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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



DIVISION ONE
FILED: 06/09/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

STATE OF ARIZONA ex rel. ARIZONA
DEPARTMENT OF ECONOMIC SECURITY
(AMANDA V. ROBINSON),

1 CA-CV 10-0127

Petitioners/Appellees,

DEPARTMENT E

v.

MEMORANDUM DECISION
(Not for Publication -
Rule 28, Arizona Rules
of Civil Appellate
Procedure)

ROBERT L. ROBINSON,

Respondent/Appellant.

Appeal from the Superior Court in Maricopa County

Cause No. DR1998-002081

The Honorable Mina E. Mendez, Commissioner

AFFIRMED

Thomas C. Horne, Attorney General
by Carol A. Salvati, Assistant Attorney General
Attorneys for Petitioners/Appellees Phoenix

Amanda Robinson-Goodhope
Petitioner/Appellee Pro per Scottsdale

Robert Robinson
Respondent/Appellant Pro per Phoenix

I R V I N E, Judge

¶1 Robert L. Robinson ("Father") appeals the family court's denial of his petition to modify his child support

payments and its contempt order. For the reasons that follow, we affirm the judgment of the family court.

FACTS AND PROCEDURAL HISTORY

¶2 We view the evidence in the light most favorable to sustaining the family court's findings. *Gutierrez v. Gutierrez*, 193 Ariz. 343, 346, ¶ 5, 972 P.2d 676, 679 (App. 1998). Amanda V. Robinson ("Mother") and Father's marriage was dissolved on February 23, 2000. They are the parents of three children, one of whom is still a minor. After the divorce, Father was required to pay both spousal maintenance and child support.¹ Father has failed to make consistent and full payments, which has resulted in numerous findings of contempt against him and a large arrears balance for both his child support and spousal maintenance obligations. Father has successfully petitioned to modify his child support obligation previously. The family court, however, noted at one point that "financial discrepancies and the unreliability of [Father's] financial disclosures have been a hallmark of this litigation almost from its commencement."

¶3 In January 2008, Father petitioned to modify his child support obligation. In its order granting Father's petition to modify, the family court noted that Father had structured his pool business as "a ruse to avoid creditors," and was "not

¹ Mother has since remarried, and Father is no longer obligated to provide Mother with monthly spousal maintenance.

working as hard as he could because he perceives that any additional money earned would only go to his creditors." The court ruled that Father could afford the lowered child support amount of \$495. The family court stated that Father's bank statements showed expenses such as golfing, a fitness club membership, restaurants and a charitable event. It stated, "Although there is nothing wrong with spending money on such things, there is when it comes at the expense of one's child support obligation."

¶4 The court also found Father in contempt for failing to comply with his child support obligation; Father owed over \$100,000 in child support and spousal maintenance arrears. As a result, Father was ordered to pay Mother \$5000 in arrears or the court would issue a child support arrest warrant with a \$10,000 purge amount.² Further, the court ordered Father to pay \$205 per month in child support arrears. The court stated: "If Father fails to pay this obligation, or unilaterally chooses his own amount to pay, the court *will issue another child support arrest warrant* with another \$10,000 purge." (Emphasis added.)

¶5 The current dispute arises from Father's April 2, 2009 petition to modify child support. On November 25, 2009, the family court held a hearing on Father's petition to modify, the

² Father timely paid the \$5000 to Mother.

State's petition to enforce and also its petition for contempt. At the hearing, Father testified that although his monthly income had decreased due to a loss in customers, his monthly living expenses were "[z]ero" because his fiancé paid for them. When asked specifically by his attorney what income he wanted the court to use in its calculation for child support, Father responded "I personally would say about \$1,500 a month."³ After a break to confer with his attorney, Father testified that he "was confused" by his attorney's question, and that his net income was only about \$1100 or \$1200 per month. The court warned Father that it found his "answers to be misleading and evasive, and that's going to weigh heavily in my mind when I have to decide how credible all of your testimony has been." The family court took the matter under advisement after hearing testimony from both parties and considering exhibits presented.

¶16 On December 7, 2009, the family court filed its order denying Father's petition to modify child support. The court found that Father "is in the habit of intentionally running his living expenses through his significant other . . . to avoid an accurate determination of Father's income for purposes of

³ The State pointed out that if the family court used Father's requested income of \$1500 and kept Mother's income at the same level attributed to her at the January 2008 hearing, Father's monthly payment would be \$480; \$15 less than what he was paying at the time of his request for modification.

calculating child support and to avoid making consistent child support payments." The family court's ruling stated "Father presented no credible evidence which would support a finding that Father should be attributed less income than was attributed to him" in the prior modification proceedings in January 2008. The court did not find a substantial or continuing change in the parties' income from the January 2008 proceedings. Therefore, the court attributed \$2200 monthly income to Father and \$2150 monthly income to Mother - the income attributed to each party during the January 2008 proceedings.

¶7 The court did find a substantial and continuing change in circumstances in regards to: (1) the increased cost of health insurance for one of Mother and Father's children, (2) the amount of parenting time Father was exercising, and (3) that Mother was entitled to credit for another biological child living in her household. As a result, Father's child support payment increased from \$495 to \$641 per month. The family court found that Father "willfully failed to make child support payments despite his ability to do so." Citing the family court's January 2008 order, noting Father would be held in contempt for failure to pay child support arrearages, the court held Father in contempt. Father timely appealed.

DISCUSSION⁴

Child support modification

¶8 Father argues his bank statements and his testimony show a substantial change in income and therefore, his request for modification of his child support obligation should have been granted. Orders for child support may be modified only upon a showing of a substantial and continuing change in circumstances. Ariz. Rev. Stat. ("A.R.S.") §§ 25-327 (A) (2007), -503(E) (Supp. 2010); *State ex rel. Dep't of Econ. Sec. v. McEvoy*, 191 Ariz. 350, 352, ¶ 7, 955 P.2d 988, 990 (App. 1998). The party requesting the spousal maintenance modification has "the burden of establishing changed circumstances with competent evidence." *Jenkins v. Jenkins*, 215 Ariz. 35, 39, ¶ 16, 156 P.3d 1140, 1144 (App. 2007). Whether a change in circumstances is sufficient to warrant a modification of maintenance or support is within the sound discretion of the family court and will not be disturbed on appeal absent an abuse of discretion. *Id.* at 37, ¶ 8, 156 P.3d at 1142. The family court abuses its discretion if

⁴ As a preliminary matter, we note that Father fails to cite either the record or any legal authority in his opening brief. An opening brief must contain arguments supported by citations to the record and legal authority. See ARCAP 13(a)(6) (opening brief must contain argument supported by citations to the record and legal authority). Although we could treat Father's issues presented on appeal as waived, we decline to do so on this record. See *State Farm Mut. Auto. Ins. Co. v. Novak*, 167 Ariz. 363, 370, 807 P.2d 531, 538 (App. 1990) (failure to properly develop an argument on appeal results in waiver).

the record, when viewed in the light most favorable to upholding the family court, lacks competent evidence to support the decision. *Little v. Little*, 193 Ariz. 518, 520, ¶ 5, 975 P.2d 108, 110 (1999).

¶9 Father cleans and repairs swimming pools, and had approximately twenty-five or twenty-six customers at the time of the January 2008 modification proceedings. At the time of the 2009 modification proceedings, he testified he had eleven or twelve customers. Despite the drop in customers, Father also noted that he had no living expenses, his health insurance was paid for, and he had a car to drive; all provided by his fiancé.

¶10 Father testified that he had a reduction in clients as a result of the downturn in the economy, but he did not bring a list of his clients to document such a decrease. When asked by the court for documentation of his income evidenced by tax returns, Father stated that he did not file tax returns for the prior year, noting that he did not have the money to file them. Instead, Father provided bank statements detailing his personal and business account activity from August 2007 through August 2009.⁵ The family court then asked, "So the only evidence that you have to present today of your income is your testimony and the bank statements?" Father noted that he also had an affidavit

⁵ Father had previously been ordered by the family court to deposit all his income into one account.

of financial information ("AFI"). Upon review, the court pointed out that Father had listed \$1400 as his gross income on the AFI despite the fact that Father testified the court should use \$1500 as his gross income and then later corrected his testimony to \$1100 or \$1200 per month. Father never filed an amended or updated AFI; to resolve the discrepancy in his gross income amounts, Father explained he had lost clients since the time of filing that particular AFI.

¶11 As the party requesting the modification, Father was required to show a substantial and continuing change in his circumstances to warrant a modification of his child support obligation. Father's contention that his income was reduced based on a loss of clients is largely unsupported by the record. Based on the evidence and testimony presented to the family court, it did not err in denying Father's petition.

¶12 Father also argues that the family court "believe[d] [M]other when she testified that her husband[']s income" was reduced as a result of the economy, but that it did not believe that Father's income had decreased as a result of the economy "in the same state and the same planet." Mother's current husband's income is not a factor that is considered in the calculation of Father's child support obligation or Mother's income. As far as the record reveals, there is no evidence that

the family court considered Mother's husband's income in the calculation of Father's child support obligation.

¶13 Father also argues that his medical conditions should be taken into account when considering his decreased income because "[i]t is reasonable and logical to understand [F]ather would have difficulty in meeting his support obligations." Father testified he had hernia and sinus surgery, which prevented him from working for six weeks. Father's counsel clarified at the hearing that the medical evidence was in support of Father's contempt argument, not his modification argument. Additionally, Father's counsel noted that Father was not requesting the court to take notice of a full disability that prevented him from working, but rather that he was unable to work during the time he was recuperating from his surgeries. In its ruling, the family court noted that Father had been unable to work for a period of time because of his surgeries and did not find Father in contempt of his child-support obligation for that time. The court also stated, however, that Father's recuperation time and/or medical issues were not "a basis to excuse" Father from his child-support obligation. The family court considered and accounted for Father's surgeries in its ruling. We find no error.

¶14 We note that in addition to his briefs, Father also filed a "Notice to the Court." In the notice, Father does not

request any sort of relief from this Court. Instead, Father states that since the ruling of the family court, his "LIFE & CIRCUMSTANCES has [sic] completely & totally changed." He notes that as a direct result of the family court's ruling and his subsequent jail time, "[h]is fiancé kicked him out" and all of the benefits associated with that relationship were taken away. He states that he has "no place to go or sleep," has "a warrant out for his arrest," that he "left the state . . . [a]nd has no plans of returning until [his] appeal is decided."

¶15 We construe Father's notice as asserting new facts in support of a child support modification. Our scope of review is limited to the facts presented to the family court. Therefore, we do not consider the issues asserted in Father's notice. Because the family court has continued jurisdiction over the issue of child support for the duration of the obligation, Father may request modification if supported by the facts. See *LaPrade v. LaPrade*, 189 Ariz. 243, 246, 941 P.2d 1268, 1271 (App. 1997) ("Spousal maintenance, child support, custody, and visitation provisions are squarely within the continuing jurisdiction of the trial court.").

No judicial bias

¶16 Father asserts that the family court judge was biased against him in favor of Mother. Specifically, Father asserts the "matter was already determined before entering the courtroom,"

that the judge had "the spirit of ill will" and "was hostile towards [Father], but was kind and friendly towards [M]other at trial, and showed its favoritism to [M]other." Further, Father characterizes the court as "crafty" in "how it demonstrates its ill will, biases, and favoritism towards Mother" because its rulings were "not based on the evidence provided at trial, but [what it] want[s] it to be for [M]other."

¶17 A judge is presumed to be free of prejudice and bias, and a party challenging a judge's impartiality must overcome this presumption by a preponderance of the evidence. *State v. Ramsey*, 211 Ariz. 529, 541, ¶ 38, 124 P.3d 756, 768 (App. 2005). At no time during the entirety of the proceedings did Father request the family court judge recuse herself pursuant to A.R.S. § 12-409(B)(5) (2003). Nor did Father move for a change of judge pursuant to Arizona Rule of Civil Procedure 42(f). See Ariz.R.Fam.L.P. 6 (adopting Ariz.R.Civ.P. 42).

¶18 As a basis for his arguments that the family court was prejudiced and biased, Father's argument focuses almost exclusively on the family court's ruling holding Father in contempt for failing to pay child support payments. We note, however, a court may enforce a child-support order by way of contempt. See *Ruhsam v. Ruhsam*, 110 Ariz. 326, 328, 518 P.2d 576, 578 (1974). Father also argues the court had no authority to hold him in contempt when Father failed to make payments he

had agreed to make. The family court acted within its authority. See generally Ariz.R.Fam.L.P. 92.

¶19 To the extent Father challenges the court's impartiality in light of its decision holding him in contempt for non-payment of child support, we note adverse judicial rulings do not demonstrate bias or prejudice. See *Smith v. Smith*, 115 Ariz. 299, 303, 564 P.2d 1266, 1270 (App. 1977) ("the bias and prejudice necessary to disqualify a judge must arise from an extra-judicial source and not from what the judge has done . . . in the case"). Father fails to cite any portion of the record demonstrating any bias by the family court judge. Therefore, Father has not met his burden. Additionally, our review of the record on appeal demonstrates no indication of judicial bias or prejudice towards Father.

Contempt order

¶20 Father argues that the family court abused its discretion when it held him in contempt and required him to pay a purge amount. This court lacks jurisdiction over appeals from civil-contempt orders except those challenged by special action. *Danielson v. Evans*, 201 Ariz. 401, 411, ¶ 35, 36 P.3d 749, 759 (App. 2001); *Holt v. Hotham*, 197 Ariz. 614, 615, ¶ 4, 5 P.3d 948, 949 (App. 2000). Accordingly, we do not address Father's contempt argument.

Miscellaneous requests for relief

¶21 Father requests a variety of relief from this Court, including: altering his child support obligation based on the "true incomes" presented to the family court, changing his arrears payments, ordering when his child support payments will end, "issue a realistic support order," "recognize the current recession and economic conditions has [sic] had a drastic effect on fathers [sic] income," prepare a new child support worksheet using \$1200 per month as Father's income, recalculate the worksheet back to Father's filing date, not attribute any income to Mother, determine the best interests of their minor child in Mother's sole custody, and "remove" the arrest warrant and \$10,000 purge.

¶22 Father is essentially asking this Court for a de novo review of the family court's rulings. We concluded above that the family court did not abuse its discretion in denying Father's petition to modify his child support obligation. Father's requests are beyond the scope of our review and therefore, we do not consider them.

CONCLUSION

¶23 For the foregoing reasons, we affirm the judgment of the family court.

/s/
PATRICK IRVINE, Judge

CONCURRING:

/s/
PETER B. SWANN, Presiding Judge

/s/
MAURICE PORTLEY, Judge