IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE THE MARRIAGE OF

NIKKI GOMEZ, NKA NIKKI WIDUP,
Petitioner/Appellee,

and

IGNACIO GOMEZ,
Respondent/Appellant.

No. 2 CA-CV 2023-0097-FC
Filed April 30, 2024

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Maricopa County
No. FC2021051197
The Honorable Lori Ash, Judge Pro Tempore

AFFIRMED

Nikki Widup
In Propria Persona

Ignacio Gomez, Phoenix
In Propria Persona

MEMORANDUM DECISION

Presiding Judge Brearcliffe authored the decision of the Court, in which Judge Eckerstrom and Judge Kelly concurred.

B R E A R C L I F F E, Presiding Judge:

¶1 Ignacio Gomez appeals from the trial court's decree of dissolution of his marriage to respondent Nikki Widup. Specifically, Ignacio contends the court erred in its division of assets and in awarding child support and attorney fees to Widup. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to upholding the trial court's ruling. *See In re Marriage of Rojas*, 255 Ariz. 277, ¶ 2 (App. 2023). Gomez did not provide this court with a transcript of the trial; consequently, we presume that sufficient evidence was presented to support the trial court's rulings. *See Baker v. Baker*, 183 Ariz. 70, 73 (App. 1995) (if party fails to provide transcripts for relevant proceeding on appeal, "we assume they would support the court's findings and conclusions"); *see also* Ariz. R. Civ. App. P. 11(c)(1)(A) (appellant's responsibility to order transcripts "necessary for proper consideration of the issues on appeal"). In light of the lack of transcripts of the underlying proceedings, the facts that follow are derived either from the decree or from undisputed facts in the parties' filings.

¶3 Gomez and Widup were married in October 2019. They share one child in common, M.G., born in 2011. Before their marriage, in 2017, Gomez and Widup took title to a home in Phoenix as "Joint Tenants with Right of Survivorship." Widup filed her Petition for Dissolution in April 2021.

¶4 At trial in January 2023, the trial court took evidence from the parties and testimony from Widup. According to the decree, Gomez did not provide testimony because he exhausted his allotted time at trial on cross-examination during Widup's testimony.

¶5 The trial court entered the decree on March 14, 2023, citing Rule 78(b), Ariz. R. Fam. Law P., and explaining that while "[t]he Court

must decide the amount of attorney's fees and costs to be awarded," there was "no just reason to delay making a final order." However, in the same ruling, the court also entered a child support order finalized under Rule 78(c), stating that "[n]o further claims or issues remain for the Court to decide." Of course, this Rule 78(c) language was erroneous because attorney fees remained unresolved. At minimum, the Rule 78(b) language was inapplicable to any matters pertaining to attorney fees, *see Hernandez v. Athey*, 256 Ariz. 476, ¶ 6 (App. 2023), but on April 7 the court entered a judgment awarding attorney fees to Widup and certified that judgment as final under Rule 78(c). Gomez appealed that same day. His notice of appeal is ostensibly from the March 14 decree and does not mention the April 7 attorney fees judgment. But one of several aspects of the March 14 decree he challenges is the court's award of attorney fees. *See* Ariz. R. Civ. App. P. 8(c)(3) (notice of appeal must "[d]esignate the judgment or portion of the judgment from which the party is appealing"); *Ruesga v. Kindred Nursing Ctrs., L.L.C.*, 215 Ariz. 589, ¶ 38 (App. 2007) ("[O]ur review on appeal is limited to the rulings specified in the notice of appeal."). Because Gomez specifies errors concerning attorney fees in his notice of appeal, and Widup does not contend that she lacked notice of the issue, we construe the notice of appeal to have been sufficient to encompass the issues he addresses in his briefing on appeal, including attorney fees. *See Hill v. City of Phoenix*, 193 Ariz. 570, ¶¶ 10-15 (1999). We have jurisdiction over Gomez's appeal under A.R.S. §§ 12-120.21 and 12-2101(A)(1).[1]

[1]Other procedural complexities occurred in this appeal. On April 7, the same day that Gomez appealed, he also moved for reconsideration and a new trial—although his motion was brought under Rule 83, Ariz. R. Fam. Law P. The trial court denied the motion due to Gomez's "fail[ure] to identify any newly discovered evidence" that would impact the ruling. Gomez renewed his motion on May 1, 2023. The court took "no further action" because Gomez did not "notif[y] the Court of Appeals of the filing" pursuant to Rule 9(e)(2), Ariz. R. Civ. App. P. Gomez filed a motion to stay trial court proceedings on May 23, 2023. This was denied on June 22, 2023. Gomez then asked this court to stay trial court proceedings, which we denied on June 30, 2023; however, we revested jurisdiction in the trial court until July 31, 2023, so that it could rule on Gomez's May 1 motion. Thereafter, the trial court denied that motion in a Rule 78(c) final judgment on July 6, 2023. Gomez then moved to modify child support with the trial court on July 26, 2023. According to Gomez, the court denied the motion to modify, but he did not amend his appeal to include either that denial or the

Discussion

¶6 Although his notice of appeal claims several errors, such as the division of other assets including retirement accounts, Gomez's briefing only addresses child support, the disposition of the Phoenix home, and attorney fees. Consequently, we will only address those issues briefed on appeal, and we deem any others waived. *See* Ariz. R. Civ. App. P. 13(a)(7); *State v. Carver*, 160 Ariz. 167, 175 (1989) ("In Arizona, opening briefs must present significant arguments, supported by authority, setting forth an appellant's position on the issues raised. Failure to argue a claim usually constitutes abandonment and waiver of that claim.").

I. Child Support

¶7 Gomez first challenges the allocation of child support under the decree. We review the trial court's child support order for an abuse of discretion, accepting the court's factual findings unless clearly erroneous, but reviewing legal issues de novo. *Candia v. Soza*, 251 Ariz. 321, ¶ 7 (App. 2021). "[W]hether a trial court abuses its discretion in [ordering child support] depends largely upon the facts of the case as revealed by the evidence before the trial court." *Rexing v. Rexing*, 11 Ariz. App. 285, 289 (1970). And we defer to the court's determination of witness credibility and the weight to give conflicting evidence. *Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶ 13 (App. 1998).

¶8 After trial on the petition for dissolution, the trial court entered its decree, stating that it had "considered the evidence which includes where applicable/presented, the demeanor of the witnesses" and "reviewed the exhibits as well as the case history, and considered the parties' arguments and agreements." The court then awarded child support for the parties' minor child, adopting a child support worksheet as the factual basis for its ruling and attaching the worksheet to the decree. The court ordered Gomez to pay Widup $559 per month in current support for the minor child. Additionally, the court ordered Gomez to pay $150 per month toward support arrears, which amounted to $15,014.

¶9 On appeal, Gomez does not argue that the trial court erred in its calculation of support based on its findings in the child support order, but rather challenges the underlying findings themselves or contends that

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denial of his May 1 motion. We revested jurisdiction in this court to address his appeal from the decree.

his income has since changed. As stated above, Gomez has not provided transcripts of the dissolution trial in the record on appeal. *See* Ariz. R. Civ. App. P. 11(c)(1)(A) (appellant's responsibility to order transcripts "necessary for proper consideration of the issues on appeal"). Consequently, we presume that the evidence presented to the court supported its judgment. *See Baker*, 183 Ariz. at 73. Further, Gomez has not developed a legal argument supported by authority as required by the Rules of Civil Appellate Procedure. *See* Ariz. R. Civ. App. P. 13(a)(7); *see also Flynn v. Campbell*, 243 Ariz. 76, ¶ 24 (2017) ("We hold unrepresented litigants in Arizona to the same standards as attorneys."). Accordingly, because of these failures, we deem Gomez's attempted arguments waived. *See Ritchie v. Krasner*, 221 Ariz. 288, ¶ 62 (App. 2009) (arguments not supported by authority in an opening brief are deemed waived). We affirm the court's child support award.

II. Division of Assets

¶10 Gomez argues that the trial court erred in its division of the Phoenix property. We review a trial court's division of property for abuse of discretion, but the characterization of the property is a legal question we review de novo. *In re Marriage of Pownall*, 197 Ariz. 577, ¶ 15 (App. 2000).

¶11 Gomez argued below that he was the sole owner of the Phoenix home by adverse possession and abandonment. The trial court "wholly rejected" that claim. Rather, the court found that Gomez and Widup each had an interest in the Phoenix home, concluding that it was "community property." The court awarded Gomez—who had seemingly been living in the home since the parties' separation—the home as his "sole and separate property." In doing so, it ordered the house to be refinanced to remove Widup from any associated debt, and a special commissioner be appointed to sell the house "upon motion of the parties." Additionally, it ordered that Gomez must pay Widup $67,899.66 for her "community interest" in the home's equity within forty-five days of the decree. If he failed to do so, the property would be sold and each party awarded fifty percent "of the equity from the sale of the home."

¶12 As to the Phoenix home, Gomez argues, "Adverse Possession of the abandoned property applies" and Widup's "refusal to assist with any debts and taxes or other fees related to the property constitute[d] abandonment." He also contends the home was purchased before the marriage and should therefore be "legally deemed Separate Property." And because they acquired the property "as individuals" and "did not transmute the property" into community property, he maintains the trial

court "wrongfully" ordered him to refinance the debt. The entirety of Gomez's argument on appeal is that Widup should have accepted his settlement offers for the house and that the court made incorrect findings. Again, we lack a transcript of the underlying proceedings as to any disputed or stipulated facts, and none of Gomez's assertions are supported by legal argument, citation to authorities, or citations to the record. *See* Ariz. R. Civ. App. P. 11(c)(1)(A), 13(a)(6), (7). We deem Gomez's arguments waived or irrelevant, and affirm the trial court's division of assets. *See Baker*, 183 Ariz. at 73; *Rice v. Brakel*, 233 Ariz. 140, ¶ 28 (App. 2013).

¶13 We note that the trial court concluded that the Phoenix home was "community property." It did so even though it was undisputed that the home was purchased before the parties' marriage and remained titled to them as joint tenants with right of survivorship. An ownership interest in joint tenancy is a separate property ownership interest. *State v. Superior Court*, 188 Ariz. 372, 373 (App. 1997). Nonetheless, "[a] husband and wife can, by agreement, transmute separate property to community property." *Moser v. Moser*, 117 Ariz. 312, 314 (App. 1977). "Even in the absence of an explicit agreement, written or oral, a court may find a transmutation of property if the circumstances clearly demonstrate that one spouse intended to effect a change in the status of his separate property." *Id.* There may have been evidence at trial that the Phoenix home had been transmuted by the parties to community property. *See Baker*, 183 Ariz. at 73. Ultimately, the court divided the value of the home substantially equally, awarding each party roughly fifty percent of the home's net equity. Without transcripts of the dissolution trial, we presume the evidence presented supports the court's final calculations. *See Baker*, 183 Ariz. at 73. Had the court divided the home as a jointly owned property—which it had the jurisdiction to do, *see Toth v. Toth*, 190 Ariz. 218, 219-20 (1997)—the result would not have been substantially different. We see no error.

III. Attorney Fees

¶14 Each party requested an award of attorney fees and costs in the trial court. The court found that there was a "substantial disparity of financial resources between the parties" and that Gomez "ha[d] considerably more resources available to contribute" to Widup's attorney fees and costs. It further found that Gomez had "acted unreasonably in the litigation" by, among other things, making "requests for relief that lacked legal foundation," including an award of attorney fees even though he was not represented by counsel. It therefore granted Widup her attorney fees and costs.

¶15 Although Gomez ostensibly has appealed the trial court's award of attorney fees and costs to Widup, he makes no substantive argument challenging that award in his briefing. Instead, he contends that Widup had rejected his offers to settle and "dragged out the divorce." He seeks an award of fees from Widup in the amount of $200,000. Because Gomez makes no argument in support of any claim of error in the court's award of fees below, we deem this argument waived and affirm the court's award of fees to Widup. *See* Ariz. R. Civ. App. P. 13(a)(7); *Rice*, 233 Ariz. 140, ¶ 28. And, because he is self-represented, states no legal or factual basis for an award of fees in this court, and is not the prevailing party in any event, we deny Gomez's request for attorney fees on appeal. Widup—who is also self-represented on appeal—does not request attorney fees. Therefore, we award Widup—as the prevailing party on appeal—her costs upon her compliance with Rule 21, Ariz. R. Civ. App. P.

Disposition

¶16 We affirm.