DIVISION ONE
FILED: 05/29/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:	)	1 CA-CV 11-0456
	)	
SHERMAN WESLEY HENSON,	)	DEPARTMENT B
	)	
Petitioner/Appellant,	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
v.	)	Rule 28, Arizona Rules
	)	of Civil Appellate
ELAINE RUTH HENSON,	)	Procedure)
	)	
Respondent/Appellee.	)	
	)	

Appeal from the Superior Court in Mohave County

Cause No. S801DO2006023

The Honorable Julie S. Roth, Judge

VACATED AND REMANDED

Law Offices of Janice M. Palmer, P.C. Chandler
By Janice M. Palmer
Attorney for Petitioner/Appellant

Elaine Ruth Henson, *In Propria Persona* Lake Havasu City
Respondent/Appellee

W I N T H R O P, Chief Judge

¶1 Sherman Wesley Henson ("Father") appeals the family court's post-dissolution decree order that he pay Elaine Ruth Henson ("Mother") $4369.50 as reimbursement for various alleged

medical bills incurred on behalf of the couple's two daughters. Father contends that the court erred in (1) ordering him to pay for expenses incurred before entry of the dissolution decree, (2) ordering him to pay for his daughters' facial treatments, (3) ordering him to pay for expenses incurred after his daughters reached the age of majority, and (4) denying his motion for new trial. It is clear that some error occurred, but given the poorly developed record and the lack of a transcript, we cannot determine the extent of the error; accordingly, we vacate the court's order and remand for a new hearing.

FACTS AND PROCEDURAL HISTORY

¶2 In September 1985, Mother and Father were married in Bethlehem, Pennsylvania. They eventually moved to Lake Havasu City, Arizona, and had two children together: Heidi, born August 6, 1989, and Hanna, born May 20, 1992.

¶3 In March 2006, Father filed a petition for dissolution of the parties' marriage. In November 2006, the couple entered a joint custody agreement, with both children residing primarily with Mother.

¶4 On April 30, 2007, the family court filed a decree of dissolution, pursuant to which the court incorporated the parenting plan and a series of stipulations entered by the

parties.[1] In part, the court awarded Mother and Father joint legal custody of the children and designated Mother the primary residential parent with final decision making authority concerning all major parenting decisions, including "medical, dental, and educational issues," after input from Father. In addition to spousal maintenance, the court ordered Father to pay Mother child support in the amount of $2500 per month until August 2007, that "being the month that Heidi shall have both graduated high school and turned 18 years of age," and thereafter $2000 per month until "Hanna is anticipated to have both turned 18 and graduated high school." The court also found that Father had fully paid all child support arrears and was current on his support obligation. Father's company began deducting support payments from his salary in June 2007.[2]

¶5 Also as part of the dissolution decree, the court ordered Father to "provide health insurance covering [the] Children, while minors, similar to that he purchased during [the] marriage," and ordered Mother to provide vision insurance

---

[1] The court found that the parties had "reached a settlement of all matters in controversy, the terms of which were placed on the record." Both Mother and Father were represented by counsel throughout the divorce proceedings, and after the parties obtained the dissolution decree, the court granted motions to withdraw by counsel for each side.

[2] Father was self-employed and owned his own company. Mother is a self-employed registered nurse practitioner who runs a clinic called the Women's Medical Health Center, Inc.

covering the children. The court further ordered that "[a]ll uninsured medical, dental, vision, and other health related expenses related to [the] Children shall be apportioned per the Arizona Child Support Guidelines which is presently 75% [Father] and 25% [Mother]," and "[a] party seeking reimbursement or contribution toward uninsured expenses shall submit proof of said uninsured expense to the other party, who shall reimburse the party incurring the uninsured health expense within thirty (30) days." The decree also provided that Mother "shall assume as her sole and separate obligation, and indemnify and hold [Father] harmless therefrom, the following debts: 1. Any and all debts held in her own name, regardless of when incurred; [and] 2. All debt otherwise incurred by her on or after August 1, 2005." Additionally, the decree contained a more general "hold harmless" clause:

> [Father] and [Mother] mutually agree to be solely responsible for all indebtedness, community or otherwise, for which he or she becomes liable or contracts from August 1, 2005 and agrees to indemnify and hold harmless the other party from all such liability. Each party hereby warrants that he or she has not incurred any community debts not addressed in this Decree or otherwise disclosed to the other party; has not placed or caused to be placed any liens upon any community property without the knowledge of the other. In the event that any undisclosed liens or debts are discovered, the party responsible for such debt or lien shall indemnify and hold harmless the other party of all such liability and reimburse the other party for any damages suffered thereby, which, in addition to all damages and other reimbursement

allowed by law or equity, shall include all reasonable attorney fees, costs and expenses incurred.

¶6 On November 18, 2010, Mother filed a confusing *pro per* petition entitled "Motion to Appear," pursuant to which she sought reimbursement for medical expenses purportedly incurred on behalf of the children from 2005 through 2010. Mother claimed that the total amount of these expenses was $5582.88, and she stated that she was seeking seventy-five percent of that amount, or $4190.32, as payment from Father.[3] As support for her claim, Mother attached portions of a series of documents, many with little or no explanation, and some with no obvious relevance.[4] Mother did explain, however, that she was seeking reimbursement in part for charges incurred during a hospital emergency room visit by Heidi, and she asserted that in March 2008, Father had "allowed the bill to default to collections" and "directed the agency to assign the balance to [her]."[5]

---

[3] We note that seventy-five percent of $5582.88 is actually $4187.16.

[4] Included in the documents was a "statement" from a licensed professional counselor, Nancy McCoy, dated July 31, 2008, seeking past due charges of $750.00, and other statements from Ms. McCoy apparently indicating that Mother had made some payments toward the debt. The statements left blank virtually all pertinent information, including the date of service, the actual charges, and the services provided. Father disputed his responsibility for the counseling charges, claiming that he had "fired" Ms. McCoy before the charges were incurred.

[5] Mother attached a copy of an October 2007 letter she sent to Medical Revenue Services, the billing provider, in which she

Mother also asserted that she had been unaware the debt had been assigned to her until October 2010. Included in the myriad documents Mother attached to her petition was a November 2010 statement from Havasu Regional Medical Center indicating that Mother had paid $1100.00 to the hospital in November 2010, and that an amount due of $294.64 remained from an August 10, 2006 hospital emergency room visit by Heidi.

¶7 In an order filed December 2, 2010, the court acknowledged Mother's November 18 petition, but because the court was "unable to understand [Mother's] Petition," the court requested that Mother "clarify with more specificity her allegations" before the court set the matter for a hearing. On December 21, 2010, Mother filed a document entitled "Court Notice," in which she stated that she was seeking "financial restitution" for "past due" "medical expenses" and that "unpaid balances resulted in [her] credit to be illegally accessed and harmed, as well as placed an undue financial hardship on [her] to make payments on all unpaid balances left by [Father]." The document provided no further clarification as to the specific claims for which Mother sought reimbursement.

---

disputed the emergency room charges and asserted that the hospital was engaging in a "fraudulent billing practice" because "my daughter is being charged for an MRI that was never done." In the letter, she also asserted that "the medical biolls [sic] are to be forwarded and assigned to my ex-husband."

¶8 Father filed an ex parte letter with the court stating that he was "unable to understand the exact charges [Mother] is asking for." In the letter, he stated that he had asked Mother for clarification in an e-mail (which he attached to the letter), but she had not complied.[6] The court directed the clerk to place the letter in the court's file, but took no formal action on the letter; nonetheless, in a January 12, 2011 minute entry, the court found Mother's December 21 filing "an inadequate clarification as requested," noted that Mother had not properly supplemented her petition for unreimbursed medical bills, and stated that she "must provide proof of medical services with proof of her payment of [Father's] share." On January 25, 2011, Mother filed an "Expedited Process Request To Enforce: Uninsured Medical/Dental/Vision Expenses," in which she requested that the court order Father to pay her $5282.53, swore that she had provided documentation to Father, and stated that "[Father] refuses to pay his court ordered amount of 75%." That same day, Mother filed a "Witness and Exhibit List" in which she stated that, *inter alia*, she had a copy of the outstanding August 2006 medical bill for Heidi, "[c]opies of medical and dental receipts for Heidi [] and Hanna [] paid in

[6] In the e-mail, Father requested a copy of each medical bill for which Mother sought reimbursement, showing the date of service, the daughter who had received the service, the provider of the service, the total bill, the amount paid by insurance, and the remaining amount due.

full by [Mother],” “[c]opies of eye doctor paid receipts for Hanna [] from 12/16/2005-2/2/2010,” “[c]opies of eye doctor paid receipts for Heidi [] from 6/24/2005-4/10/2007” and “[c]opies of correspondence between therapist for [H]anna and unpaid balances by [Father].” The court scheduled an evidentiary hearing on Mother’s petition for February 18, 2011, and ordered Mother to “mail a copy of all documents filed and exhibits to [Father].”

¶9 On the morning of February 18, 2011, the family court held an evidentiary hearing on Mother’s petition for unreimbursed medical bills.[7] At the conclusion of the hearing, the court ordered Father to pay Mother the sum of $4369.50, which was effectively the full amount that she had requested, and made the following findings and orders:

> The Court does find that [Father] is equally responsible for the medical as set forth in the Decree of Dissolution. [Father], therefore, owes the unreimbursed medical independent of the child support he paid because, according to State statute, he has the ability to pay.
>
> In addition, [Father] is equally responsible for a bill which was not known at the time of the decree, was thereafter challenged by [Mother], and not paid. Because [Father] was aware of the bill, he could have dealt with it but did not, and it now haunts [Mother’s] credit.

---

[7] Both parties were unrepresented by counsel at the hearing. We note that a party appearing without a lawyer is entitled to no more consideration than a party represented by counsel and is held to the same standards as an attorney. *Kelly v. NationsBanc Mortg. Corp.*, 199 Ariz. 284, 287, ¶ 16, 17 P.3d 790, 793 (App. 2000).

[Father] owes 75% of the unreimbursed medical pursuant to the Decree.

The bills incurred when the child was emancipated are 100% the responsibility of [Mother].

The counseling charges of Ms. McCoy should not be included for payment by [Father] as he told Ms. McCoy her services would no longer be required and that was not a joint custody decision.

The Court determines the balance owed to be $5,578 and [Father] is responsible for 75% which is $4,183.50.

IT IS ORDERED that judgment [is] in the amount of $4,183.50 against [Father] and in favor of [Mother]. . . . If he fails to pay within [ninety days], statutory interest of 10% will be charged.

In addition, [Mother] is entitled to reimbursement of $186 for filing fees and service cost bringing the total to $4,369.50 divided by three payments.

On the issue of credit damage, the Court does appreciate the indemnity and hold harmless clause of the decree. But the hospital bill was not known and was contested during the time of the divorce and to have actual damages, [Mother] would have had to get an expert to quantify the damages.

The Court specifically finds that the bill from Lake Havasu Regional Medical Center that was incurred for Heidi Henson (d.o.b. 8/6/89) was a bill for which Mr. Henson was the insured, was the legal guarantor and should have made payment. But the bill was not paid. The Court does today assign that liability under the parties' Divorce Decree to [Father]. [Mother] was not obligated to pay. The Court makes a specific finding that this unpaid debt to the medical care provider had an adverse impact on [Mother's] credit report and credit.

If that does not satisfy the credit agency, then [Father] upon notification from them is obligated and Court **ORDERED** to cooperate in trying to make the same type of statement to cure [Mother's] credit. His

> incentive to do so is that, if not cured, this issue may not be resolved.
>
> [Father's] first payment is due 30 days from today's date.

¶10 Shortly after the hearing, Father again hired counsel, and on March 14, 2011, he filed a "Motion to Clarify/Motion for Reconsideration/Motion for New Trial." In his motion, Father maintained that the court's "judgment" was "mathematically incorrect," primarily because it was inconsistent with the court's findings. More specifically, Father maintained that the court had erred in part because (1) although the court found that bills incurred after the children were emancipated were Mother's responsibility, the court had nonetheless included post-emancipation medical expenses in the judgment, (2) although the court found that the counseling charges of Ms. McCoy should not be included for payment by him, those charges had apparently been included in the judgment, and (3) the court should not have included in the judgment facial treatments provided to the children by Mother in her clinic because the treatments had resulted in no out-of-pocket cost to Mother and the insurance company had declined to pay Mother's claims for those treatments. Father argued that because Mother had presented no out-of-pocket expenses related to the facial treatments, he "ought not to be required to pay a phantom medical bill." Father also challenged the court's determinations with regard to

the August 2006 hospital emergency room bill. He noted that although the court found the bill "was not known at the time of the decree," the court found Father "equally responsible" for that unpaid bill, which "was thereafter challenged by [Mother]." Father argued that bill and other pre-decree medical debts merged into the decree, and under the decree were the responsibility of Mother, and the court had erred in finding he had harmed Mother's credit because he had not previously paid that bill. Father provided a list of bills (totaling $1589.17) for which he conceded he bore seventy-five percent of the responsibility ($1191.88). Father also argued that the court had erred in ordering him to pay Mother's filing fees and service costs, in part because Mother had failed to advise him that any bills were outstanding or timely provide him with information about the medical expenses, and he "did not see or know of the charges until directly before Trial."

¶11 Mother objected to the motion, and although the court found her objection "did not specifically address the substantive issues raised in [Father's] Motion," the court nonetheless denied Father's motion for new trial. In its ruling, the court made, in pertinent part, "the following clarifications and/or new orders":

> The Court acknowledges that the minutes produced from this lengthy and difficult hearing are confusing. It appears that [Father] did not order a CD of the

hearing. In any event, if [Father] believes the Court made a mathematical error of medical bills incurred during the children's minority [Father] can lodge an Order that correctly states the amounts incurred and the parties[']' respective percentage of liability.

The Court disagrees that any medical bills incurred on behalf of the parties[']' minor children under temporary orders are moot if not reduced to a written amount and/or judgment in the parties' final decree. Unlike other obligations, responsibilities incurred under support orders for children do not merge into the decree. This Court is not resurrecting this obligation now but reflecting parents' responsibility to pay for their children's medical care. [Father] did not cite a case relating to children's medical bills as authority and therefore the Court is not reconsidering its findings on this issue.

Regarding the skin related treatment, testimony at the hearing from both parties support a finding that this bill was incurred, necessary and in fact a benefit to daughter. This bill was not determined to be "phantom" as described by [Father] in his Motion. [Father] had an opportunity at the time of the hearing to discredit [Mother] and/or present his own testimony that this bill was "phantom." Simply put he failed to do so.

Regarding [Mother's] claim for damages to her credit the Court specifically found after listening to three hours of testimony that [Father] did not act prudently regarding the Lake Havasu Regional Center bill. The Court gave [Father] an opportunity to take steps to correct the issue since he is the insured but the Court specifically stopped short of assessing this bill or any damages to [Mother], even though [Father's] inaction has impacted her credit as reflected in her credit report. The Court did not assign [Father] the debt but Ordered him to act in a reasonable and prudent manner to assist in processing the insurance claim.

The Court appreciates [Father] is unhappy with the rulings from February 18, 2011. However, the Court considers [Father's] pleading as an attempt to

> get a second bite from the apple since the hearing left him with a sour taste. Both parties presented testimony and exhibits, and were given an opportunity for cross-examination.

¶12 In a signed order filed June 13, 2011, the court formally adopted its February 2011 findings and orders. On July 8, 2011, a signed copy of the court's denial of Father's motion for new trial was filed.

¶13 Father filed a timely notice of appeal from the court's June 13 order and denial of his motion for new trial. We have appellate jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1)-(2), (5)(a) (West 2012).[8]

ANALYSIS

I. The Merits

¶14 In his opening brief, Father raises numerous contentions of error, including that the court erred in (1) ordering him to pay for expenses incurred before entry of the dissolution decree because those expenses were either addressed in the decree as being the obligation of Mother or were merged in the decree at the time it was signed, (2) ordering him to pay for his daughters' facial treatments, in part because Mother failed to demonstrate that the treatments were medically

[8] We cite the current version of the statutes as they appear in Westlaw unless changes material to our decision have since occurred.

necessary or that she actually paid for the treatments, (3) ordering him to pay for expenses incurred after his daughters reached the age of majority, and (4) denying his motion for new trial, in part because the court relied on insufficient evidence provided by Mother.

¶15 In general, we review the family court's orders and denial of a motion for new trial for an abuse of discretion. *See Little v. Little*, 193 Ariz. 518, 520, ¶ 5, 975 P.2d 108, 110 (1999); *Thomas v. Thomas*, 203 Ariz. 34, 37, ¶ 18, 49 P.3d 306, 309 (App. 2002); *Cano v. Neill*, 12 Ariz. App. 562, 567-68, 473 P.2d 487, 492-93 (1970). An abuse of discretion may occur if the court commits an error of law in exercising its discretion, *Fuentes v. Fuentes*, 209 Ariz. 51, 56, ¶ 23, 97 P.3d 876, 881 (App. 2004), or if no competent evidence supports the court's ruling. *Little*, 193 Ariz. at 520, ¶ 5, 975 P.2d at 110 (citation omitted). Any issue of the parties' credibility, however, was for the family court to determine. *See generally In re Estate of Pouser*, 193 Ariz. 574, 579, ¶ 13, 975 P.2d 704, 709 (1999) (noting that the reviewing court does not reweigh conflicting evidence or re-determine the preponderance of the evidence, but examines the record only to determine whether substantial evidence exists to support the lower court's action).

¶16 We have reviewed in detail the entire record provided this court. The record as developed and provided by the parties offers limited insight as to the specific evidence the family court considered in its decision and the arguments raised and properly made to the court. Further, the briefs submitted by the parties contain numerous errors, factual and otherwise, and only minimally advance the parties' arguments. *See generally* ARCAP 13(a)(4), (6), (b) (requiring the parties to appropriately cite to the record and develop a legal argument "with citations to the authorities, statutes and parts of the record relied on"). Although Father cites to a transcript in his brief, he has failed to provide a copy of that transcript to this court, and at least some of the success of his arguments is predicated on the testimonial evidence presented at the evidentiary hearing. *See Rancho Pescado, Inc. v. Nw. Mut. Life Ins. Co.*, 140 Ariz. 174, 189, 680 P.2d 1235, 1250 (App. 1984) (noting the duty of the appealing party to insure that all necessary transcripts are presented to this court); 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."). Because we do not have a transcript to consider, we do not know what testimony or argument, if any, was

presented. We therefore must presume the missing transcript would support the court's findings and order. *See Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995); *Walker v. Walker*, 18 Ariz. App. 113, 114, 500 P.2d 898, 899 (1972).

¶17 Despite our presumption that the missing transcript would support the family court's order, however, we must vacate the order because it is clear from the record that the court committed at least some error. The court's order is internally inconsistent because the court effectively awarded Mother the full amount of reimbursement she sought, despite finding that the bills incurred after the children were emancipated were Mother's responsibility and the counseling charges of Ms. McCoy should not be included. Moreover, as the court appeared to recognize, it could not hold Father responsible for the children's post-emancipation bills. For child support purposes and with certain exceptions not present here, a child becomes emancipated on her eighteenth birthday, *see* A.R.S. § 25-503(O)(2),[9] unless she is still attending high school when she reaches the age of majority, in which case "support shall continue to be provided while [she] is actually attending high school" or until she reaches nineteen years of age. A.R.S. § 25-501(A). As a general rule, there is no duty to support a

[9] *See also* A.R.S. § 8-101(1), (4) (providing that, in Arizona, a child is "any person under eighteen years of age," and an adult is "a person eighteen years of age or older").

child who has reached the age of majority, and the superior court lacks jurisdiction to adjudicate questions of liability for the support of a child who has reached the age of majority. *See Mendoza v. Mendoza*, 177 Ariz. 603, 604, 870 P.2d 421, 422 (App. 1994) (citation omitted); *see also Stanley v. Stanley*, 112 Ariz. 282, 283, 541 P.2d 382, 383 (1975) ("When a person is no longer accorded a particular status, he is no longer entitled to put forward claims based upon that status.").[10] Because the record makes clear that Mother sought reimbursement for several charges incurred after the parties' daughters reached the age of majority, and the court ordered Father to reimburse Mother for those charges, the court erred.

¶18 Given the undeveloped record and briefing provided this court, however, we cannot fully determine the extent of the court's error or the amount properly owed by Father. Also, it appears the court may have committed other errors, but without a transcript, we cannot verify the existence and determine the extent of those errors. We therefore do not address the

[10] We note, however, that the Arizona Child Support Guidelines provide that the presumptive termination date of the child support order shall be the last day of the month of the eighteenth birthday of the youngest child included in the order or the last day of the month of the child's anticipated graduation date. *See* A.R.S. § 25-320 app. § 4. Further, for purposes of determining the presumptive termination date, the court shall presume that the child will graduate in May. *See id*. at § 4(B). Therefore, any legitimate medical expenses incurred for Hanna on the day of her graduation and birthday were properly compensable if supported by competent evidence.

parties' other arguments, including whether the children's facial treatments were properly reimbursable and whether Mother's claims for medical expenses incurred before the decree were merged with the decree.[11] On remand, the parties may further develop the record and clarify their arguments for the family court to consider.

[11] We note that, in general, to determine whether the pre-decree medical expenses merged with the decree, the court must discern the intent of the parties from the language of the decree. *See generally LaPrade v. LaPrade*, 189 Ariz. 243, 248, 941 P.2d 1268, 1273 (1997) (considering whether the parties' separation agreement merged with the decree of dissolution); *see also* A.R.S. § 25-315(F)(4) (providing that a temporary order or preliminary injunction terminates when a final decree is entered); *cf. Solomon v. Findley*, 167 Ariz. 409, 412, 808 P.2d 294, 297 (1991) (concluding that a contract for child support merged with the divorce decree and could be enforced by the divorce court as long as the child was a minor, but after the child reached majority, the parties were left to a suit in contract). In this case, the decree provides in part that each party "mutually agree[s] to be solely responsible for all indebtedness, community or otherwise, for which he or she becomes liable or contracts from August 1, 2005 and agrees to indemnify and hold harmless the other party from all such liability." Such language would tend to indicate the pre-decree bills merged into the decree and became the responsibility of the party who had contracted the debt or assumed liability for the debt (by holding it in his or her own name) by the time of the decree. Moreover, the decree addressed the possibility that a party incurred community debts unbeknownst to the other party and failed to disclose those debts before the decree was entered by providing that each party warranted that "he or she has not incurred any community debts not addressed in this Decree or otherwise disclosed to the other party" and that "[i]n the event that any undisclosed liens or debts are discovered, the party responsible for such debt or lien shall indemnify and hold harmless the other party of all such liability and reimburse the other party for any damages suffered thereby."

II. Attorneys' Fees on Appeal

¶19 Both sides request attorneys' fees on appeal, and we deny each request. Mother is not an attorney and therefore cannot claim attorneys' fees. *See Connor v. Cal-Az Props., Inc.*, 137 Ariz. 53, 56, 668 P.2d 896, 899 (App. 1983). Father requests attorneys' fees pursuant to A.R.S. §§ 12-348(A)(1) and 25-324. Section 12-348(A)(1), which provides for an award of fees to a party who successfully defends "[a] civil action brought by the state or a city, town or county against the party," is inapplicable here. As to Father's request for fees pursuant to § 25-324, he presents no facts or argument regarding the parties' current financial status or demonstrating that Mother's position has clearly been unreasonable.[12] Because Father is the successful party on appeal, however, we award him costs upon his compliance with ARCAP 21.

CONCLUSION

¶20 It is impossible on this record to parse out all of the claims for which Mother properly sought reimbursement and those claims for which the family court erred in awarding reimbursement. Given the status of the record provided this court, and given our conclusion that at least some error

[12] We note that a transcript and better developed record may have assisted this court in making a reasonableness determination.

occurred, we are compelled to vacate the family court's June 13 order and remand for a new hearing.

_____/S/_____
LAWRENCE F. WINTHROP, Chief Judge

CONCURRING:

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

_____/S/_____
JON W. THOMPSON, Judge