

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



DIVISION ONE
FILED: 10/10/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:) 1 CA-CV 12-0790
)
HOLLY ROSE EARLY,) DEPARTMENT A
)
Petitioner/Appellant,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
STEPHEN JOSEPH EARLY,)
)
Defendant/Appellee.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FC2007-091940

The Honorable Veronica Brame, Judge Pro Tempore

AFFIRMED

Law Office of Stephanie J. Meade
by Stephanie J. Meade
Attorneys for Petitioner/Appellant

Tucson

P O R T L E Y, Judge

¶1 Holly Rose Early ("Mother") appeals the denial of her request for attorney's fees and costs. Because we find that the family court did not abuse its discretion, we affirm.

FACTS AND PROCEDURAL HISTORY

¶12 After five years of marriage, Mother and Stephen Joseph Early ("Father") were divorced in July 2008. Mother successfully sought a modification of Father's child support obligation in 2011. Father, like Mother, sought to modify his child support obligation using the standard procedures some fourteen months later. He claimed he was entitled to a child support adjustment because Mother failed to report additional income.

¶13 Mother moved to dismiss the petition pursuant to Arizona Rule of Civil Procedure 12(b)(6) for failing to state a claim upon which relief could be granted and requested attorney's fees and costs pursuant to Arizona Revised Statutes ("A.R.S.") section 25-324(B) (West 2013). Father did not respond to the motion. The family court granted Mother's motion to dismiss the petition and denied her request for fees and costs.

DISCUSSION

I. Denial of Attorney's Fees and Costs

¶14 Mother argues that the court abused its discretion by failing to award her attorney's fees and costs under § 25-324(B)(2). We review the denial of attorney's fees for an abuse of discretion. *Engel v. Landham*, 221 Ariz. 504, 514, ¶ 45, 212

P.3d 842, 852 (App. 2009) (citing *Gutierrez v. Gutierrez*, 193 Ariz. 343, 351, ¶ 32, 972 P.2d 676, 684 (App. 1998)).¹

¶15 Here, Father discovered that Mother had additional income and wanted it included in a new child support obligation. Mother countered with her motion to dismiss and request for fees and costs. The court considered the petition and the motion to dismiss, and ruled that the court “does not generally attribute income greater than what would have been earned from full-time employment.” As a result, the court dismissed Father’s petition, which he did not appeal, and denied Mother’s fee request.

¶16 The family court was not requested or required to issue findings when denying Mother’s request for fees. In her motion, Mother told the court why she wanted fees under one or all of the subsections of § 25-324(B). We know that the court read the pleading because the court stated such in its order and considered one of the arguments to support the denial of Father’s petition. As a result, we presume the court considered her arguments about fees and costs and found them unpersuasive under any of the § 25-324(B) subsections. *Cf. Neal v. Neal*, 116 Ariz. 590, 592, 570 P.2d 758, 760 (1977) (stating that we

¹ Father did not file an answering brief. Although we may consider his failure as a confession of error, we are not required to do so, and do not in this case. *Gonzales v. Gonzales*, 134 Ariz. 437, 437, 657 P.2d 425, 425 (App. 1982).

presume the court found every fact necessary to sustain its ruling). And, we, like our supreme court, know that trial courts are presumed to know and correctly apply the law. *State v. Moody*, 208 Ariz. 424, 443, ¶ 49, 94 P.3d 1119, 1138 (2004). Consequently, and because we do not reweigh the record, we find no abuse of discretion.

II. Attorney's Fees and Costs On Appeal

¶7 Mother requests attorney's fees and costs on appeal. Because she has not prevailed on appeal, we deny her request for fees and costs.

CONCLUSION

¶8 Based on the foregoing, we affirm the denial of fees and costs.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Judge

/s/

KENT E. CATTANI, Judge