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: 06-17-2010
PHILIP G. URRY, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE THE MARRIAGE OF:	1 CA-CV 09-0623
SUSAN MARY MADISON,	DEPARTMENT A
Petitioner/Appellee,	**MEMORANDUM DECISION**
v.	
MARK ALAN MADISON,	Not for Publication – (Rule 28, Arizona Rules of Civil Appellate Procedure)
Respondent/Appellant.	

Appeal from the Superior Court in Maricopa County

Cause No. FN2008-050521

The Honorable Alfred M. Fenzel, Judge

AFFIRMED

Jaburg & Wilk, P.C. — Phoenix
By Kathi Mann Sandweiss
Roger L. Cohen
Attorneys for Appellee

Deloughery & Ruotolo, P.C. — Scottsdale
By Fred Ruotolo
Attorney for Appellant

B A R K E R, Judge

¶1 Mark Madison ("Husband") appeals from portions of the divorce decree dissolving his marriage to Susan Madison ("Wife"). For the following reasons, we affirm.

Facts and Procedural History[1]

¶2 Husband and Wife were married on November 6, 1993, and had no children. On November 24, 2007, Wife left the marital residence because she felt Husband was out of control. Wife filed a petition for dissolution of marriage without children on March 7, 2008. Wife felt harassed and consequently obtained a new car, address, bank account, and a new parking spot at her medical practice. Husband still sent wife "hundreds of e-mails, text messages and phone calls," and Wife requested a protective order from the court, which was served on April 24, 2008. On November 24, 2008, the court found Husband had committed an act of domestic violence within the last year and continued the protective order in full force and effect.

¶3 Wife is self-employed as a physician, specializing in sleep disorders, and Husband is self-employed as a photographer. Wife completed all of her education before the marriage and contributed all of her earnings during her residency, fellowship training, and her medical career to the marital community. Wife's salary was the chief source of income throughout the

[1] Additional pertinent facts will be introduced as necessary in the context of particular arguments.

parties' marriage. At the time of trial, Wife was forty-nine and Husband was fifty-two.

¶4 Husband filed a motion to continue the trial on January 27, 2009, alleging late disclosure of Wife's financial documents. The family court denied that motion and trial was held on February 2 and 6, 2009. Wife agreed that Husband was entitled to some spousal maintenance. The court awarded Husband $1500 in spousal maintenance for twelve months.

¶5 The family court divided the marital assets and debts and awarded Wife the Scottsdale residence, which it found had no equity. Husband received the California property with $78,000 in equity. Wife's inheritance of $306,496.27 from her grandmother was found to be community property and Husband received one-half. Wife was awarded her medical practice, and Husband was awarded his photography business and all related equipment. The family court ordered Husband and Wife to split any debt related to the lease of Husband's photography studio. Each party was ordered to bear their own attorneys' fees and costs.

¶6 Husband filed a motion for new trial, which was subsequently denied. The trial court entered a decree of dissolution on August 13, 2009. Husband timely filed a notice of appeal. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(B) (2003).

Discussion

1. Motion to Continue

¶7 Husband contends he was unduly prejudiced by the family court's denial of his motion to continue the trial date. The family court did not set forth its reasons for denying the motion in its minute entry, and Husband has not provided us with a transcript of that hearing. We review the grant or denial of a motion to continue for an abuse of discretion. *In re Maricopa County Superior Court No. MH2003-000240*, 206 Ariz. 367, 369, ¶ 10, 78 P.3d 1088, 1090 (App. 2003).

¶8 Husband argued in his motion to continue that because wife did not "give access to her financial information (1099s) until January 26, 2009 at 4:00 p.m.," Husband did not have an opportunity to depose Wife regarding this information. On appeal, he alleges that because he had insufficient time to review the financial documents his own exhibits were delivered late to the family court. In addition, Husband asserts that if he had been able to evaluate the records in more detail he could have illustrated to the family court justification of a higher and longer spousal maintenance award, relocation fees, and attorneys' fees and costs.

¶9 Maricopa County Local Rule of Practice 3.4 provides that "[w]hen an action has been set for trial, no trial continuance shall be granted except upon a finding of good

cause." The February 2, 2009 trial date was set on September 26, 2008. Husband knew that all depositions needed to be completed and all exhibits prepared in advance of the February 2 trial. By April 30, 2008, Wife had provided financial documentation to the certified public accountant jointly retained by the parties to prepare evaluation reports of Wife's medical practice and Husband's photography business. Husband does not contend that he did not have access to this documentation, which included Wife's federal income tax returns for tax years 2005 through an amended 2007 return, income documentation and historical income statements from 2003 through 2007, cash flow statements from 2003 through 2007, and any other documentation used by the accountant in his valuation of Wife's medical practice. All of this financial information and documentation would have proved useful in the deposition of Wife. This court has examined the 1099s provided on January 26 and fails to see how a deposition could not have occurred prior to receipt of these forms or why this caused Husband's exhibits to be filed late. Husband has also failed to demonstrate how, with this financial documentation available, the 1099s would have made any difference in illustrating to the family court justification of more spousal maintenance or relocation costs.

¶10 Accordingly, we cannot find that the family court abused its discretion in denying Husband's motion to continue.

2. Lost Exhibits

¶11 Husband asserts that he was unduly prejudiced by the family court staff's loss of his proposed exhibits. The exhibits were delivered on January 28, 2009 at 8:07 a.m., the day after they were due. No mention was made of the exhibits until the end of the first day of trial on February 2. At that time, the following dialogue took place:

> [HUSBAND'S COUNSEL]: And I'm sorry, we'd move to reconsider the exclusion of Husband's exhibits.
>
> THE COURT: At this point I haven't excluded anything.
>
> [HUSBAND'S COUNSEL]: Oh, okay.
>
> [HUSBAND'S COUNSEL]: Yeah, he's not -- we're good.
>
> THE COURT: At this point they're there.
>
> [HUSBAND'S COUNSEL]: For some reason they weren't listed on the exhibit list.
>
> THE COURT: All right. I think they were just filed this morning. I don't think there was time --
>
> [WIFE'S COUNSEL]: They didn't get them down here -- they should have had them this morning.
>
> THE COURT: I don't think any of the exhibits that are --
>
> [WIFE'S COUNSEL]: Your documents aren't here.
>
> [HUSBAND'S COUNSEL]: The judge had them on Wednesday morning.

> [WIFE'S COUNSEL]: Then they have just -- he was not aware of them.
>
> THE COURT: We'll deal with that Friday. We'll see what happens with it.

On February 6, before Husband took the stand, the following discussion took place regarding the exhibits:

> [HUSBAND'S COUNSEL]: One other preliminary matter just for the record. Hawkins EZ Messenger indicates that the exhibits were delivered at 8:06 or 8:07 something, the morning after the exhibits were due, and that would have been last Thursday. And --
>
> THE COURT: Okay. My staff's looking for them.
>
> [HUSBAND'S COUNSEL]: Okay.
>
> THE COURT: What I have is what I have.
>
> [HUSBAND'S COUNSEL]: Okay.
>
> THE COURT: All right.
>
> [WIFE'S COUNSEL]: Are we -- Your Honor, are we going to address if they try and introduce individual exhibits, are we going to address each one individually because I'm going to make the same objection on each one.
>
> THE COURT: I think we're going to --
>
> [WIFE'S COUNSEL]: So I don't know if we want to do that now or not.
>
> THE COURT: I think we're going to cross that bridge when we get to it. All right. Because I don't even know -- right now there's no exhibits in front of me. I don't have them.

¶12 Husband never objected to the trial going forward without his exhibits. In Husband's motion for new trial he raised the issue as prejudicial error. Errors not raised in the trial court cannot be raised for the first time on appeal. *Van Dever v. Sears, Roebuck & Co.*, 129 Ariz. 150, 151-52, 629 P.2d 566, 567-68 (App. 1981). "[P]ost-trial objection is too late to preserve on appeal an issue which the trial court has not had an effective opportunity to rule upon at trial." *Id.* at 152, 629 P.2d at 568.

¶13 Regardless, we find that Husband was not unduly prejudiced. The evidence shows that Husband offered and had admitted at least one exhibit and possibly two more exhibits on the first day of trial. The court allowed Husband's attorney to enter exhibit number three during the accountant's testimony, over objection by Wife's counsel, despite its being late and there being no disclosure. The court made it clear that it had not excluded anything and that it would deal with the exhibits on an individual basis. Despite this attitude of leniency, Husband did not offer another set of exhibits to the court or attempt to admit any other exhibits during testimony. In his opening brief Husband states that "[c]ounsel was not prepared with an additional set of exhibits to use at trial[] because counsel was unprepared for the possibility that the court staff would misplace an approximately eight inch stack of documents."

Considering that Husband had a full three and a half days in between the first and second days of trial and knew at the end of the first day that there was a mix-up with the exhibits, there is no prejudicial error.

3. Spousal Maintenance

¶14 Husband appeals the amount and duration of spousal maintenance awarded to him. The trial judge is in the best position to determine a reasonable amount and the duration of spousal maintenance, and we will not interfere absent an abuse of discretion. *Cullum v. Cullum*, 215 Ariz. 352, 354, ¶ 9, 160 P.3d 231, 233 (App. 2007); *In re Marriage of Hinkston*, 133 Ariz. 592, 593, 653 P.2d 49, 50 (App. 1982). "We view the evidence in the light most favorable to the superior court order and will affirm the judgment if there is any reasonable evidence to support it." *Cullum*, 215 Ariz. at 354, ¶ 9, 160 P.3d at 233.

¶15 In order for the court to award spousal maintenance the requirements of A.R.S. § 25-319(A) must be met during the dissolution hearing. *In re Marriage of Hinkston*, 133 Ariz. at 594, 653 P.2d at 51. Wife admits that Husband was entitled to some spousal maintenance. Her agreement that Husband is entitled to some maintenance obviates the need to consider whether he qualifies for such support under § 25-319(A) because his eligibility is not at issue.

¶16 In reviewing the amount and duration of the award of spousal maintenance we determine whether the trial court properly considered the factors listed in A.R.S. § 25-319(B) (2007).[2] *Thomas v. Thomas*, 142 Ariz. 386, 390, 690 P.2d 105, 109

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[2] Pursuant to § 25-319(B), factors properly considered by the court include:

> 1. The standard of living established during the marriage.
>
> 2. The duration of the marriage.
>
> 3. The age, employment history, earning ability and physical and emotional condition of the spouse seeking maintenance.
>
> 4. The ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance.
>
> 5. The comparative financial resources of the spouses, including their comparative earning abilities in the labor market.
>
> 6. The contribution of the spouse seeking maintenance to the earning ability of the other spouse.
>
> 7. The extent to which the spouse seeking maintenance has reduced that spouse's income or career opportunities for the benefit of the other spouse.
>
> 8. The ability of both parties after the dissolution to contribute to the future educational costs of their mutual children.
>
> 9. The financial resources of the party seeking maintenance, including marital property apportioned to that spouse, and that spouse's ability to meet that spouse's own needs independently.

(App. 1984). Although the court must consider all the statutory factors, *Leathers v. Leathers*, 216 Ariz. 374, 377, ¶ 10, 166 P.3d 929, 932 (App. 2007), it is required to apply only those factors relevant to the case and on which the parties have presented evidence. *Cullum*, 215 Ariz. at 355, ¶ 15, 160 P.3d at 234 (citation omitted); *Rainwater v. Rainwater*, 177 Ariz. 500, 502, 869 P.2d 176, 178 (App. 1993). Here, the family court considered and made detailed findings regarding the relevant factors set forth in § 25-319(B) on which evidence was presented. Further, we presume the trial court fully considered

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> 10. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and whether such education or training is readily available.
>
> 11. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.
>
> 12. The cost for the spouse who is seeking maintenance to obtain health insurance and the reduction in the cost of health insurance for the spouse from whom maintenance is sought if the spouse from whom maintenance is sought is able to convert family health insurance to employee health insurance after the marriage is dissolved.
>
> 13. All actual damages and judgments from conduct that results in criminal conviction of either spouse in which the other spouse or child was the victim.

A.R.S. § 25-319(B).

all evidence prior to issuing its decision. *Fuentes v. Fuentes*, 209 Ariz. 51, 55, ¶ 18, 97 P.3d 876, 880 (App. 2004).

¶17 Husband argues the family court failed to recognize his financial needs and his limited income potential. The record, however, shows otherwise. At the end of trial, the court delineated its thoughts on the factors considered for spousal maintenance. The family court found the parties' standard of living was modest; did not think either party had aided the earning ability, income, or career opportunities of the other party; there were no education costs for mutual children; and the marital property was apportioned "to meet that spouse's own needs independently," estimating a $600 benefit to Husband a month in receiving the California home. The family court also considered that if "the Court rules in favor of Husband with respect to the trust fund [from Wife's grandmother], then he will be getting approximately a little less than $80,000 of that trust money." Time necessary to acquire sufficient education and training was considered a moot issue by the court. The court determined that Husband had a trade that would allow him to be self-employed or employed by someone else.

¶18 The family court heard evidence and made a determination based upon substantial supporting evidence in light of the relevant statutory factors. Likewise, after

reviewing the record and considering the § 25-319(B) factors, we cannot say the family court erred in the amount and duration of spousal maintenance awarded to Husband. The parties had a modest standard of living and no children during their fourteen-year marriage. They ate out and travelled infrequently and never took extravagant vacations. Husband and Wife did most of their own maintenance on the houses, and Husband described them as the "Beverly Hillbillies" of the neighborhood. Both parties entered the marriage already working in their chosen professions and nothing has prevented them from working on their careers. There is no evidence that either party contributed substantially to the success of the other's business beyond the support and various daily tasks that one does in a marriage relationship.

¶19 Furthermore, Wife completed all of her education before marrying Husband, and he did not contribute anything towards the cost of her education. No community funds were used to establish Wife's medical practice. The certified public accountant hired by both parties testified that Wife's practice was not a lucrative specialty and he "was surprised at how low the compensation level actually was." Under his analysis, the proper amount of income attributable to Wife for purposes of calculating spousal maintenance was $145,000. Using the historical cost of the assets in the photography business with book value and accelerated depreciation, the accountant valued

the photography business at $22,817. Although Husband argued the value of his business was less, Husband's late and non-disclosure of the assets made it impossible for the accountant to give a definitive opinion. Husband testified that his photography business in California had been profitable.

¶20 After their separation, Wife did not receive any of the rental income from the Riverside property, but she continued to make mortgage payments on the Scottsdale home even though only Husband was living there. Wife also paid $2200 in rent because she was not living at the Scottsdale home. She received deliveries of envelopes from Husband at her medical practice that were full of community bills that she paid.

¶21 The principal objective of spousal maintenance is a transition toward independence. *Rainwater*, 177 Ariz. at 503, 869 P.2d at 179; *see also Gutierrez v. Gutierrez*, 193 Ariz. 343, 349, ¶ 24, 972 P.2d 676, 682 (App. 1998) (holding one purpose of spousal maintenance is "to aid one's ex-spouse for a *limited time* period while he or she achieves financial independence" (emphasis added)). Husband did not demonstrate an impaired or disabled earning capacity beyond his own admitted disinterest in improving his options through further education or training and defeatist attitude toward the possibility of obtaining work. He expressed no interest in going back to school stating that he "did not do well in school" and that "school's very tough for

me." Husband agreed that he could make at least $16.97 per hour, but expressed discouragement about the job market and stated that he "can't get a job doing anything. Everybody's losing their jobs, you look at websites and the TV everyday, there's -- everybody's laying off. . . . nobody's working." He had already received an offer for $8 per hour despite only searching online. When asked if he could open another photography studio he stated "it always takes at least ten years" and that it would be "[p]retty hard at 52 years old." Husband's lack of motivation to become self-sufficient is not a satisfactory reason to find that the amount and duration of the family court's award of spousal maintenance is an abuse of discretion.

¶22 Because substantial evidence supports the court's decision, we affirm the amount and duration of the spousal maintenance award.

4. Value of the Scottsdale Marital Residence

¶23 Husband argues that the court erred in using speculative costs of sale in determining the value of the Scottsdale marital residence. The division of marital property is within the sound discretion of the trial court and will not be overturned absent a clear abuse of discretion. *Gutierrez*, 193 Ariz. at 346, ¶ 5, 972 P.2d at 679; *see also Wayt v. Wayt*, 123 Ariz. 444, 446, 600 P.2d 748, 750 (1979). "An abuse of

discretion may occur when a trial court commits an error of law in the process of exercising its discretion." *Kohler v. Kohler*, 211 Ariz. 106, 107, ¶ 2, 118 P.3d 621, 622 (App. 2005).

¶24 The Scottsdale home was encumbered by liens in the aggregate amount of approximately $836,000. A licensed Arizona realtor testified that the house should be priced between $900,000 and about $940,000. The family court determined that the home had no equity because if the house sold for $900,000 and 7% went to closing costs and the realtor's commission then "that leaves a net of $837,000."

¶25 "In the absence of evidence that a sale is likely to occur in the near future, it is speculative to allow a deduction of the costs of a hypothetical sale from the share of the equity awarded to the spouse not receiving the property." *Id.* at ¶ 6. If the anticipated costs are not expected to be incurred in the near future then it is "generally [] inequitable to reduce one party's share of the community property." *Id.*

¶26 Here, the realtor testified that he had "been selected as the realtor to sell the [Scottsdale] residence." Wife testified that she wanted the house awarded to her because "[Husband] can't afford it to be sold, so that leaves me." Throughout the trial the Scottsdale home was discussed in connection with what it would take to sell the house. We need not decide whether, under an abuse of discretion standard, this

provides reasonable evidence that a sale was likely to occur in the near future. Even if a sale was not likely to occur imminently, as Husband contends, the realtor's testimony at trial supports the family court's determination that the house has no equity. The realtor gave the following testimony:

> Q. Let's assume that Husband remains in the Scottsdale residence and not [sic] renovations whatsoever are made to the house, meaning it goes on the market as is. Should that be the case, is it likely that the house would be sold for a price that might not be sufficient to repay the debt secured by the house?
>
> A. Quite likely.
>
> Q. Okay.
>
> A. Very, very likely.

¶27 Based on the foregoing testimony, the family court did not abuse its discretion in finding that the Scottsdale home did not have any equity. Therefore, there is no error on this ground.

5. Moving Expenses

¶28 Husband claims he is entitled to moving expenses to relocate to California. He asserts that the failure of the trial court to address this issue was an error and an abuse of discretion. At the beginning of trial, Husband asked the court "if we can discuss at a different time how he's going to fund that move. That is an issue." The issue was never brought up again. At the end of trial the court asked if there was

"[a]nything else," but Husband did not say anything or raise the issue of relocation costs.

¶29 On appeal, Husband cites no relevant authority, legal theory, or justification as required by Arizona Rule of Civil Appellate Procedure 13(a)(6). Thus, we do not consider this issue. *See State Farm Mutual Automobile Ins. Co. v. Novak,* 167 Ariz. 363, 370, 807 P.2d 531, 538 (App. 1990).

6. $60,000 delivered to Wife

¶30 Husband asserts that the court's failure to make reference to the $60,000 he gave to Wife in a brown paper bag in January of 2008 was error under A.R.S. § 25-318(A), which requires the family court to "divide the community, joint tenancy and other property held in common equitably, though not necessarily in kind." A.R.S. § 25-318(A). After Husband and Wife separated, Husband appeared at Wife's medical practice uninvited and handed her a "brown bag" and told her "don't let it out of your sight" because "there's $60,000 in cash in there."

¶31 Wife gave substantial testimony that Husband controlled the money in their marriage, including the money from her medical practice. Husband confirmed this in his testimony. Husband substantially dealt with and deposited the income from the medical practice during the marriage. Husband had been putting money in a "slush" fund and told Wife there was "well

over $70,000." Wife did not know where the fund was or the source of the money. After they separated, Wife would receive deliveries of envelopes that were full of bills that she paid. Wife testified that she spent the $60,000 on the two mortgages on the Scottsdale home, "the Riverside house and truck payments, the state and federal tax last year, the property taxes on the two houses, the utilities for the Arizona [] house that [Husband's] living in, HOA fees, well accounted for, it's more than 60,000."

¶32 Accordingly, because there was substantial testimony that the money was used for community expenses and that there was nothing left for the trial court to divide or distribute, we do not find that it was error for the family court to fail to award the $60,000.

7. Motion for New Trial

¶33 Husband argues the family court erred when it denied his motion for new trial. Trial courts have broad discretion in their decision to grant or deny a motion for new trial, and absent an abuse of that discretion we will not overturn trial court decisions. *Pullen v. Pullen*, 223 Ariz. 293, 295, ¶ 10, 222 P.3d 909, 911 (App. 2009) (citation omitted). Husband holds the burden to show the trial court abused its discretion. *Id.* Under Arizona Rule of Family Law Procedure 83(a), a party may be entitled to a new trial on the grounds of the prevailing party's

misconduct, erroneously admitted evidence, new evidence, or a judgment not justified by the evidence.

¶34 The family court did not state a reason for the denial of Husband's motion for new trial. Because the same issues in the motion for new trial are those raised on appeal, Husband incorporates his arguments on appeal as grounds to appeal the court's denial of his motion for new trial. As we have addressed each of those arguments and affirmed the court's rulings we find no abuse of discretion in the denial of Husband's motion for new trial.

8. Attorneys' Fees

¶35 Husband contends the family court abused its discretion in failing to award him some legal fees and costs pursuant to A.R.S. § 25-324(A) (Supp. 2009). The family court has discretion under this statute to order one party to compensate the other for costs and expenses "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings." A.R.S. § 25-324(A). Expenses may include attorneys' fees. *Id.* § 25-324(B). We review the trial court's ruling on attorneys' fees for an abuse of discretion. *In re Marriage of Robinson & Thiel*, 201 Ariz. 328, 335, ¶ 20, 35 P.3d 89, 96 (App. 2001).

¶36 It is an abuse of discretion to deny attorneys' fees to the party who has substantially fewer resources, unless those resources are clearly ample to pay the fees. *See Rowe v. Rowe*, 154 Ariz. 616, 622, 744 P.2d 717, 723 (App. 1987). We have found an abuse of discretion where there is great financial disparity in the income of the parties. In *Burnette v. Bender*, 184 Ariz. 301, 306, 908 P.2d 1086, 1091 (App. 1995), we found an abuse of discretion where the husband's income was three times that of the wife's and the husband had "far more financial resources."

¶37 However, we have also held that it is not an abuse of discretion to deny the party with less income and financial resources an award of fees where that party has sufficient assets to pay his or her own fees. *In re Marriage of Robinson & Thiel*, 201 Ariz. at 335, ¶¶ 21-22, 35 P.3d at 96. Here, other than arguing that the disparity in income and the late delivery of Wife's financial information supports an award of his attorneys' fees, Husband has not directed us to evidence that he is unable to pay his attorneys' fees. *See In re Marriage of Williams*, 219 Ariz. 546, 550, ¶ 15, 200 P.3d 1043, 1047 (App. 2008) (in considering financial resources, the court "look[s] to a number of factors, none of which alone is dispositive"). The family court here stated that it considered the factors set forth in § 25-324, but did not elaborate further on its

reasoning for denying husband attorneys' fees. Nevertheless, the record supports the court's decision in not awarding Husband his fees and costs. The court found that Wife's inheritance from her grandmother had been comingled and had become community property and that Husband was entitled to "one-half of the amount therein." Husband received approximately $80,000 from this asset. In addition, Husband received the California property, which had $78,000 in equity and provides Husband with rental income of more than $600 a month. Because Husband has sufficient assets to pay his own attorneys' fees, we cannot say the court abused its discretion in denying Husband's request for fees. *See In re Marriage of Robinson & Thiel*, 201 Ariz. at 335, ¶¶ 21-22, 35 P.3d at 96.

Conclusion

¶38 For the foregoing reasons, we affirm the family court's ruling. Both parties request an award of attorneys' fees on appeal pursuant to A.R.S. § 25-324. In our discretion, we deny both requests. Each party is to bear his or her own attorneys' fees on appeal. Pursuant to A.R.S. § 12-341 (2003), we award Wife, as the successful party on appeal, costs on appeal upon compliance with Arizona Rule of Civil Appellate Procedure 21.

/s/
____
DANIEL A. BARKER, Judge

CONCURRING:

/s/
____
PATRICIA A. OROZCO, Presiding Judge

/s/
____
LAWRENCE F. WINTHROP, Judge