

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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 Matter of:

NICHOLAS R. GLIMCHER, *Petitioner/Appellant*,

v.

APRIL E. GLIMCHER, *Respondent/Appellee*.

No. 1 CA-CV 19-0777 FC

FILED 12-22-2020

Appeal from the Superior Court in Maricopa County

No. FC 2015-052908

The Honorable Adam Driggs, Judge

AFFIRMED

COUNSEL

Joseph M. Huey PLC, Scottsdale
By Joseph M. Huey
Counsel for Petitioner/Appellant

Sandoval Law PLLC, Phoenix
By David J. Sandoval
Counsel for Respondent/Appellee

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MEMORANDUM DECISION

Presiding Judge Jennifer B. Campbell delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge Peter B. Swann joined.

CAMPBELL, Judge:

¶1 In a post-decree enforcement proceeding, Nicholas Glimcher (“Father”) requested a credit for amounts he paid to instructional aides for one of the parties’ children. The superior court denied his request and his subsequent motion to alter or amend that ruling. For the reasons stated below, we affirm.

BACKGROUND

¶2 Father and April Glimcher (“Mother”) have five children, one of whom (“B”) has special needs. In 2017, the superior court adopted the parties’ consent decree and property settlement agreement (“Agreement”), in which Father agreed to pay “100% of [B]’s therapy with any licensed or certified therapist, including his speech therapy; [B]’s school; [and] any aide needed for [B] in school (including CeCee, Ivana or any other individual to be agreed upon by the parties).” Apparently, Ivana was B’s aide when he was in preschool. Father also agreed to pay 80% of the children’s daycare expenses.

¶3 In January 2019, Mother moved to enforce these and other provisions in the Agreement. Mother alleged that Father reduced paying for B’s aides in September of 2018 after she filed an emergency motion for temporary orders. Father explained he stopped paying the aides when he learned the State provided B with an aide during school at no charge. Mother did not dispute that B’s public school provided an aide at no cost or that she told Father the privately-employed aides were working during school hours, when, in fact, they were providing care at Mother’s home after school and on weekends. Mother also claimed to have over \$80,000 in daycare/nanny expenses between February 2017 and January 2019, and Father had not paid his 80% share and owed her \$64,592.77.

¶4 The superior court denied Mother’s claim for daycare/nanny expenses because the evidence (Exhibit 46) showed these were actually babysitting-type charges not commonly considered daycare expenses and

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because she did not provide Father a copy of the original bill or proof of payment, as required by the Agreement. The court did not specifically address Father's request for a credit but denied all other relief not expressly granted. Father moved to alter or amend the judgment on the grounds that the court did not address his request for a credit. The court denied the motion without comment. Father timely appealed.

DISCUSSION

¶5 Father contends the superior court abused its discretion by denying his request for a \$43,000 credit for what he paid B's aides as a result of Mother's intentional misrepresentations. We review the court's ruling on a post-decree petition for relief for an abuse of discretion. *See McGovern v. McGovern*, 201 Ariz. 172, 175, ¶ 6 (App. 2001) (motion for reconsideration); *In re Marriage of Priessman*, 228 Ariz. 336, 338, ¶ 7 (App. 2011) (petition for modification). An abuse of discretion occurs when the record does not support the court's decision or when the court commits an error of law in the process of reaching a discretionary conclusion. *Hurd v. Hurd*, 223 Ariz. 48, 52, ¶ 19 (App. 2009).

¶6 Father argues the superior court abused its discretion by failing to directly address his request for a credit. Although the court did not specifically address Father's request, the court denied all relief not expressly granted which necessarily included his request for a credit. Father did not request findings of fact or conclusions of law under Arizona Rules of Family Law Procedure, ("Rule") 82. Therefore, the lack of express findings or conclusions does not amount to an abuse of discretion. We presume the court found every fact necessary to support the ruling if those findings are supported by the record and do not conflict with express findings. *See Elliott v. Elliott*, 165 Ariz. 128, 135 (App. 1990).

¶7 Mother admitted that she lied and told Father that one of the privately-employed aides provided services at B's school so he would pay the aide for services actually provided in Mother's home. Father contends, based on his testimony, that it is "undisputed" that he unnecessarily paid over \$72,000 for what turns out to have been home-based aides for B as a result of Mother's misrepresentations. Father, however, failed to provide any documentary evidence in the form of receipts, invoices, or emails in support of such contention, and his own testimony conflicts with his written filings. At the hearing, Father testified he paid the aides about \$76,000. Yet, his pretrial statement and motion to alter or amend the judgment only requested a \$43,000 credit. On appeal, Father again states, without explanation, that he paid \$72,000 but only seeks a \$43,000 credit.

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Father failed to provide any support for his claim other than pointing to Mother lying and causing him to make payments that were not required under the agreement. As with all claimed medical costs, the party claiming entitlement to reimbursement must provide documentation in support of the claimed amount, including proof that the charges have been satisfied. Rule 91.2(b). Father failed to do so. While we agree with Father, Mother acted in bad faith by lying, that does not automatically entitle the court to award any amount requested to remedy the misdeed.

¶8 In light of Father’s own inconsistencies, we cannot ascertain the actual amount paid—much less agree that the amount of the requested credit is undisputed. Further, there is nothing in the record to support an award of \$43,000. Given the lack of evidence to support Father’s claim and his inconsistent assertions, the superior court did not abuse its discretion in declining to give Father credit for his overpayment.¹

¶9 Next, Father tries to equate Mother’s lies to a fraud against the court discussed in *McNeil v. Hoskyns*, 236 Ariz. 173, 177, ¶¶ 17–19 (App. 2014). While we do not condone Mother’s lying and in fact find it reprehensible, she did not commit a fraud upon the court. Fraud upon the court occurs when a party “has committed ‘some intentional act or conduct . . . [that] has prevented the unsuccessful party from having a fair submission of the controversy.’” *Id.* at 176–77, ¶ 14 (quoting *Bates v. Bates*, 1 Ariz. App. 165, 169 (1965) (alteration in *McNeil*)).

¶10 Mother made false statements to Father, not the court, and admitted making the false statements while in court. The misrepresentations were related to a matter that Father contested, and Mother admitted providing the false information. *Id.* at 178, ¶ 23 (explaining a “false statement . . . about a matter in dispute rarely will constitute a fraud on the court”). Although Father may have paid for an aide outside B’s school time based on Mother’s false statements, the court properly denied his claim because he failed to provide evidence—testimonial, documentary or otherwise—to establish how much he overpaid. Without this evidence, the court could not determine with any

¹ In light of this resolution, we need not address Mother’s contention that the superior court properly denied Father’s request because Father was obligated to pay for B’s aides regardless of the time or place where they provided assistance.

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accuracy how much of a credit Father would be entitled to moving forward. We find no abuse of discretion.

¶11 Moving forward the parties should adhere to the agreement and provide the other documentation to verify the legitimacy of any service provided.

¶12 Both parties request an award of attorney's fees on appeal. Father cites A.R.S. § 25-324 and contends Mother's fraudulent conduct was unreasonable. Mother cites A.R.S. § 12-341, however this statute only enables a party to recover costs. In the exercise of our discretion and because we lack information regarding the parties' current financial resources, we decline to award attorneys' fees to either party on appeal.

CONCLUSION

¶13 We affirm the order denying Father's request for a credit and the denial of the motion to alter or amend that order. As the successful party on appeal, we award Mother her costs upon compliance with ARCAP 21. See A.R.S. § 12-342.



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