IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

DUSTIN MATTHEWS, *Petitioner/Appellant*,

v.

ROSEANN ROBLES, *Respondent/Appellee*.

No. 1 CA-CV 17-0241 FC
FILED 2-15-2018

Appeal from the Superior Court in Maricopa County
No. FC2012-093973
The Honorable Jeffrey A. Rueter, Judge

AFFIRMED

COUNSEL

Dustin Matthews, Tempe
Petitioner/Appellant

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge James P. Beene and Judge Randall M. Howe joined.

C A T T A N I, Judge:

¶1 Dustin Matthews ("Father") appeals the superior court's ruling modifying child support, legal decision-making, and parenting time. For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Father and Roseann Robles ("Mother") have one child together: D.M., born in 2011. In December 2013, the superior court entered judgment (based in part on the parties' agreement under Rule 69 of the Arizona Rules of Family Law Procedure) establishing paternity, giving the parties joint legal decision-making, declaring Mother the primary residential parent with Father to have parenting time each weekday and alternating weekends, and imposing on Mother a monthly child support obligation of $39.46. Just over one year later, the parties agreed to terminate Mother's ongoing child support obligation based on Father's increased income, and the court entered an order to that effect.

¶3 In August 2016, Father filed a petition to modify legal decision-making, parenting time, and child support. After an evidentiary hearing at which both Father and Mother testified, the court modified their co-parenting arrangement by granting the parties joint legal decision-making, establishing equal parenting time, and imposing on Mother a monthly child support obligation of $47.05. The court denied Father's subsequent motion to alter or amend the judgment, and Father timely appealed.

DISCUSSION

¶4 Father challenges the superior court's child support calculation and related rulings.[1] We review a child support award for an abuse of discretion, accepting the superior court's factual findings unless clearly erroneous. *See Engel v. Landman*, 221 Ariz. 504, 510, ¶ 21 (App. 2009). We similarly review the court's legal decision-making and parenting time decisions for an abuse of discretion. *Nold v. Nold*, 232 Ariz. 270, 273, ¶ 11 (App. 2013).

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[1] Mother did not file an answering brief. Although we could treat her failure to do so as a confession of error, instead we exercise our discretion to address the merits of Father's claims. *See Savord v. Morton*, 235 Ariz. 256, 259, ¶ 9 (App. 2014).

I. Modification of Child Support.

A. Gross Income.

¶5 Father first challenges the superior court's calculation of his gross income for child support purposes. The court considered Father's acknowledged $16.67 hourly wage, and further attributed an additional $1,037 per month in recurring gifts from his family. *See* Ariz. Rev. Stat. ("A.R.S.") § 25-320 app. ("Guidelines") § 5(A). The court noted that Mother did not provide new evidence of recurring gifts, but rather relied on the 2013 child support order that attributed additional income to Father and the absence of any evidence that the payments had changed since that time.

¶6 Father asserts that the court erred by considering the additional gift income because Mother did not present evidence to support it and because the 2013 child support order never specifically referenced recurring gift income. Although the 2013 child support worksheet did not expressly designate a portion of Father's income as recurring gifts, the record supports an inference that the 2013 calculation was based on $1,037 in gift income in addition to Father's wages. Father's affidavit of financial information at that time listed $1,950.40 in monthly wages. Mother argued that Father should be attributed additional income due to recurring monetary gifts from his family, apparently evidenced by Father's bank statements. The court in fact attributed to Father $2,987.92 per month, approximately $1,037 more than Father's acknowledged monthly wages. Accordingly, the record supports the inference drawn by the superior court that the 2013 child support calculation attributed to Father $1,037 in recurring gift income.

¶7 For purposes of the modification, Mother raised the issue of recurring gift income in her pretrial statement, and the court's ruling reflects that Father failed to provide any controverting evidence or evidence that he no longer received regular monetary gifts from his family. Father did not provide a transcript of the evidentiary hearing to complete the record on appeal, so we must presume the missing transcript supports the superior court's findings and ruling in this regard. *See Kohler v. Kohler*, 211 Ariz. 106, 108 n.1, ¶ 8 (App. 2005); *see also* ARCAP 11(c)(1)(A)–(B) (noting appellant's duty to provide any transcripts "necessary for proper consideration of the issues on appeal," particularly to substantiate an argument that the ruling is not supported by the evidence presented). In light of the reasonable inference that Father received recurring gift income at the time of the 2013 child support calculation, and lacking any evidence that Father no longer received regular monetary gifts, the superior court

did not abuse its discretion by attributing to Father an additional $1,037 per month in gift income.

B. Credit for Health Insurance.

¶8 Father next argues that the court erred by crediting Mother for the cost of health insurance covering her as well as the child. The court considered $140 as the cost paid by Mother to provide health, dental, and vision insurance for the child. *See* Guidelines § 9(A). Although, as Father points out, Mother's affidavit of financial information did not separate the cost to insure her from the cost to insure the child, Mother had previously asserted that the cost to insure the child was $140. Moreover, Mother testified at the evidentiary hearing, and as Father failed to provide the transcript, we must presume the evidence presented supports the court's finding as to the cost of insurance. *See Kohler*, 211 Ariz. at 108 n.1, ¶ 8.

C. Childcare Expenses.

¶9 Father argues the superior court erred by failing to credit him for the cost of childcare even though he pays the full cost of the child's daycare. But inclusion of childcare expenses is not mandatory; instead, the court has discretion whether to add to the basic support obligation childcare costs "that would be appropriate to the parents' financial abilities." Guidelines § 9(B)(1). Here, the parties disputed the appropriate provider of, cost of, and payment for the child's daycare—all of which would necessarily change in a matter of months when the child started school. And without a transcript of the evidentiary hearing to review the evidence presented as to the actual cost (and reasonableness of the cost) of daycare, we must presume the record supports the superior court's determination. *See Kohler*, 211 Ariz. at 108 n.1, ¶ 8.

D. Tax Exemptions.

¶10 Father next argues the superior court erred by changing the years for which each parent could claim tax exemptions for the child, asserting that the parties' 2013 Rule 69 agreement set the schedule (Mother in even years, Father in odd) and that neither side sought to change it. But Father's petition to modify requested the right to claim the child every year, and Mother sought a pro rata division based on relative income (Mother two years, Father every third). *See* Guidelines § 27 (allowing allocation of tax exemptions by agreement or by proportionate share of combined adjusted gross income). Although Father's pretrial statement asserted the 2013 Rule 69 agreement as a stipulation to "alternate years for the tax deduction," Mother's pretrial statement reflected no such agreement. And

in any event, the court's resolution retained the previously agreed 50–50 split and simply traded the specific years (Father in even years, Mother in odd). As each parent had received the benefit of the tax exemption under the 2013 judgment twice before the modified support order went into effect, the modification did not give Mother any greater benefit than Father.

E. Start Date for Child Support.

¶11 Father argues that the superior court erred by ordering that the modified support order take effect the first of the month following entry of the order, and that the court should instead have retroactively applied the modified support amount from when Mother stopped paying for childcare or when he filed his petition to modify. Father relies on A.R.S. § 25-320(B), which provides for retroactive child support from the date of the petition "[i]f child support has not been ordered by a child support order." But here Father sought modification after an initial child support order in 2013 (and a modification in 2015), so § 25-320 is inapposite. Instead, the proceeding was governed by the modification provisions of A.R.S. § 25-327.

¶12 Under § 25-327(A), child support modifications generally take effect on the first of the month following notice of the petition to modify, but the court has discretion to order that the change become effective on a later date "for good cause shown." The superior court here found good cause to begin payments the month after entry of the modification order to coincide with the beginning of the new equal parenting time plan, which was itself one variable on which the child support calculation was based. Because the circumstances underlying the new child support calculation did not take effect until after entry of the modification order, the court did not abuse its discretion by finding good cause to begin the new child support obligation at the same time.

II. Parenting Time.

¶13 Father argues that the court erred by failing to "remove[]" the designation of Mother as primary residential parent in light of the new equal parenting time plan. But the modification order does not include any such designation; instead, it properly states that the parents "share equal parenting time" on a 5/2/2/5 schedule. Accordingly, Father has not shown error in this regard.

III. Motion to Alter or Amend the Judgment.

¶14 Father contends that, for the same reasons argued on appeal, the superior court should have granted his motion to alter or amend the

judgment. Given our resolution of the other arguments presented, Father has not shown that the court erred by denying his post-trial motion.

CONCLUSION

¶15 Father seeks an award of his attorney's fees and costs on appeal under A.R.S. §§ 12-341 and 25-324. Because Father's appeal was not successful, and having considered the relevant criteria under § 25-324, we deny his request for fees and costs.

¶16 The superior court's modification ruling is affirmed.

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