DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

PAYMENT RESOURCE INTERNATIONAL OF ARIZONA, INC.; MARTIN J. CISEK, an individual, Plaintiffs/Appellants, v. PAYMENT RESOURCES INTERNATIONAL, a Nevada limited liability company; ANDREW PHILLIPS, Defendants/Appellees.	1 CA-CV 10-0179 DEPARTMENT A **MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court of Maricopa County

Cause No. CV2005-009669 and CV2007-007783

The Honorable Richard Trujillo, Judge

AFFIRMED

Gammage & Burnham P.L.C. Phoenix
By James A. Craft
Attorneys for Plaintiffs/Appellants

Hornberger & Brewer Los Angeles
By Nicholas W. Hornberger
Attorneys for Defendants/Appellees

T H O M P S O N, Judge

¶1 Payment Resource International of Arizona, Inc. and Martin Cisek (appellants) appeal from the judgment entered on a jury verdict in favor of Payment Resources International and Andrew Phillips (appellees). For the reasons that follow, we affirm.

BACKGROUND

¶2 The subject of this litigation is a dispute between Cisek and Phillips and their respective corporate entities regarding Cisek's business dealings with Don Lapre and Lapre's businesses.[1] Specific details regarding the circumstances of the dispute are not material to our disposition of this appeal, and thus will not be outlined here.

¶3 Appellants' claims of interference with business relationships and defamation, and appellees' counterclaim of breach of contract, proceeded to a ten-day jury trial.[2] The jury rejected all claims and the counterclaim, the trial court entered judgment, and appellants moved for a new trial. The trial court denied the motion. This timely appeal followed. We have jurisdiction

[1] Appellants commenced Maricopa County Superior Court case number CV2005-009669 against appellees, and they filed Maricopa County Superior Court case number CV2007-007783 against other individuals and corporate defendants including Lapre and Lapre's companies. The cases were subsequently consolidated, and the Lapre parties were later dismissed. Phillips pursued various counterclaims against appellants, only one of which, breach of contract, was presented to the jury.

[2] Eight of those days involved the presentation of evidence in the form of live testimony, depositions, and physical exhibits.

pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101(B) and (F)(1) (2003).

DISCUSSION

A. Evidence From Federal Case

¶4 Appellants first appear to argue that the court erred in precluding evidence of an order from a federal case in Texas showing that Phillips and Dominic Magliarditi (apparently Phillips' business partner) had been terminated by their employer and were enjoined from engaging in certain business activities.

¶5 Most of the factual assertions in appellants' briefs, however, are not supported by citations to the record, and appellants also do not cite any particular ruling in the record to which they assign error on this issue. Accordingly, we will not consider this argument. *See* Arizona Rules of Civil Appellate Procedure (ARCAP) 13(a)(6) (requiring appellant's opening brief to contain "citations to the authorities, statutes and parts of the record relied on"); *State v. 1810 E. Second Ave.*, 193 Ariz. 1, 2 n. 2, 969 P.2d 166, 167 n. 2 (App. 1997) ("We will not consider . . . unsupported assertions."); *Watahomigie v. Ariz. Bd. of Water Quality Appeals*, 181 Ariz. 20, 26, 887 P.2d 550, 556 (App.1994) ("[W]e will not consider issues not properly briefed."); *Hubbs v. Costello*, 22 Ariz. App. 498, 501, 528 P.2d 1257, 1260 (1974) (stating appellate court has no obligation to search the record to determine if evidence supports an appellant's position).

Additionally, appellants have not provided us with complete transcripts from trial. Instead, they have included in the record only small portions of transcripts from one pretrial conference and five days of trial. We presume any rulings made by the trial court are supported by missing portions of the record. *See Johnson v. Elson*, 192 Ariz. 486, 489, ¶ 11, 967 P.2d 1022, 1025 (App. 1998); *see also Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995) ("When a party fails to include necessary items, we assume they would support the court's findings and conclusions.").

B. Defense Counsel's Closing Argument

¶6 Appellants next argue that, during closing arguments, appellees' counsel improperly referred to appellants' failure to "get an expert to come in and put over his position in this courtroom." However, the cited portion of the transcripts reflects that appellants did not timely object to this statement so that the court could take measures to cure any possible prejudice. In any event, the record indicates that the court properly instructed the jury that the lawyers' comments during closing arguments are not evidence. We presume the jury followed these instructions. *Wendland v. AdobeAir, Inc.*, 223 Ariz. 199, 207, ¶ 28, 221 P.3d 390, 398 (App. 2009).

C. Confrontation at Trial Between Defense Counsel and Cisek

¶7 Appellants next contend that they were unfairly prejudiced by a confrontation that apparently occurred between

appellees' counsel and Cisek in the hallway during a break in trial. But appellants point to nothing in the record that demonstrates any purported prejudice resulting from the confrontation. Their reference to Cisek's and a witness's declarations regarding the confrontation only establish that the confrontation occurred and Cisek "was still shaken" after trial adjourned for the day. On this record, we cannot conclude reversible error occurred.[3] *See Purvis v. Hartford Acc. and Indem. Co.*, 179 Ariz. 254, 259, 877 P.2d 827, 832 (App. 1994) ("In order to justify reversal, the trial court error must be prejudicial to the substantial rights of the appealing party, and the prejudicial nature of the error will not be presumed but must affirmatively appear from the record.").

¶8 To the extent that appellants argue the trial court erred in denying their motion for a new trial on the basis of the foregoing issues, we cannot on this record conclude the court abused its discretion. *Larsen v. Decker*, 196 Ariz. 239, 244, ¶ 27, 995 P.2d 281, 286 (App. 2000) ("We will not reverse a denial of [a motion for new trial] unless the record and circumstances show it was a manifest abuse of discretion.").

D. Undisclosed E-Mail

[3] We cannot even conclude error occurred. Although we agree that such an interaction between a party and opposing counsel is highly inappropriate, appellants do not indicate whether they requested the trial court take any particular curative action with respect to the incident.

¶9 Finally, appellants appear to contend the trial court should have granted their new trial motion because appellees failed to disclose an e-mail from Phillips to Lapre dated November 26, 2006. Appellants claim they first discovered the e-mail after trial, and they imply the e-mail contradicted "Lapre's victimhood[, which] was a fundamental part of the defense at trial." Without a proper record and citations to the relevant portions thereof, we are unable to evaluate the propriety of the trial court's rejection of this argument. We must assume the court acted within its discretion. *Elson*, 192 Ariz. at 489, ¶ 11, 967 P.2d at 1025.

¶10 In sum, appellants have failed, on all issues raised, to meet their burden to demonstrate any basis for reversal.

E. Attorneys' Fees

¶11 Both parties request attorneys' fees. The requests are denied.

CONCLUSION

¶12 The judgment is affirmed. We also affirm the trial court's order denying appellants' motion for a new trial. The

requests for attorneys' fees are denied.

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JON W. THOMPSON, Judge

CONCURRING:

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PHILIP HALL, Presiding Judge

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LAWRENCE F. WINTHROP, Judge