary orders. For the reasons that follow, we affirm in part, reverse in part, and remand for further proceedings.

***Facts and Procedural Background***

¶12 Husband and Wife married in February 1998 and are the parents of two minor children. During the marriage, Husband opened two bank accounts in India in his name,<sup>1</sup> transferred money to India, purchased an apartment in India, and purchased gifts for his family.

¶13 In April 2008, Wife filed a petition for dissolution. Pursuant to Wife's request, the court entered temporary orders pertaining to custody, parenting time, and living expenses. Additionally, the court ordered Husband to identify every transfer of community assets to banks and individuals irrespective of location, and to re-domesticate the entire amount to Arizona.

¶14 After a trial, the court issued a decree on May 26, 2009, valuing and dividing the property. Husband filed a motion to correct and amend the decree pursuant to Arizona Rules of Family Law Procedure 84 and 85. The court denied Husband's motion, and Husband timely appealed.<sup>2</sup> We have jurisdiction

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<sup>1</sup> Husband's father is a signatory on those accounts.

<sup>2</sup> Husband's notice of appeal was premature, but the superior court later entered a final appealable judgment. See

pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(C).

### ***Discussion***<sup>3</sup>

#### ***1. Standard of Review***

¶15 On appeal, Husband challenges the court's valuation and division of property. We review the superior court's division of property for an abuse of discretion and in the light most favorable to sustaining the court's findings. *In re Marriage of Pownall*, 197 Ariz. 577, 581, ¶ 15, 5 P.3d 911, 915 (App. 2000); *Gutierrez v. Gutierrez*, 193 Ariz. 343, 346, ¶ 5, 972 P.2d 676, 679 (App. 1998). The court abuses its discretion if there is no evidence supporting its decision. *Little v. Little*, 193 Ariz. 518, 520, ¶ 5, 975 P.2d 108, 110 (1999).

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*Barassi v. Matison*, 130 Ariz. 418, 422, 636 P.2d 1200, 1204 (1981).

<sup>3</sup> Wife asks this court to strike Husband's opening brief and dismiss the appeal because it is false, fabricated, and misleading. Husband's brief, however, cites to the record and addresses issues raised in the superior court. Thus, we decline to dismiss the brief or the appeal. Nonetheless, we disregard the "reports" Husband attached to his opening brief and reply brief relating to the issues raised on appeal because those documents were not part of the record before the superior court. See *GM Dev. Corp. v. Cmty. Am. Mortg. Corp.*, 165 Ariz. 1, 4-5, 795 P.2d 827, 830-31 (App. 1990) (appellate review is limited to the record before the trial court).

## 2. *Funds Transferred to India*

¶16 Husband argues the court incorrectly calculated the total amount of money transferred to India and not returned to the United States. The decree provides:

Father transferred funds to India. He was ordered to have the refunds returned to the United States. Reportedly, all but \$230,187.67 has been returned. Each party had an interest in the \$230,187.67 that was not returned. Each party is entitled to receive one-half or \$115,093.83.

Husband contends the correct amount not returned to the United States is \$167,000. The amount calculated by the court (\$230,187.67), however, is supported by the record.

¶17 Wife testified that Husband transferred a total of \$523,186.87 of community funds to India. Although Husband disputes this amount, it is supported by the evidence at trial.<sup>4</sup> We give great deference to the superior court's determination of witness credibility and resolution of conflicting evidence because it is in the best position to make such determination.

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<sup>4</sup> According to the evidence, the following amounts were wired out of the parties' joint bank account held at TruWest and transferred to Husband's Corporation bank account in India: \$56,000, \$85,000, \$180,000, and \$74,000. Husband made cash withdrawals from the TruWest account and issued one check in the following amounts: \$35,000, \$20,000, \$5,000, \$4,000, \$4,500, and \$19,500. Further, Husband's Corporation bank account in India shows additional deposits of \$36,990 and \$3,196.87. The total amount included in these transactions is \$523,186.87. Husband asserts the \$19,500 was transferred to Wife's personal bank account. However, no documentary evidence supports this assertion.

*Gutierrez*, 193 Ariz. at 347, ¶ 13, 972 P.2d at 680. Further, the parties agree \$293,000 was returned to their joint bank account in the United States held at TruWest.<sup>5</sup> Subtracting \$293,000 from \$523,186.87 equals \$230,186.87 - eighty cents less than the amount the court calculated to be divided between the parties.<sup>6</sup> Because the court's calculation is supported by the record, there was no error.

### **3. *Alleged Mathematical Errors***

#### **a. *India Apartment***

¶8 Husband raises several issues concerning the court's valuation and division of the apartment in India. The court found:

Husband used some of the money he transferred to purchase an apartment at the Purvanchal Heights Complex. The apartment is awarded to Husband as his sole and separate property, subject to Wife receiving one-half the equity. Husband paid \$160,000.00 for the

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<sup>5</sup> In the joint pretrial statement, at trial, and in his motion to correct, Husband agreed \$293,000 was returned to the United States. Yet, Husband also contends an additional \$30,000 was returned to the TruWest account. Although there is evidence of a \$30,000 deposit, there is no proof the \$30,000 was not included within the \$293,000. In light of the parties agreeing that \$293,000 was returned to the United States, and without clear evidence showing there was an additional \$30,000 returned, we cannot conclude there was any error.

<sup>6</sup> Although the superior court's calculation is off by eighty cents (as was the calculation in Wife's closing statement), in her calculation of funds transferred to India, Wife did not include dispersals of \$1,000 or less. Thus, the court's calculation is equitable.

apartment. Wife is owed \$80,000.00 as her one-half share of the equity.

Husband contends the purchase price is incorrect, the purchase price is not equity, and some of the funds not returned from India were used to purchase the apartment. Thus, Husband argues that awarding Wife one-half of the equity in the apartment compensates Wife twice for the same funds. These issues must be remanded.

¶19 First, Wife has not cited to any evidence in the record that would support a purchase price or value of \$160,000. Although the court apparently adopted the value Wife attributed to the property in her closing statement, Wife testified she was unsure how much Husband invested in the apartment. At trial, Husband testified he purchased the apartment for approximately \$119,000; however, earlier in the proceedings, he indicated that he had emailed Wife about purchasing an apartment for approximately \$141,000. Nevertheless, the evidence at trial included the "Buyer's Agreement" for the apartment which shows a purchase price of 50,14,700.00 rupees. There is also documentary evidence of the payments made on the apartment in rupees.<sup>7</sup> Regarding the equity, Husband submitted an appraisal of

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<sup>7</sup> Husband lists these payments in his opening brief and converts rupees into dollars using specific conversion rates. Despite the general conversion rates displayed on the line graph in Exhibit 52, Appellant's precise conversion rates were not presented to the superior court, and therefore we will not

the apartment showing it was worth 48,31,700 rupees in August 2008, which Husband testified was the equivalent of \$95,000.

¶10 Additionally, it is undisputed Husband used some of the funds transferred to India to purchase the apartment; however, it is not clear how much. Thus, to the extent those funds were not returned to the United States, Wife was already compensated for such unreturned funds in the previous award.<sup>8</sup> See *supra* ¶¶ 6-7.

¶11 Because the court's value of the property is not supported by evidence and because the division appears to compensate Wife twice for the same funds, the court erred by denying Husband's motion to correct this matter and we must remand. On remand, the court should determine the equity in the apartment based on the evidence available at trial. If there is any positive equity in the property, Wife should be awarded one-half of the value to the extent it exceeds the community funds contributed toward the property.<sup>9</sup>

***b. Cash Remaining in India***

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consider them. See *GM Dev. Corp.*, 165 Ariz. at 4-5, 795 P.2d at 830-31.

<sup>8</sup> Although it is undisputed Husband's father paid the balance of the purchase price in April 2008, Husband's father's testimony is inconsistent about whose money was used to make the final payment.

<sup>9</sup> There was, however, no evidence that the apartment had increased in value at the time of trial.

¶12 Next, Husband argues the court double charged him for the cash remaining in India. The decree provides:

Of the money transferred to India, [Husband] still retains balances in accounts 0138 (\$226.00), 0040 (\$4,310.00) and 5408 (\$40.00). Additional monies are on deposit in accounts held by or with Husband's father. The monies on deposit in these other accounts total \$305.00. A total of \$4881.00 of community money is on deposit in India. Each party is entitled to receive one-half of the \$4881.00 or \$2,440.50.

¶13 Neither party disputes the amounts remaining in these bank accounts. Nonetheless, Wife was already awarded \$115,093.83 as her share of the money that was not returned to the United States. The court specifically found this money was a result of the transfer of funds to India. In essence, this order awards Wife the same money a second time. Because Wife was already compensated for her share of the funds not returned from India, this award is erroneous and is vacated.

**c. Loan**

¶14 The decree provides:

Husband paid \$16,000.00 in community funds to his father as repayment of a loan that was Husband's sole and separate debt. Wife is entitled to one-half of the community funds that were used to repay Husband's sole and separate debt.

Husband argues this is the court's second allocation of these funds, as the court's award of \$115,093.83 to Wife includes this



amount sent to India and not returned to the United States.<sup>10</sup> We agree.

¶15 Wife testified she was not sure what the money transferred to India was used for. Husband testified part of the money was used to repay a loan from his father. There is no evidence to the contrary. Because the court's award to Wife of \$115,093.83 includes this loan repayment, this is the second award to Wife of those funds and was therefore improper.

***d. Family Gifts***

¶16 Husband argues the court made a double-charging error concerning the gifts he made to his family. The court found:

[Husband] gave his family gifts totaling \$6,550.00. He also gave his mother additional gifts of cash and jewelry totaling \$10,000.00. These gifts were made without Wife's knowledge or permission. Husband shall repay to Wife one-half the amounts he gifted to his family or \$8,275.00.

¶17 Although the testimony and evidence show Husband made these gifts to his family, the record does not establish all of these gifts were made with the funds transferred to India. For instance, there is evidence of three separate checks totaling \$6,550, made payable directly to Husband's family from the parties' TruWest and MECU-West accounts. The funds transferred

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<sup>10</sup> In his opening brief, Husband cites to trial exhibit 36. Exhibit 36 was not admitted at trial, nor is it in the record on appeal. Accordingly, we disregard Husband's reference to this exhibit.

to India totaling \$523,186.97, however, consist of wire transfers from the TruWest account, cash withdrawals from the TruWest account and deposits directly into one of Husband's India bank accounts. Thus, these specific gifts are not included within the total \$523,186.87 transferred to India. It is not clear from the record whether the additional \$10,000 in gifts is included with the funds transferred to, and not returned from, India.

¶18 By not mentioning in its decree that these gifts were included within the funds transferred to India, the court implicitly determined the gifts were separate from the funds transferred to India. See *Coronado Co., Inc. v. Jacome's Dep't Store, Inc.*, 129 Ariz. 137, 139, 629 P.2d 553, 555 (App. 1981) ("Implied in every judgment, in addition to express findings made by the court, is any additional finding that is necessary to sustain the judgment, if reasonably supported by the evidence, and not in conflict with the express findings."). Accordingly, because Husband has not shown the court "double counted" the gifts to his family, we find no error concerning this award of \$8,275 to Wife.

#### **4. Bank and Retirement Funds**

¶19 Husband argues the court erred in valuing the parties' joint bank account and retirement funds. The court valued these

items collectively at \$328,000 and awarded each party one half, or \$164,000 each.

¶120 In her closing statement, Wife asserted she testified the funds in the joint account and retirement account total \$328,000. The transcript, however, does not reveal such testimony. In her answering brief, Wife reiterates her alleged testimony, but fails to cite any portion of the record for support. Further, the documentary evidence of the joint account value and retirement fund values fail to support this amount.<sup>11</sup> In short, Wife has not identified any portions of the record that support the court's \$328,000 valuation.

¶121 Accordingly, given the absence of support in the record, the court erred in valuing the bank and retirement funds at \$328,000 and in subsequently denying Husband's motion to correct. Therefore, we remand this matter for the court to value the accounts based on the evidence at trial.<sup>12</sup>

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<sup>11</sup> It is not clear what valuation date was used. See *Sample v. Sample*, 152 Ariz. 239, 242-43, 731 P.2d 604, 607-08 (App. 1986) ("[T]he selection of a valuation date rests within the wide discretion of the trial court . . . ."). Wife filed the petition for dissolution on April 18, 2008, and served Husband on or about April 24, 2008. In her response to Husband's motion to correct, Wife asserted the value of the funds remaining in the joint account and retirement funds at the time of trial was \$328,000. The documentary evidence does not include values of these accounts as of the date of trial.

<sup>12</sup> Although Husband asserts in his opening brief the correct amount is \$252,084.42, in his motion to correct, he

## **5. Retirement Withdrawal**

¶22 Husband argues the court erred in awarding Wife \$25,000 based on a withdrawal of \$50,000 from a retirement account. The court stated:

Husband had possession of \$50,000.00 that had been withdrawn from a retirement account. Wife was entitled to receive half of the amount or \$25,000.00.

There was no error with this ruling.

¶23 Wife testified that in 2004, Husband took \$50,000 of community funds, which had been withdrawn from a retirement account, and did not return it to the parties' joint account. Although there is no documentary evidence supporting Wife's testimony, she had personal knowledge. The superior court has discretion to accept a party's testimony. *Spector v. Spector*, 94 Ariz. 175, 181, 382 P.2d 659, 663 (1963). Accordingly, there is credible evidence supporting this order and there was no error.<sup>13</sup>

## **6. Temporary Orders**

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claimed the correct value was \$251,173.00. It is for the superior court to determine the correct value.

<sup>13</sup> On appeal, Husband argues Wife's testimony was hearsay. Husband, however, made no objection during Wife's testimony, and therefore waived this argument. *Estate of Reinen v. N. Ariz. Orthopedics, Ltd.*, 198 Ariz. 283, 286, ¶ 9, 9 P.3d 314, 317 (2000).

¶124 Next, Husband argues the court erred by affirming the temporary orders in the decree for Husband to pay Wife \$1,246.71 per month for child support and \$2,014 per month for spousal maintenance through April 30, 2009. We agree.

¶125 After a temporary orders hearing in May 2008, the court ordered Wife to "have access to the joint account to pay for her living expenses." Nearly two months later, the court issued temporary orders for Husband to pay Wife \$1,246.71 per month in child support and \$2,000 per month in spousal maintenance. Husband filed a motion to amend the temporary orders, contending there was no need for specific child support and spousal maintenance orders in light of Wife's access to the joint account to pay her expenses. Wife responded and agreed the child support and spousal maintenance orders should be stricken. The court granted the motion to amend and entered a minute entry relisting all of the temporary orders except for the child support and spousal maintenance provisions.<sup>14</sup>

¶126 Thus, the record indicates the parties stipulated Husband would not be required to pay specific amounts for child support or spousal maintenance because Wife had access to the joint account. See *Pulliam v. Pulliam*, 139 Ariz. 343, 346, 678 P.2d 528, 531 (App. 1984) ("A party . . . cannot stipulate to

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<sup>14</sup> The court also did not list an attorneys' fee provision, which is not at issue on appeal.

one thing and then later change her mind and withdraw her consent.”). Further, neither child support arrearages, nor spousal maintenance arrearages were listed as contested issues in the parties’ joint pretrial statement. See *Leathers v. Leathers*, 216 Ariz. 374, 378, ¶ 19, 166 P.3d 929, 933 (App. 2007) (failing to raise an issue in a joint pretrial statement waives the issue). Additionally, these issues were not raised at trial. See *Loya v. Fong*, 1 Ariz. App. 482, 485, 404 P.2d 826, 829 (1965) (stipulations can be waived if both parties join in litigating the issue). Therefore, this temporary orders issue was waived and not properly before the superior court. The superior court erred in failing to grant Husband’s motion to correct the decree with respect to the temporary orders. Accordingly, the portion of the decree pertaining to the temporary orders is vacated.

#### **7. Trial Continuance**

¶27 Last, Husband argues the court erred by not granting his request for a continuance of trial. This argument, however, was made in Husband’s motion for new trial, not in his motion to correct and amend the decree. We have no jurisdiction to address the arguments Husband raises from the denial of his motion for new trial as Husband did not appeal from the denial of that motion. See *Acuna v. Kroack*, 212 Ariz. 104, 108 n.4, ¶ 13, 128 P.3d 221, 225 n.4 (App. 2006) (we lack jurisdiction

over matters not contained in the notice of appeal).  
Consequently, we will not address this argument.

**Conclusion**

¶28 For the foregoing reasons, we reverse the denial of Husband's motion to correct and amend as to those matters specified above. We remand for further proceedings consistent with this decision. We deny Husband's request for attorneys' fees. See *Connor v. Cal-Az Props., Inc.*, 137 Ariz. 53, 56, 668 P.2d 896, 899 (App. 1983) (a party filing pro per cannot claim attorneys' fees due to the absence of the attorney-client relationship).

/s/

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DANIEL A. BARKER, Judge

CONCURRING:

/s/

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DONN KESSLER, Presiding Judge

/s/

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JON W. THOMPSON, Judge