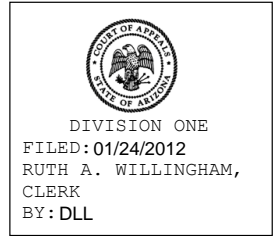


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



In re the Marriage of:) No. 1 CA-CV 11-0005
)
RIZALIE GO,) DEPARTMENT E
)
Petitioner/Appellant,) **MEMORANDUM DECISION**
) (Not for Publication
v.) (Rule 28, Arizona Rules
) of Civil Appellate Procedure
HOMER MARTINEZ,)
)
Respondent/Appellee.)

Appeal from the Superior Court in Maricopa County

Cause No. FC2010-000335 and FC2010-000442 (Consolidated)

The Honorable Thomas L. LeClaire, Judge

AFFIRMED

Rizalie Go
In *Propria Persona* Petitioner/Appellant

Goodyear

G E M M I L L, Judge

¶1 Rizalie Go ("Wife") appeals the court's distribution of marital assets in the decree dissolving her marriage to Homer Martinez ("Husband").

FACTS AND PROCEDURAL HISTORY

¶2 In January 2010, Wife filed a petition for dissolution of marriage. The parties submitted an "agreement for full

agreement," requesting joint custody of their child, which the court adopted in June 2010.

¶13 A judgment and decree of dissolution, including a division of assets, was issued following a hearing on August 27, 2010. Both Husband and Wife were present on their own behalf at the hearing. In the decree, the family court affirmed the June 2010 orders regarding custody and parenting time of their minor son. Husband was also ordered to provide Wife with an insurance card, and the court ruled that the minor son was not permitted to travel outside of the United States with either parent. The court also found the marriage was irretrievably broken and ordered the dissolution of the marriage. The court denied Wife's request for spousal maintenance and found that "each party has a similar earning capacity and each has a similar amount of income following the marriage."

¶14 Wife provided the court with a list of items for which she sought compensation or possession in her pretrial statement. The court denied Wife's request for payment of her 2002 GMC Yukon, but granted her one-half the amount, leaving Wife with a balance owed to Husband of \$3,479.50 for her vehicle. The court found a 2004 GMC Pickup Truck, 2004 Polaris ATV, 2002 Tahoe Trailer, Honda ATV, and a gun safe, to be Husband's sole and separate property because he purchased them with money he inherited from his mother. The court concluded that a rice and

corn mill had been sold to a third party and was no longer a part of the marital estate. The court granted Wife's request to transfer the marital home to Husband and to hold her harmless from any liability, fees, or costs, including any mortgages, related to the home. The court further ordered the distribution of all garage tools to Husband. Wife also asked for a reimbursement of \$2,000 for money she paid to Husband to obtain furniture items that Husband was selling to liquidate personal property allocated to him. The court determined that this transaction "was an arm's length transaction entered into by the parties and the sale and payment was an accord and satisfaction and that the parties intended to dispose of the personal property in this manner." The court further found that:

all of personal property and real property has been exchanged by and between the parties or has been awarded by this [c]ourt during the August 27, 2010 hearing. The one exception is the ownership and valuation of real property located in the Phillippines that may be an asset of the marital estate. A subsequent hearing has been scheduled for the parties to offer evidence on that issue, if the parties so choose. The hearing shall be limited to that potential marital asset only.

¶15 Wife subsequently filed a motion to review divorce decree, requesting, in part, that the court "reconsider the distribution on how the assets should be split." Wife also submitted a copy of the couple's marriage license and argued

that the court erroneously listed the couple as being married for six years, asserting that they had been married for fourteen years.

¶16 The court held an evidentiary hearing on November 2, 2010, in which Husband and Wife testified about a home in the Philippines. The court noted that Husband testified that the couple spent \$14,000 to build and furnish a vacation and retirement home in the Philippines, using funds Husband received from an inheritance when his mother passed away. Husband presented evidence to show that four members of Husband's family "heard [Wife] discuss the home in the Philippines and verified that it was a vacation and retirement home owned by the parties." Wife alleged at the hearing that the home was built for her brother and that her brother owned the property, but acknowledged the money given to her brother came from a joint account. Wife provided the court with documents purporting to list the brother as the owner, but, the court noted, Wife "acknowledged to the [c]ourt that the purported title documents merely reflected the person who was now the owner and did not prove the original ownership." Further, Husband provided evidence to show "that at no time did [Wife] claim that the home was owned by her brother until the instant action was filed." The court found that Wife's "testimony at this hearing and the earlier hearing lacks any credibility." The court noted that

Wife "could not consistently present her position," and she "attempted to feign no knowledge of even the existence of [the] property in the Philippines until [Husband] was able to locate a document supporting the existence of [the] property." The court concluded that the home in the Philippines was a marital asset, and the court awarded Wife the home and Husband \$7,000 for his share of the home. The court concluded "[t]here being no further matters in this case undecided, the case is CLOSED."

¶17 Go appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101 (Supp. 2011).

DISCUSSION

¶18 We construe Wife's argument to be that the family court erred in granting certain marital assets to Husband, especially a \$7,000 judgment in favor of Husband arising from the division of value of a home in the Philippines. She also asserts that Husband was awarded assets valuing \$170,000 and she was not awarded her fair share. Further, Wife argues that the family court erred in valuing the assets of the marital estate. Wife also asserts that the court erroneously indicated that Husband and Wife were married for less than six years.

¶19 Pursuant to A.R.S. § 25-318(A) (Supp. 2011), the family court must divide community property equitably. *In re Marriage of Flower*, 223 Ariz. 531, 536, ¶ 18, 225 P.3d 588, 593

(App. 2010). The family court, however, is given broad discretion in its allocation of individual assets and liabilities. *Id.* at 535, ¶ 14, 225 P.3d at 592.

¶10 As an initial matter, we note that Wife has failed to adequately develop and support her arguments in her opening brief. See ARCAP 13(a)(6) (The appellant's brief should include "[a]n argument which shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on."); see also *Polanco v. Indus. Comm'n of Ariz.*, 214 Ariz. 489, 492 n.2, ¶ 6, 154 P.3d 391, 394 n.2 (App. 2007) (failure to develop and support an argument waives it on appeal). In our discretion, we choose to address Wife's arguments rather than deem them waived. See *Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984) (recognizing courts generally prefer to decide cases upon the merits rather than dismiss on procedural grounds).¹

¶11 Wife did not provide us with any transcripts of the proceedings. See *Rancho Pescado, Inc. v. Nw. Mut. Life Ins.*

¹ Similarly, we note that Husband did not file an answering brief on appeal. Although we may treat the absence of an answering brief as a confession of error, we are not required to do so. *In re Marriage of Diezsi*, 201 Ariz. 524, 525, ¶ 2, 38 P.3d 1189, 1190 (App. 2002); see also ARCAP 15(c). On the basis of the appellate record in this appeal, we do not choose to treat Husband's failure to file an answering brief as a confession of error.

Co., 140 Ariz. 174, 189, 680 P.2d 1235, 1250 (App. 1984) ("It is, of course, the duty of the appealing party to insure that all necessary transcripts of evidence finds its way to this court."); see also ARCAP 11(b)(1) ("If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a certified transcript of all evidence relevant to such finding or conclusion.").² We are required to presume the content of the missing transcripts would support the court's findings. *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995) ("When a party fails to include necessary items, we assume they would support the court's findings and conclusions."). Therefore, we find that the court did not err in its division of assets or in awarding Husband \$7,000 as his share of the marital home in the Philippines.

¶12 Wife also asserts that she "believe[s] the error in the years of marriage influenced the [c]ourt[']s decision on splitting the marital estate." The court noted in the spousal maintenance section of the decree that "the marriage was of short duration, considerably less than six (6) years from the date of marriage to the date of separation." In the petition

² Besides the court's minute entries and judgments from the August 27 and November 2 hearings, we have no further evidence in the record regarding the aforementioned proceedings. The available record on appeal provides no indication that the court failed in equitably dividing the marital assets.

for dissolution of marriage, Wife listed February 16, 1996 as the date of marriage and August 21, 2009 as the date of the parties' separation. Wife also attached a copy of the couple's marriage license to her motion to review divorce decree, which reflected a marriage date of February 16, 1996. Without the transcripts of the parties' testimony, we must presume that the testimony at trial would support the court's finding regarding the time from marriage until separation. See *Baker*, 183 Ariz. at 73, 900 P.2d at 767. Additionally, this statement by the court that "the marriage was of short duration, considerably less than six (6) years from the date of marriage to the date of separation," is found in the spousal maintenance section of the decree and not in the division of property section; and Wife has not identified how the court's conclusion, even if incorrect, had any effect on the court's division of marital assets.

CONCLUSION

¶13 For the foregoing reasons, we affirm the court's decree and orders dissolving the marriage and dividing the marital assets.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
PATRICIA A. OROZCO, Presiding Judge

_____/s/_____
PHILIP HALL, Judge