DIVISION ONE
FILED: 08/16/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:	)	No. 1 CA-CV 11-0768 A
	)	
MICHAEL RIVERS,	)	DEPARTMENT A
	)	
Petitioner/Appellant,	)	**MEMORANDUM DECISION**
	)	(Not for Publication
v.	)	Rule 28, Arizona Rules
	)	of Civil Appellate
CARLA GLADNEY,	)	Procedure)
	)	
Respondent/Appellee.	)	
	)	
_____	)	

Appeal from the Superior Court in Maricopa County

Cause No. FC2007-054160

The Honorable Stephen J. P. Kupiszewski, Judge *Pro Tem*

AFFIRMED

Michael Rivers — Phoenix
Petitioner/Appellant in *propria persona*

Carla Gladney — Phoenix
Respondent/Appellee in *propria persona*

D O W N I E, Judge

¶1 Michael Rivers ("Father") appeals from an order modifying custody, parenting time, and child support. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Father and Carla Gladney ("Mother") have two sons together. In 2007, Father filed a Petition to Establish Child Custody and Parenting Time. The parents later agreed to joint custody and a parenting time schedule, which the court approved. The court also ordered Father to pay child support.

¶3 In January 2009, the parents filed separate petitions to modify custody, parenting time, and child support. They subsequently agreed to modify parenting time but keep all other orders in force. The court approved the parties' agreement.

¶4 In November 2010, Mother filed a new modification petition.[1] She sought sole custody, supervised and reduced parenting time for Father, and $300 per month in child support. After an evidentiary hearing ("September 2011 hearing"), the court awarded Mother sole custody, reduced Father's parenting time, and ordered Father to pay child support. Father timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 8-235.

[1] Mother also filed a modification petition in August 2010, but it was never served.

DISCUSSION[2]

¶5 We review the court's modification orders for an abuse of discretion. *See Little v. Little*, 193 Ariz. 518, 520, ¶ 5, 975 P.2d 108, 110 (1999) (child support); *Armer v. Armer*, 105 Ariz. 284, 289, 463 P.2d 818, 823 (1970) (parenting time); *Hurd v. Hurd*, 223 Ariz. 48, 51, ¶ 11, 219 P.3d 258, 261 (App. 2009) (custody). We review constitutional claims *de novo*. *Egan v. Fridlund-Horne*, 221 Ariz. 229, 232, ¶ 8, 211 P.3d 1213, 1216 (App. 2009).

[2] Opening briefs must clearly identify and support an appellant's arguments on appeal. The failure to so argue a claim usually constitutes abandonment and waiver of that claim. *State v. Moody*, 208 Ariz. 424, 452 n.9, ¶ 101, 94 P.3d 1119, 1147 n.9 (2004); *see also* ARCAP 13(a)(6), (b)(1); *MT Builders, L.L.C. v. Fisher Roofing, Inc.*, 219 Ariz. 297, 304-05 n.7, ¶ 19, 197 P.3d 758, 765-66 n.7 (App. 2008) (arguments not developed on appeal are deemed waived); *Higgins v. Higgins*, 194 Ariz. 266, 270, ¶ 12, 981 P.2d 134, 138 (App. 1999) (holding a *pro per* litigant to the same standard as an attorney). Father's opening brief falls far short of these standards. We have not addressed arguments raised for the first time in the reply brief. *See State v. Aleman*, 210 Ariz. 232, 236, ¶ 9, 109 P.3d 571, 575 (App. 2005); *Anderson v. Country Life Ins. Co.*, 180 Ariz. 625, 636, 886 P.2d 1381, 1392 (App. 1994). Additionally, although Father offered transcripts of two hearings, they were not prepared by an authorized transcriber and are not part of the superior court's record. *See* ARCAP 11(b)(1)(3) (electronically recorded court hearings must be transcribed by "an authorized transcriber"); Ariz. R. Sup. Ct. 30(a)(2) ("authorized transcriber" is a certified reporter, an individual or service under contract with an Arizona court, or an individual employed by a court whose official duties include the preparation of transcripts). We therefore decline to consider them.

I. Custody Award

¶6 Father contends the court erred in awarding Mother sole custody because the only motion he received was for a "change of visitation." The record does not support this claim.

¶7 Mother's petition clearly stated that she was seeking sole custody *and* a decrease in Father's parenting time. The record demonstrates Father's awareness that custody was at issue. He made two motions -- one oral and one written -- to dismiss Mother's petition. His written motion argued against Mother's request to "chang[e] custody or parenting time" and asked the court to keep the "current custody, parenting time, and support orders in place" or to set an evidentiary hearing. Additionally, the joint pretrial statement sets forth the parties' differing positions regarding custody.

¶8 To the extent Father suggests he did not receive proper notice of the September hearing, the record reflects otherwise. He was served with the "Order to Appear; Motion for Post Decree Orders; Post Decree Temporary Order; Petition to Modify; Notice of Filing Petition; Child Support Worksheet; Affidavit Re: Minor Children." *See* Ariz. Rev. Stat. § 25-411(L). Father subsequently appeared at an April 19, 2011 hearing wherein the court set the September 2011 hearing. Father attended and participated in that hearing.

¶9 Father also contends that certain minute entries "led [him] to believe that issues related to Custody and Child Support would not be addressed." He fails to expand upon this argument in the opening brief, and his citations to the record do not clarify his claim. The April 19 minute entry ordered the parties to prepare for the September 2011 hearing by filing a joint prehearing statement that included, *inter alia*, a description of "disputed custody, access or visitation issues" and "a specific proposal for custody and visitation by each party." Mother complied with this directive.

¶10 Father also argues the court erred by not making specific findings on the record regarding custody modification.[3] *See* Ariz. Rev. Stat. § 25-403(B) (when custody is disputed, court must make certain findings on the record). However, the minute entry from the September 2011 hearing states that the court "enter[ed] its findings on the record with regard to A.R.S. § 25-403." Because we lack a certified hearing transcript, we presume that the official record would support the family court's statement. *See State ex rel. Baumert v. Superior Court (Rapp)*, 118 Ariz. 259, 260, 576 P.2d 118, 119

[3] Father raises no specific issues about the parenting time or child support decisions, and we decline to address his claim that the court erred simply because evidence offered on these topics was inconsistent. *See O'Hair v. O'Hair*, 109 Ariz. 236, 240, 508 P.2d 66, 70 (1973) (citations omitted) (appellate courts do not re-weigh evidence on appeal).

(1978) (in the absence of a transcript, appellate court presumes that the record supports the trial court's rulings); *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995) (same).

II. Jurisdiction

¶11 Lastly, Father argues his due process rights were violated because the family court lacked personal jurisdiction over him. We conclude otherwise.

¶12 Father was served with the petition on March 29, 2011. He thereafter appeared and participated in the proceedings without contesting jurisdiction. By doing so, Father subjected himself to the court's jurisdiction. *See State ex rel. Dep't of Econ. Sec. v. Burton*, 205 Ariz. 27, 29, ¶¶ 8-9, 66 P.3d 70, 72 (App. 2003) (citations omitted) ("[A]ny action on the part of a party except to object to personal jurisdiction that recognizes the case as in court will constitute a general appearance" subjecting the person to the court's jurisdiction).

CONCLUSION

¶13 The judgment of the family court is affirmed.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
PETER B. SWANN, Presiding Judge

/s/
PATRICIA A. OROZCO, Judge