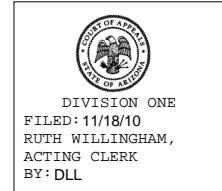


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);  
Ariz.R.Crim.P. 31.24



**IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE**

IN RE THE MARRIAGE OF: ) 1 CA-CV 09-0703  
)  
ROBERT JOHN KRETKOWSKI, ) DEPARTMENT D  
)  
Petitioner/Appellee, ) **MEMORANDUM DECISION**  
) (Not for Publication -  
v. ) Rule 28, Arizona Rules  
) of Civil Appellate  
SHARI MARIE HEIM, ) Procedure)  
)  
Respondent/Appellant. )  
)

---

Appeal from the Superior Court in Maricopa County

Cause No. FC 2007-093005

The Honorable David B. Gass, Judge

**AFFIRMED**

---

Law Office of Louis Lombardo, PC  
by Louis K. Lombardo  
Attorneys for Petitioner/Appellee

Tempe

Cates, Hanson, Sargeant & Schoenau, PLC  
by William P. Sargeant III  
Attorneys for Respondent/Appellant

Phoenix

---

**I R V I N E**, Judge

¶1 Shari Marie Heim ("Heim") appeals the judgment of the family court denying her motion for new trial and her motion for

reconsideration. For the reasons that follow, we affirm the judgment of the family court.

#### **FACTS AND PROCEDURAL HISTORY**

¶2 Robert John Kretkowski ("Kretkowski") and Heim's marriage was dissolved on August 21, 2008. The parties incorporated a property settlement agreement ("PSA") into their consent decree. In regards to the former shared residence (the "Property"), the PSA provides:

The parties agree that [Heim] shall refinance said property and legally remove [Kretkowski's] name from any loan, lien, mortgage or other encumbrance on said property within sixty (60) days from entry of a Decree of Dissolution of Marriage, and [Heim] shall pay to [Kretkowski] \$125,000 for his community interest in said property within that sixty (60) day period.

¶3 The decree provided that the PSA was "enforceable at either party's option as a separate contract and/or by all remedies available for enforcement of a judgment, including contempt." Heim did not refinance the Property within sixty days nor did she pay Kretkowski \$125,000. As a result, Kretkowski filed a petition to enforce. The family court held a hearing on the petition to enforce. Heim testified that because of the unwillingness of the banks to lend and "the depressed real estate market values," she had been unable to refinance the Property.

¶4 The court found that Heim was in violation of the PSA. It ordered that Heim refinance the Property within a specified time and pay Kretkowski \$125,000. If Heim did not comply, the court ordered that the Property should be transferred to Kretkowski as his sole and separate property. Kretkowski requested his attorneys' fees, which the family court awarded "because Ms. Heim ha[d] been unreasonable." Heim filed a motion for clarification, reconsideration and new trial. The family court granted Heim's motion for clarification,<sup>1</sup> but denied her motion for reconsideration and new trial. Heim timely appealed.

#### DISCUSSION

¶5 Heim argues that the family court (1) exceeded its authority because it modified the terms of the PSA; (2) erred when it provided a remedy that Kretkowski did not specifically ask for; and (3) abused its discretion when it awarded Kretkowski attorneys' fees. Therefore, she contends, the family court erred in denying her motion for new trial and motion for reconsideration.

¶6 We review the denial of motions for new trial and reconsideration for an abuse of discretion. *Pullen v. Pullen*, 223 Ariz. 293, 296, ¶ 10, 222 P.3d 909, 912 (App. 2009) (motion

---

<sup>1</sup> The family court clarified that if Heim transferred the Property to Kretkowski, she would be relieved of her obligations to refinance the residence and pay Kretkowski \$125,000.

for new trial); *McGovern v. McGovern*, 201 Ariz. 172, 175, ¶ 6, 33 P.3d 506, 509 (App. 2001) (motion for reconsideration).

***Enforcement of the PSA***

¶7 Heim contends that the family court erred when it ordered her to transfer the Property to Kretkowski as his sole and separate property if she did not refinance and provide him with \$125,000. Specifically, Heim argues that the order exceeded the family court's power because "it ordered her to do something which the PSA did not require her to do or provide for."

¶8 Family courts have the authority to approve and enforce property settlement agreements. See *Sharp v. Sharp*, 179 Ariz. 205, 208, 877 P.2d 304, 307 (App. 1994). Additionally, "the trial court is obliged to achieve a fair and equitable distribution of the property and is 'not foreclosed from doing so by the parties' separation and property settlement agreement.'" *Id.* at 210, 877 P.2d at 309 (quoting *Wick v. Wick*, 107 Ariz. 382, 385, 489 P.2d 19, 22 (1971)). Arizona Revised Statutes ("A.R.S.") section 25-317(E) (2007) provides that terms of a property settlement agreement "are enforceable by all remedies available for enforcement of a judgment, including contempt."

¶9 The family court ordered Heim to fulfill her obligations under the PSA; Heim was required to refinance the Property and provide Kretkowski with \$125,000 from the proceeds.

If Heim failed to do so, the court ordered her to transfer the Property to Kretkowski as his sole and separate property. The hearing on Kretkowski's petition was the equivalent of an enforcement action of the parties' PSA. The PSA specifically provided that its provisions were enforceable at either Kretkowski or Heim's option as a separate contract and/or by all remedies available for enforcement of a judgment. Additionally, the family court was not modifying the parties' PSA, but instead using a mechanism to enforce its provisions. See A.R.S. § 25-317(E). Heim testified that the appraisal value she received for the Property was in the range of \$194,000. She also testified that the parties owed approximately \$100,000 on their mortgage. This would result in equity of \$94,000. Under these circumstances, Kretkowski will actually receive less than the \$125,000 that he was due under the PSA. Because the court was enforcing the parties' PSA and did not provide Kretkowski with anything more than what he was due, we find no error.

¶10 Heim also argues that the family court erred because neither party specifically requested that Kretkowski get the Property if Heim did not comply with the provisions of the PSA. Heim provides no legal authority to support this argument. A party must present significant arguments, set forth his or her position on the issues raised, and include citations to relevant authorities, statutes, and portions of the record. See ARCAP

13(a)(6). The failure to present an argument in this manner usually constitutes abandonment and waiver of that issue. See *Cullum v. Cullum*, 215 Ariz. 352, 355 n.5, ¶ 14, 160 P.3d 231, 234 n.5 (App. 2007) (stating that appellate courts "will not consider arguments posited without authority.")

¶11 Even if we were to consider Heim's argument, it would fail. In his petition to enforce, Kretkowski requested the money he was owed under the PSA, his attorneys' fees and that Heim be held in contempt. Kretkowski also requested "other and further relief as the Court may deem just and proper." Although Kretkowski did not specifically ask for the remedy the family court provided, the court provided relief that it deemed just and proper - enforcement of the terms of the PSA or, in the alternative, transferring the Property to Kretkowski. As referenced above, *supra* ¶ 9, the family court had the discretion to order the transfer. We find no error.

***Attorneys' fees in the family court***

¶12 Heim next argues that the family court abused its discretion when it awarded Kretkowski his attorneys' fees because the court (1) did not state a reason for the award, and (2) did not have jurisdiction to enter the award.<sup>2</sup> Again, Heim

---

<sup>2</sup> Although Heim asserts that the fees were "imposed as a sanction," the record states that the family court awarded Kretkowski his fees pursuant to A.R.S. § 25-324 (Supp. 2010).

provides no legal authority to support her argument. See *Cullum*, 215 Ariz. at 355 n.5, ¶ 14, 160 P.3d at 234 n.5. Heim also failed to file a notice of appeal from the attorneys' fee award. The court did not enter a final fee order until after Heim filed her notice of appeal. "[P]rior judgments which adjudicate some but not all claims in a given" action are not final and appealable until "entry of the judgment entered last in time-the judgment which effectively terminates all issues remaining in the litigation." *Hill v. City of Phoenix*, 193 Ariz. 570, 574, ¶ 16, 975 P.2d 700, 704 (1999). Because the family court had not entered a final order as to the amount of Kretkowski's attorneys' fees, all issues had not been finalized, and Heim's notice of appeal was premature. Although Heim filed her notice of appeal prematurely, we nonetheless deem it effective pursuant to *Barassi v. Matison*, 130 Ariz. 418, 421-22, 636 P.2d 1200, 1203-04 (1981).

¶13 In any event, her argument fails. The family court may award attorneys' fees, "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). On appeal, we review a family court's decision as to whether to award attorneys' fees for an abuse of discretion, recognizing that the family court had the opportunity to observe the conduct of the parties and review

their financial records. *In re Marriage of Williams*, 219 Ariz. 546, 548, ¶ 8, 200 P.3d 1043, 1045 (App. 2008); *Granville v. Dodge*, 195 Ariz. 119, 131, ¶ 56, 985 P.2d 604, 616 (App. 1999).

¶14 The family court stated it was granting fees because Heim had been "unreasonable." The family court heard testimony that, nearly one year after entry of the decree, Heim had neither refinanced the Property nor had she paid Kretkowski what he was due from the Property pursuant to the PSA. Heim provided no evidence to show she had been rejected for refinancing. The family court also heard testimony that Heim was awarded other assets in the consent decree that may have enabled her to pay Kretkowski what he was owed. Accordingly, the family court did not abuse its discretion in awarding Kretkowski his attorneys' fees.

¶15 Heim also contends the family court did not have jurisdiction to enter an attorneys' fees award because she had already filed her notice of appeal prior to the entry of the attorneys' fees order. Although the family court's final order awarding Kretkowski his attorneys' fees was entered after Heim filed her notice of appeal, the family court had jurisdiction to enter the order. Rule 78(B) of the Arizona Rules of Family Law Procedure provides a court with discretion to treat a claim for attorneys' fees as a separate claim in the context of a "related judgment regarding the merits of a cause." The State Bar



Committee Notes to the 1999 amendments of Arizona Rule of Procedure 54(b), predecessor to Rule 78(B), explains that a "trial court will retain jurisdiction to address the attorneys' fees issue after the appeal of a Rule 54(b) certified judgment on the merits." Accordingly, the family court retained jurisdiction over the matter to enter an order awarding Kretkowski attorneys' fees after Heim filed her notice of appeal.

***Attorneys' fees on appeal***

¶16 Both parties request an award of attorneys' fees on appeal. Heim cites no statutory authority for her request so we deny it. *See Haynes v. Syntek Fin. Corp.*, 184 Ariz. 332, 341, 909 P.2d 399, 408 (App. 1995) (without substantive authority, attorneys' fees award will be denied). Kretkowski requests attorneys' fees pursuant to A.R.S. § 25-324. In an exercise of our discretion, we decline to award Kretkowski his attorneys' fees. As the prevailing party on appeal, however, Kretkowski is entitled to recover his costs on appeal pursuant to A.R.S. § 12-341 (2003). We award him those costs upon his compliance with Arizona Rule of Civil Appellate Procedure 21.

