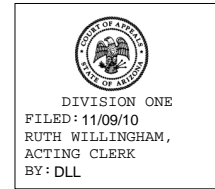


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ex rel. THE ) No. 1 CA-CV 09-0672  
DEPARTMENT OF ECONOMIC SECURITY )  
(PATRICIA A. SANDINO), ) DEPARTMENT E  
)  
) **MEMORANDUM DECISION**  
Petitioners-Appellees, )  
) (Not for Publication -  
v. ) Rule 28, Arizona Rules of  
) Civil Appellate Procedure)  
MARTIN R. SANDINO, )  
)  
Respondent-Appellant. )

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Appeal from the Superior Court in Maricopa County

Cause No. DR2000-016766

The Honorable Mina E. Mendez, Commissioner

**AFFIRMED**

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Terry Goddard, Arizona Attorney General Mesa  
By Carol A. Salvati, Assistant Attorney General  
Kathleen Skinner, Assistant Attorney General  
Attorneys for Petitioners-Appellees

Gillespie, Shields & Associates, P.A. Phoenix  
By DeeAn Gillespie Strub  
Mark A. Shields  
Attorneys for Respondent-Appellant

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H A L L, Judge

¶1 Martin R. Sandino (Father) appeals from the trial court's decision denying Father's motion to reduce his child support obligation. For the following reasons, we affirm.

#### **BACKGROUND**

¶2 Father and Patricia A. Sandino (Mother) married in November 1986 and had one child together, a son, born in September 1992. Father and Mother dissolved their marriage in May 2003 and Father was ordered to pay \$350.00 a month in child support. Mother subsequently requested an increase in Father's monthly child support payments due to his salary increase. In May 2007, the parties agreed to a child support modification in the amount of \$683.55 per month.<sup>1</sup> Father petitioned the court to modify the child support order in July 2008, which the court denied. Father filed a second petition to modify his child support obligations in February 2009. The court held an evidentiary hearing in August 2009 regarding Father's petition and ordered Father to provide "proof of income (check stubs, W-2 forms, past Income Tax forms for the last 3 years)," an Affidavit of Financial Information (AFI), proof of his unemployment status and benefits, and "proof of his job search including a copy of each application that was submitted, the business name, address, phone number and a contact person.

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<sup>1</sup> This amount does not include the \$115.00 Father was ordered to pay monthly in child support arrears.

Other proof of application, such as an employer note or internet receipt, will also be considered." Father was also ordered to "provide proof of what he has done to secure employment as in the same capacity as he was previously earning."

¶13 Father testified at the evidentiary hearing that he was employed as a project manager at an architectural firm, but was laid-off in June 2008 and had not worked in approximately fifteen months.<sup>2</sup> Father stated that although he applied for numerous jobs since he was laid-off, such as a "carpenter, engineer, drafting, surveyor, waiter, dishwasher, cook, . . . art director, sports trainer, cashier," he only had one interview in fifteen months, but did not get the job. Father said that prior to his architectural job he was self-employed, and although he was sometimes paid in cash, his finances were not conducted "under the table," he kept records of his finances, and submitted the proper documents to the IRS. While Father was self-employed, he reported that his annual income was \$20,000.00-\$30,000.00.

¶14 Despite the court's explicit orders, Father failed to provide the court with his requisite personal and financial information. Father submitted approximately 150 printouts of online confirmations of application submissions as well as several emails written between Father and potential employers.

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<sup>2</sup> It is undisputed that Father was laid-off from his job.

However, the majority of these confirmations failed to include the actual application, business name, address, phone number, or contact person. Further, the emails that Father included between himself and the potential employers appeared, for the most part, to be unprofessional and hastily written. For example, several emails merely stated, "I'M INTERESTED!" or "I am interested, could we meet? Thank you" or simply Father's phone number with no words included. Additionally, Father provided the court with his 2006 tax return, 2006 and 2007 W-2s, his 2008 unemployment compensation fund, a partially completed AFI, and his most recent pay stub. Father failed to provide the court with the mandated 2007 and 2008 tax returns, a second most recent pay stub, and a completed AFI. Father omitted from the AFI his 2009 gross income, total gross income for the prior three years, gross monthly income, self-employment income, commissions/bonuses, tips, and occupational training.

¶15 Father testified that he received \$1139.00 a month in unemployment benefits, and \$516.00 of that amount was allotted for child support.<sup>3</sup> Father stated that he was willing to pay the same total amount of child support a month if he could allocate

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<sup>3</sup> Father stated that his unemployment benefits were ending the week of the evidentiary hearing and he had applied to receive twenty more weeks of benefits.

the majority of that payment towards child support arrears.<sup>4</sup> Father testified he was capable of making the same total monthly payment due to the financial assistance of his current wife. Father additionally said that his wife "pays everything," including their monthly mortgage payment and monthly car payment. Father has made child support payments every month since August 2006. Father conceded that "the economic difficulties have also impacted [Mother] and that she has a different job at a lower rate."

¶6 Father also testified that he pays \$200.00 a month in food, money towards utility bills, \$180.00 in biweekly therapy sessions, and gave his son a gift of \$100.00 several days before the hearing. Father further testified that he pays between \$10.00 and \$50.00 to attend seminars aiding in the preparation of examinations in architectural training and between \$170.00 and \$210.00 per examination.<sup>5</sup> Father further admitted that he owns a 2001 Porsche and he and his wife own land in Mexico.<sup>6</sup> Father also conceded that although child support arrears have been accruing and he has been unemployed since June 2008, he

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<sup>4</sup> The parties stipulated that Father owes \$14,718.82 in arrears, which includes both principle and interest.

<sup>5</sup> Father testified that he paid for the gift to his son, therapy sessions, seminars, and examinations from money he acquired from selling his motorcycle.

<sup>6</sup> Father said he and his wife have been trying to the sell the Mexican land in order to pay child support arrears.

took vacations to Washington D.C. in 2007 and July 2008, and to New York City in 2009. Father stated that his mother-in-law paid for those vacations.

¶17 Mother testified that Father is proud of his assets and called Mother after he purchased "beach property" in Mexico. Father also sent pictures to their son of Father "driving his Harley, in [the] background his BMW, a brand new BMW at that[,] and a Porsche." Mother further testified that Father "lies a lot" and she "can't understand why he can't pay child support and yet be able to travel."

¶18 Mother stated that Father had "opportunities to work under the table" and complete side jobs "[a]ll the time" during the course of their marriage. She said that Father had a variety of jobs in which he was paid cash, such as "construction jobs, renderings, puzzles, and working with landscape architectures." Mother was unsure if the money was reported as income on his tax returns. Mother believed that Father was working "side jobs" and working "under the table" since he was laid-off from his architectural job.

¶19 Mother stated that her son has many expenses, such as \$475.00 in monthly tuition to a private high school, a cellular phone, clothing, school uniforms, shoes, school supplies and books, a vehicle, car insurance and registration, car repairs, a defensive driving class, and gas. Mother testified that it was

in her son's best interest for the court to deny Father's petition.

¶10 Martin Quijada, Father's former co-worker and friend, testified that he was employed as an architectural draftsman, but was laid-off several months ago and has been unable to find a job.

¶11 The trial court found that Father

submitted incomplete and insufficient evidence to support a finding that a substantial and continuing change in circumstances has occurred warranting modification. [Father] provided the Court with an incomplete [AFI], and numerous job search cover letters/internet cover sheets, W-2 forms and offered the testimony of Martin Quijada, a friend who testified that he is also trained as an architect, was laid off along with [Father] from the same employer and is experiencing difficulty finding work. [Father] did not provide tax returns for the years 2007 or 2008. The Court did not find the testimony of Mr. Quijada helpful. With respect to the 150 plus applications for employment submitted by [Father] as evidence of his attempts to find work, after the Court's review of Exhibit 1, the Court finds that [Father's] job search is, at best, half-hearted.

Additionally, based upon the testimony and admitted exhibits the Court finds that [Father] has avoided incurring expenses by running all living expenses through his current spouse. However, [Father] enjoys a lifestyle currently that exceeds his stated income. The Court also found [Mother's] testimony regarding [Father's] history of earning income "under the table" very credible and consistent with the lifestyle [Father] currently leads despite his assertion that he has no income.

Given the incompleteness of [Father's] evidence and given that [Father] has the burden of proof in this case, the Court concludes that there is no substantial

and continuing change in circumstances which would warrant modification.

The court therefore denied Father's petition to modify child support. Father timely appeals and presents the following two issues of whether the trial court abused its discretion by: (1) finding Father voluntarily unemployed and (2) attributing income to Father without explicitly finding Father voluntarily unemployed.<sup>7</sup> We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-2101(B) and -2102(B) (2003).

#### DISCUSSION

¶12 An order for child support may be modified only upon a showing of a substantial and continuing change in circumstances. A.R.S. §§ 25-327(A) (2007), -503(E) (Supp. 2009); *State ex rel. Dep't Econ. Sec. v. McEvoy*, 191 Ariz. 350, 352, ¶ 7, 955 P.2d 988, 990 (App. 1998). Whether a change in circumstances is sufficient to warrant a modification of support is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion. *Jenkins v. Jenkins*,

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<sup>7</sup> Father also briefly notes that sections of the Guidelines have changed since the court's 2007 child support order, Mother has not paid the son's health insurance for the past several months, and Mother's income has decreased since 2007. However, Father failed to develop these arguments or cite to any legal authority. Father also failed to provide that any authority for his argument that Mother bore the burden of establishing Father's imputed income. "Arguments unsupported by any authority will not be considered on appeal." *Ness v. W. Sec. Life Ins. Co.*, 174 Ariz. 497, 503, 851 P.2d 122, 128 (App. 1992).



215 Ariz. 35, 37, ¶ 8, 156 P.3d 1140, 1142 (App. 2007). The trial court abuses its discretion if the record, viewed in the light most favorable to upholding the trial court, lacks competent evidence to support the decision. *Little v. Little*, 193 Ariz. 518, 520, ¶ 5, 975 P.2d 108, 110 (1999). The party requesting the child support modification has "the burden of establishing changed circumstances with competent evidence." *Jenkins*, 215 Ariz. at 39, ¶ 16, 156 P.3d at 1144.

¶13 First, Father argues that the court erred by finding Father voluntarily unemployed pursuant to the Arizona Child Support Guidelines (Guidelines) and the intermediate balancing test in *Little*, 193 Ariz. at 522, ¶¶ 11-12, 975 P.2d at 112. In this case, the court did not explicitly refer to the Guidelines or *Little's* intermediate balancing test in its ruling denying Father's request to modify his child support obligation. Courts are required to apply the Guidelines when considering a request for child support modification, unless the application would be "inappropriate or unjust." *McEvoy*, 191 Ariz. at 352, ¶ 7, 955 P.2d at 990; A.R.S. § 25-320(D) (2007). Although courts must apply the Guidelines,<sup>8</sup> we are unaware of any authority, and the parties did not provide us with any, that the court must explicitly state its findings in the ruling. We can infer the

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<sup>8</sup> Courts are not required to apply the *Little* intermediate balancing test, however.

findings necessary to uphold the court's order and may affirm if the trial court is correct for any reason supported by the record. *Baker v. Baker*, 183 Ariz. 70, 72, 900 P.2d 764, 766 (App. 1995); *Forszt v. Rodriguez*, 212 Ariz. 263, 265, ¶ 9, 130 P.3d 538, 540 (App. 2006).

¶14 "[T]he Guidelines are not substantive law, but function rather as a source of guidance to trial courts in applying the substantive statutory and case law." *Little*, 193 Ariz. at 521, ¶ 6, 975 P.2d at 111; see also *In re Marriage of Pacific*, 168 Ariz. 460, 463, 815 P.2d 7, 10 (App. 1991). As we have previously stated, the substantive statutory law mandates that a trial court find a substantial and continuing change in circumstances in order to modify child support. A.R.S. §§ 25-327(A), -503(E); *McEvoy*, 191 Ariz. at 352, ¶ 7, 955 P.2d at 990.

¶15 In this case, the record supports the court's finding that Father failed to meet his burden of proof that a substantial and continuing change in circumstances occurred. Father failed to submit crucial evidence, such as 2007 and 2008 tax returns and a complete AFI, proving his financial hardship and establishing a reduction in his income. Father also submitted incomplete job applications and unprofessional job inquiries with the court and the court determined his effort to find employment was "at best, half-hearted."

¶16 Further, Father did not significantly alter his lifestyle after becoming unemployed and continued to take vacations and owns property in Mexico. Father also continued to make the same monthly child support payments despite being unemployed and was capable of continuing to make the same monthly payments. "A reduction in salary does not necessarily justify a reduction in an award of [child] support payments," particularly when the parent is able to continue to make the full amount of the monthly payments. *Ruppel v. Ruppel*, 103 Ariz. 545, 547, 447 P.2d 237, 239 (1968).

¶17 The court also found Mother was a credible witness and her testimony that Father had a history of working "under the table" supported his current lifestyle, despite lacking income. We defer to the trial court's determination of the credibility of witnesses and the weight given to conflicting evidence. *Gutierrez v. Gutierrez*, 193 Ariz. 343, 347, ¶ 13, 972 P.2d 676, 680 (App. 1998). Thus, based on the copious amount of evidence provided, we cannot say that the trial court abused its discretion by implicitly finding Father was voluntarily unemployed under the Guidelines and by denying Father's request to modify his child support obligation due to a lack of a substantial and continuing change in circumstances.

¶18 Father also argues that the court erred by imputing his 2007 \$56,000.00 annual income when calculating his child

support payments. As Father recognizes, “[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.” Guidelines § 5(E); *Taliaferro v. Taliaferro*, 188 Ariz. 333, 336-37, 935 P.2d 911, 914-15 (App. 1996). Father testified that his income significantly decreased in the fifteen months preceding the hearing and he did not choose to be unemployed. However, based on Father’s 2007 income, the fact that Father’s current spouse financially supports Father and pays the majority of his living expenses, Father’s ability to “enjoy[] a lifestyle currently that exceeds his stated income” combined with his acknowledgment that he previously received substantial income from working side jobs for cash, and his failure to provide the court with the necessary financial documents to assist the court in determining his current income, and his “at best, half-hearted” attempt to find employment, we cannot say that the trial court abused its discretion by implicitly finding Father chose to reduce his earnings and attributing Father’s 2007 \$56,000.00 income to Father.

¶19 In his reply brief, Father requested attorneys’ fees on appeal pursuant to Arizona Rules of Civil Appellate Procedure (ARCAP) 21. ARCAP 21 “only sets forth the procedure requesting fees; it does not provide a substantive basis for a fee award.” *Smyser v. City of Peoria*, 215 Ariz. 428, 442, ¶ 50, 160 P.3d

1186, 1200 (App. 2007). Because Father fails to cite any authority that would justify an award of fees, we deny his request.

¶20 We award costs to the State on appeal.

**CONCLUSION**

¶21 For the foregoing reasons, we affirm the trial court's ruling denying Father's petition to modify his child support payments.

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PHILIP HALL, Presiding Judge

CONCURRING:

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SHELDON H. WEISBERG, Judge

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PETER B. SWANN, Judge