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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: 06/07/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:) 1 CA-CV 11-0384
)
DURSTION J. ARATIN,) DEPARTMENT C
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication-
v.) Rule 28, Arizona Rules
) of Civil Appellate
KEITH HOWARD ARATIN,) Procedure)
)
Respondent/Appellant.)
)
_____)

Appeal from the Superior Court of Maricopa County

Cause No. FC2006-007091

The Honorable Douglas Gerlach, Judge

AFFIRMED

Law Offices of Michael W. Berg
By Michael W. Berg
Attorneys for Respondent/Appellant

Scottsdale

Jeffrey M. Zurbriggen, P.C.
By Jeffrey M. Zurbriggen
Attorney for Petitioner/Appellee

Phoenix

T H O M P S O N, Judge

¶1 Keith Howard Aratin (father) appeals from the trial court's order requiring him to pay \$727.35 in child support to

Durstion J. Aratin (mother), plus arrearages and interest. For the reasons that follow, we affirm the decision of the trial court.

FACTUAL AND PROCEDURAL HISTORY

¶2 Father and mother were divorced in 2007. They are the parents of two children, G.A., born in April 2002, and C.A., born in June 2004. Father filed a petition to modify custody, parenting time, and child support in May 2010. At that time, father filed a signed worksheet with the court listing his gross monthly income as \$8000.00. Subsequently, mother and father came to an agreement about custody and parenting time. The parties agreed to joint legal custody with mother designated the primary residential parent, and parenting time for father on alternating weekends and Tuesday evenings. The parties stipulated that child support would be in an amount determined by the court pursuant to the child support guidelines. In August 2010, the trial court entered an order for child support requiring father to pay mother \$868.00 per month in child support beginning September 1, 2010. The court presumably used mother's child support worksheet, which attributed a gross monthly income of \$8000.00 to father (the same amount listed on father's worksheet¹) and \$4100.00 to mother.

¹ Father later filed a child support worksheet listing his adjusted gross income as \$2675.29.

¶3 Father objected to the child support order, arguing that the proposed order submitted by mother and signed by the court "was done without the benefit of [father's] financial information and based [father's] income on a child support worksheet submitted by [father] which he copied from the original worksheet submitted in 2006." The trial court held an evidentiary hearing on the child support issue in February 2011, and concluded that while the evidence did not support mother's argument that the court should attribute income of \$8000.00 per month to father, father had been "less than forthcoming about what his gross income is" and had "failed to provide complete disclosure of records that would have been helpful in corroborating his testimony about his income." The court ordered father to pay \$727.35 per month in child support to mother, effective October 1, 2010. Mother filed a motion to clarify the order, and the trial court changed the effective date for child support payments to September 1, 2010 and further ordered father to pay an additional \$200 per month for arrears. Father timely appealed.

DISCUSSION

¶4 Father raises five issues arising from the February 28, 2011 evidentiary hearing and the trial court's subsequent order for child support. Father first argues that the trial court erred by allowing mother's attorney to ask leading

questions of mother on direct examination. Father cites pages 19-21 of the transcript of the evidentiary hearing, which contain four instances where mother's counsel asked mother a leading question, to support this argument. Father cites no authority aside from Arizona Rule of Evidence 611² with regard to this issue and makes nothing more than a conclusory argument; we thus deem the issue abandoned. See *State Farm Mut. Auto. Ins. Co. v. Novak*, 167 Ariz. 363, 370, 807 P.2d 531, 538 (App. 1990); *Cagle v. Carlson*, 146 Ariz. 292, 294 n.1, 705 P.2d 1343, 1345 n.1 (App. 1985).

¶5 Father next argues that the trial court erred by permitting mother to raise the issue of father's failure to disclose his income. Father takes issue with the trial court's reliance on *Singh v. Gonzales*, 491 F.3d 1019, 1024 (9th Cir. 2007) and *Pendleton v. Brown*, 25 Ariz. 604, 622, 221 P. 213, 219 (1923), for the proposition that "it is a well-recognized principle that, when a party fails to disclose relevant evidence within his control, the Court may infer that the evidence not disclosed was unfavorable to the party who withheld it." Father failed to object when mother's attorney asked her about whether father had disclosed information about certain bank accounts and business ventures, and even admitted to the court that he had

² We also note that Rule 611 gives the court considerable discretion in controlling the mode of interrogating witnesses.

not provided all of the bank statements. Because father failed to object when the issue was raised below, we deem it waived. See *Banales v. Smith*, 200 Ariz. 419, 420, 26 P.3d 1190, 1191 (App. 2001).

¶6 Father next argues that the trial court erred by permitting mother to raise the issue of father's failure to pay her attorneys' fees. Again, father cites no authority for this argument and we decline to consider it.

¶7 Father next argues that the trial court erred by admonishing father's attorney for refusing to talk to mother. Father argues that the trial court's admonition was unnecessary and showed that the trial court was prejudiced against father. Father argues that the trial court should be reversed for its "showing of prejudice," but cites no authority to support this argument and makes no argument for reversal on this basis. We decline to consider this argument.

¶8 Finally, father argues that the evidence was insufficient to support the trial court's finding that he earned \$5000.00 per month. This court will not disturb the family court's modification ruling absent an abuse of discretion. *Little v. Little*, 193 Ariz. 518, 520, ¶ 5, 975 P.2d 108, 110 (1999). An abuse of discretion occurs "when the record, viewed in the light most favorable to upholding the trial court's decision, is 'devoid of competent evidence to support' the

decision.” *Id.* (citation omitted). We interpret the Arizona Child Support Guidelines (the Guidelines), de novo. *Hetherington v. Hetherington*, 220 Ariz. 16, 21, ¶ 21, 202 P.3d 481, 486 (App. 2008).

¶9 Neither party requested findings of fact and conclusions of law pursuant to Rule 82(A), Arizona Rules of Family Law Procedure. Consequently, “we are constrained by the presumption that the Superior Court ‘found every fact necessary to support the judgment, and such presumptive findings must be sustained if the evidence on any reasonable construction justified it.’” *Neal v. Neal*, 116 Ariz. 590, 592, 570 P.2d 758, 760 (1977) (citations omitted); see also *Berryhill v. Moore*, 180 Ariz. 77, 82, 881 P.2d 1182, 1187 (App. 1994) (in the absence of a request, an appellate court “must presume that the trial court found every fact necessary to support the judgment”). We accept the trial court’s factual findings unless they are clearly erroneous. *Hrudka v. Hrudka*, 186 Ariz. 84, 91, 919 P.2d 179, 186 (App. 1995).

¶10 Father contends that the trial court erroneously attributed gross income of \$5000 per month to him for purposes of child support. The trial court may consider “all aspects of a parent’s income” to ensure that the award is “‘just’ and based on the total financial resources of the parents.” *Cummings v. Cummings*, 182 Ariz. 383, 386, 897 P.2d 685, 688 (App. 1994)

(considering gift income received over an 18-month period prior to the filing of the modification petition); see also Guidelines § 5(A) (defining "gross income" as "income from any source").

¶11 In the case of self-employment, gross income means "gross receipts minus ordinary and necessary expenses." Guidelines § 5(C). Benefits received in the course of employment "shall be counted as income if they are significant and reduce personal living expenses. . . ." Guidelines § 5(D).

¶12 We find no abuse of discretion in the court's determination that father earned more per month than he asserted. The evidence showed that father failed to disclose bank statements and other records and there was evidence that father frequently paid for personal expenses out of his business account. Mother testified that during the marriage father took cash from the parties' hair styling business that was never reported. We have recognized that income from a parent-controlled business may be subject to manipulation for purposes of child support modification. *Pearson v. Pearson*, 190 Ariz. 231, 236, 946 P.2d 1291, 1296 (App. 1997). The trial court here was in the best position to evaluate the credibility of the parties. See *Gutierrez v. Gutierrez*, 193 Ariz. 343, 347, ¶ 13, 972 P.2d 676, 680 (App. 1998) ("We will defer to the trial court's determination of witnesses' credibility and the weight

to give conflicting evidence.”). Viewing the evidence in the light most favorable to mother, we hold that there was reasonable evidence upon which to sustain the attribution of a \$5000 gross monthly income to father.

CONCLUSION

¶13 We affirm the trial court’s child support order. After considering the reasonableness of the parties’ positions and the evidence reflecting their current financial resources, we grant mother’s request for attorneys’ fees on appeal pursuant to A.R.S. § 25-324 and Rule 21, Arizona Rules of Appellate Procedure.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

PATRICIA K. NORRIS, Presiding Judge

/s/

MARGARET H. DOWNIE, Judge