

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT
PRECEDENTIAL AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Marriage of:

DENISE A. BEAGLEY, *Petitioner/Appellee*,

v.

MARK D. IMHOFF, *Respondent/Appellant*.

No. 1 CA-CV 16-0165 FC
FILED 5-16-17

Appeal from the Superior Court in Maricopa County
No. FC2008-091332
The Honorable Theodore Campagnolo, Judge

AFFIRMED

COUNSEL

Denise A. Beagley, Phoenix, AZ
Petitioner/Appellee

Mark D. Imhoff, Shasta Lake, CA
Respondent/Appellant

MEMORANDUM DECISION

Judge Randall M. Howe delivered the decision of the Court, in which
Presiding Judge Kenton D. Jones and Judge Donn Kessler joined.

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HOWE, Judge:

¶1 Mark D. Imhoff (“Father”) appeals from the family court’s judgment resolving multiple post-decree petitions relating to relocation, legal decision-making, parenting time, and child support. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Father and Denise A. Beagley (“Mother”) divorced in 2009 and agreed to joint legal custody of their two daughters. Five years later, Father moved from Arizona to California and the children stayed with Mother. One year after his move, Father sent Mother a letter stating that he intended to relocate the younger daughter to California. In response, Mother petitioned to prevent relocation and to modify legal decision-making, parenting time, and child support. Mother also petitioned to enforce prior court orders. Father replied expressing that he wanted both children relocated.

¶3 The family court held an evidentiary hearing on Mother’s petition to enforce, but Father failed to appear. After the hearing, the court ordered Father to (1) quitclaim the marital residence to Mother, (2) refinance and remove the loan from the marital residence, (3) sign paperwork required by the Motor Vehicle Division (“MVD”) to allow the parties’ older daughter to obtain a driver’s license, and (4) pay the attorneys’ fees awarded to Mother in the decree.¹ At that time, Father had child support arrearages of \$23,028.37 and interest of \$7,564.45. The court found Father in contempt for failing to pay child support, and warned that a warrant would be issued for his arrest if he did not pay a purge amount on the arrearages and attend an Accountability Court orientation. Father did neither; consequently, the court issued an arrest warrant.

¶4 The family court later held an evidentiary hearing on Mother’s petition to modify as well as Father’s interim petitions to order sale of the marital residence and order Mother to pay half of the family business’s taxes. The hearing also considered Father’s objection to a child interview that was conducted and resulted in a report authored by a court conciliator. Once again, Father failed to appear for the hearing.

¹ Father did not appeal from the enforcement order, but he did move to vacate the judgment and for relief from judgment, both of which the family court denied.

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¶5 Following the hearing, the family court (1) denied Father’s request for relocation based on the best interests of the children; (2) awarded Mother sole legal decision-making authority; (3) granted Father parenting time during the summer, holidays, and school breaks; and (4) ordered Father to pay child support. The court ordered Father to pay \$950.22 a month in child support plus an additional \$500 a month toward the child support arrearages. Further, the court determined that all communication between the parties needed to be through ProperComm, an email communication program, and that Father be required to pay for the service. The court denied Father’s petitions seeking the sale of the marital residence and payment of business taxes and overruled his objection to the child interview. The court affirmed its prior enforcement orders and directed Father to undergo mental health and substance abuse assessments. Lastly, the court awarded Mother a portion of her attorneys’ fees. In awarding attorneys’ fees, the court specifically found that Father acted unreasonably in the litigation and “involved the children in the litigation and has attempted to alienate them from Mother, neither of which is in the best interests of the children.” Father timely appealed.

DISCUSSION

¶6 Father raises 19 issues in his opening brief but provides no citations to legal authority or references to the record in violation of Arizona Rule of Civil Appellate Procedure (“Rule”) 13(a)(7).² We discern his arguments as best we can and consider only those that are adequately supported. *In re Aubuchon*, 233 Ariz. 62, 64–65 ¶ 6, 309 P.3d 886, 888–89 (2013). Unsupported arguments are considered waived. *See Ritchie v. Krasner*, 221 Ariz. 288, 305 ¶ 62, 211 P.3d 1272, 1289 (App. 2009). Despite Father’s lack of compliance with the Rules, we review only the issues raised in Father’s brief as they relate to the best interests of the children.

1. Relocation

¶7 Father first challenges the denial of his request to relocate the children to California. We review the court’s relocation decision for an

² Father also did not provide a transcript from the evidentiary hearing, impeding our ability to evaluate many of the issues raised on appeal. As the appellant, Father is responsible for providing this court with a complete record, including the transcript. *See Ariz. R. Civ. App. P. 11(c)(1)*. In the absence of a transcript, an appellate court must presume the record supports the family court’s findings and conclusions. *See Kohler v. Kohler*, 211 Ariz. 106, 108 n.1 ¶ 8, 118 P.3d 621, 623 n.1 (App. 2005).

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abuse of discretion. *See Hurd v. Hurd*, 223 Ariz. 48, 52 ¶ 19, 219 P.3d 258, 262 (App. 2009).

¶8 Relocation is governed by A.R.S. § 25-408, which requires the court to determine whether relocation is in the child's best interests and places "[t]he burden of proving what is in the child's best interests . . . on the parent who is seeking to relocate the child." A.R.S. § 25-408(G). Here, Father had the burden of proof; however, he did not appear at the evidentiary hearing, identify witnesses, or offer any evidence to support the relocation.

¶9 The family court reviewed only the evidence presented and made findings regarding the best interest factors set forth in A.R.S. § 25-408(I). The court concluded that moving the children would adversely affect their emotional, physical, and developmental needs, and that relocating only one child would cause an even larger adverse effect on the children. In the absence of a transcript, we assume the evidence supported these conclusions. *See Biddulph v. Biddulph*, 147 Ariz. 571, 574, 711 P.2d 1244, 1247 (App. 1985). Therefore, on this record the family court did not abuse its discretion by denying Father's relocation request.

2. Legal Decision-Making and Parenting Time

¶10 Father next challenges the rulings on legal decision-making and parenting time. He asserts that Mother is not providing the children "with proper parenting" and has placed the children in danger. We review the order modifying legal decision-making and parenting time for an abuse of discretion. *See Baker v. Meyer*, 237 Ariz. 112, 116 ¶ 10, 346 P.3d 998, 1002 (App. 2015).

¶11 Arizona Revised Statutes Section 25-403 sets forth specific factors a court must consider in determining legal decision-making and parenting time. *See* A.R.S. § 25-403(A). The family court is required to "make specific findings on the record about all relevant factors and the reasons for which the decision is in the best interests of the child." A.R.S. § 25-403(B).

¶12 Here, the family court awarded Mother sole legal decision-making and made her the primary residential parent. The court also directed Mother and Father to exclusively communicate through ProperComm. The court's order contains detailed findings on the relevant A.R.S. § 25-403 factors and explains the facts supporting those findings. The exhibits admitted at the hearing support the court's findings and, in the

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absence of a transcript, we assume the testimony did as well. On this record, the family court did not abuse its discretion.

3. Child Support

¶13 Father also challenges the child support order, which we review for an abuse of discretion. *Sherman v. Sherman*, 241 Ariz. 110, 112 ¶ 9, 384 P.3d 324, 326 (App. 2016).

¶14 The court determined that Father's child support obligation was \$950.22 per month pursuant to the Arizona Child Support Guidelines, A.R.S. § 25-320 Appendix, without deviation. The court also ordered Father to pay \$500 per month toward child support arrearages. This amount arose from an earlier judgment against Father for child support arrearages of \$23,028.37 and interest of \$7,564.45. Although Father appealed that order, his appeal was deemed abandoned for failure to pay the filing fee. Therefore, Father's current attempt to challenge the arrearages calculation is untimely. *See Cont'l Tel. Co. of the W. v. Blazzard*, 149 Ariz. 1, 4, 716 P.2d 62, 65 (App. 1986) (holding that defendants' failure to appeal from a judgment entered pursuant to Arizona Rule of Civil Procedure 54(b) precluded a later appeal of the issue decided by the judgment).

¶15 Based on our review of the record, we conclude the family court did not abuse its discretion by calculating child support.

4. Other Rulings Pertaining to the Children's Best Interests

¶16 Father challenges the affirmation of prior enforcement orders directing him to refinance a line of credit and sign MVD paperwork for his daughter's license. We presume that Mother's testimony on these matters supports the rulings. *See Johnson v. Elson*, 192 Ariz. 486, 489 ¶ 11, 967 P.2d 1022, 1025 (App. 1998) ("When no transcript is provided on appeal, the reviewing court assumes that the record supports the trial court's decision.").

¶17 Father also challenges the ruling directing him to reimburse Mother \$1,250 for one-half of the daughter's orthodontic expenses. The record reflects that Mother testified to incurring \$2,500 in orthodontic expenses. Father could have contested this evidence but failed to appear at the hearing. Accordingly, we affirm the ruling.

¶18 Finally, Father challenges the award of attorneys' fees and costs to Mother, which we review for an abuse of discretion. *See Breitbart-Napp v. Napp*, 216 Ariz. 74, 83 ¶ 35, 163 P.3d 1024, 1033 (App. 2007).

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Father claims that he “has not initiated a single issue, only responses and appeals to defend himself against egregious, heavily biased rulings.” But that is incorrect. Father moved to California and, thereafter, attempted to relocate his younger daughter. The record includes multiple petitions filed by Father in family court. Despite his willingness to request relief from the court, Father feels no obligation to attend hearings or obey court orders.

¶19 The family court granted attorneys’ fees to Mother based on Father’s unreasonable actions. *See* A.R.S. § 25-324(A) (authorizing an award of attorneys’ fees in a dissolution of marriage proceeding based on financial resources or reasonableness of the parties positions). The record supports this finding. Accordingly, the family court did not abuse its discretion by awarding Mother her attorneys’ fees and costs.

CONCLUSION

¶20 For the foregoing reasons, we affirm the family court’s decision and deny Father’s other requested relief in his opening brief. We award costs to Mother upon her compliance with Arizona Rule of Civil Appellate Procedure 21.



AMY M. WOOD • Clerk of the Court
FILED: JT