DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:	No. 1 CA-CV 10-0438
HECTOR MONTANO,	DEPARTMENT B
Petitioner/Appellee,	**MEMORANDUM DECISION**
v.	(Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)
JENNIFER GUILIANO,	
Respondent/Appellant.	

Appeal from the Superior Court in Maricopa County

Cause No. FC2009-003246

The Honorable Helene F. Abrams, Judge

AFFIRMED AND REMANDED

Laura Edwards & Associates — Tempe
By Laura Jane Edwards
Attorney for Petitioner/Appellee

Pangerl Law Firm, P.L.L.C. — Phoenix
By Regina M. Pangerl
Attorney for Respondent/Appellant

S W A N N, Judge

¶1 In this custody case, the parties entered into an agreement before trial that addressed some parenting time issues but left others to be resolved by the court. Shortly before

trial, Father amended his position to request equal parenting time, and the trial court ruled in his favor. We hold that the trial court did not abuse its discretion by ordering equal parenting time, and find no reversible error in the conduct of the trial itself. We therefore affirm in all respects, but remand for entry of a corrected judgment as discussed in Section V of this decision.

FACTS AND PROCEDURAL HISTORY

¶2 Father and Mother never married but are the natural parents of H.M., who was born in 2002. They lived together until Mother and Father's relationship ended and they entered into an informal agreement regarding parenting time and child support payments. H.M. lived primarily with Mother, and she and Father shared parenting time according to their work schedules; Father paid "an arbitrary amount in child support of what he felt was necessary." This agreement remained consistent until January 2009, when Father began to date another person and was not allowed to talk to or see H.M.

¶3 In May 2009, Father filed a Petition to Establish Child Custody, Parenting Time, and Child Support. He requested joint custody and parenting time on alternate weekends with two mid-week evening visits during the other weeks. He also asked the court to impose child support in accordance with the Child Support Guidelines ("Guidelines").

¶4 Mother responded. She too requested that the court order joint custody with her as the primary residential parent, and agreed to Father's request for alternate weekends. Mother specifically opposed Father's request for weeknight visits because it would "severely interfere with [H.M.'s] established routine." She also requested guideline child support.

¶5 In July 2009, Father filed a Motion for Temporary Orders. During an August resolution management conference, Mother and Father agreed to joint legal custody of H.M. and parenting time every other weekend plus one weeknight with Father. They were unable to agree about Father's second weeknight request. The court entered temporary orders allowing Father parenting time on alternating weekends and one weeknight. At Mother's request, the court also ordered mediation to settle additional custody issues. The court also set an evidentiary hearing to determine the temporary award of child support. At the conclusion of the hearing, the court ordered Father to pay temporary child support of $510.06 per month beginning September 2009.

¶6 In December 2009, Mother filed a Settlement Conference Memorandum, asking the court to adopt the temporary child support amount as the permanent amount, and order Father to pay child support "arrearages" based on the following information:

> In May of 2005, Petitioner and Respondent ceased to live together. Petitioner had a verbal agreement to pay Respondent an arbitrary amount in child support of what he felt was necessary. Respondent never formally addressed this issue with the Court until present because she did not have the financial means to take this matter before Court and now has been put into a position of where she had to address this matter with the Court. [Mother] has now had a chance to review her financial records and submits the following for what she believes to be outstanding arrearages due to her from [Father]:

Mother then detailed $13,729.32 she paid from 2006 through 2009 for preschool, camp and day care; medical and dental insurance premiums; and school lunches. She attached copies of canceled checks and daycare invoices. Mother further asked the court to "evaluate the amount owed by [Father] for the past years based on income tax returns to determine additional arrearage amount."

¶7 At the conclusion of the settlement conference, Mother and Father entered into a binding agreement to joint legal custody and a detailed holiday parenting schedule. They remained conflicted on child support, "past support," and the parenting plan, which the court noted was "90 percent done" except for Father's weeknight request. The matter was set for trial.

¶8 Three days before trial, Father filed a separate pretrial statement that requested equal parenting time.[1] At the conclusion of the hearing, the court awarded equal parenting time and ordered Father to pay $140.80 per month in future child support. The court also ordered child support in the amount of $510.06 to be calculated back to the date the petition was filed. Judgment was entered April 13, 2010, and included an order for Father to pay child support in the amount of $140.80 per month effective March 1, 2010.

¶9 Mother timely filed a Motion for New Trial or in the Alternative, Motion to Alter or Amend the Judgment ("Motion For New Trial").[2] Father did not timely respond. The court denied Mother's request for a new trial, but amended the judgment "to correct the child support obligation mandated by statute" and

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[1] This document is not part of the record on appeal. In her opening brief, however, Mother concedes that she received this document before trial. The document is also referenced in the family court's rulings.

[2] As he did below, Father suggests that Mother's motion for new trial was untimely filed. We disagree. The time to file motions for post-judgment relief begins to run "the date a judgment actually is entered," or the date a ruling is filed with the court clerk. *Haroutunian v. Valueoptions, Inc*., 218 Ariz. 541, 544-45, ¶ 7, 189 P.3d 1114, 1117-18 (App. 2008); ARCAP 9(a). Here, that date was February 26, 2009. Mother then had fifteen days to file her motion. *See* Ariz. R. Fam. L.P. 83, 84. The fifteenth day (March 13) fell on a Saturday, so time to file motions was extended to the conclusion of the next business day -– Monday, March 15. *See* Ariz. R. Fam. L.P. 4(a). Mother filed her motion March 15.

ordered Father to pay $140.80 per month child support effective May 2009.

¶10 Mother timely appeals the court's denial of her motion for new trial. We have jurisdiction pursuant to A.R.S. § 12-2101(F).

DISCUSSION

¶11 We review the denial of a motion for new trial for abuse of discretion but the scope of our review is limited to matters assigned as error in the motion below. *See Wendling v. Sw. Sav. & Loan Ass'n,* 143 Ariz. 599, 602, 694 P.2d 1213, 1216 (App. 1984); *Van Dusen v. Registrar of Contractors*, 12 Ariz. App. 518, 520, 472 P.2d 487, 489 (1970). Here, Mother's motion for new trial raised eight issues but presented no legal authority, except her explanation that the motion was brought pursuant to Ariz. R. Fam. L.P. 83 and 84. *See* Ariz. R. Fam. L.P. 35(A)(1) ("The grounds for any motion shall be stated with particularity . . . . indicating, at a minimum, the precise legal points, statutes and authorities relied upon and citing the specific portions or pages thereof."); *McClinton v. Rice,* 76 Ariz. 358, 362, 265 P.2d 425, 428 (1953) ("[T]he essentials of a motion are that the attention of the court must be called to the particular matter or request, and that the court be given an opportunity to rule as to the matter."). In denying Mother's motion for new trial the court pointed out her failure to

provide authority for her position, and it could have summarily dismissed her motion for that reason alone. *See* Ariz. R. Fam. L.P. 35(B) ("If a motion does not conform in all substantial respects with the requirements of this rule . . . such non-compliance may be deemed a consent to the denial or granting of the motion, and the court may dispose of the motion summarily.").[3]

¶12 The court explored four substantive issues but found the "basis for [Mother's] request does not support the granting of relief requested." On appeal, Mother fails to fully develop most of her arguments. As Father notes, presentation of issues in this manner usually constitutes abandonment and waiver of issues on appeal. *State v. Moody,* 208 Ariz. 424, 452 n.9, ¶ 101, 94 P.3d 1119, 1147 n.9 (2004). *See also* ARCAP 13(a)(6) (requiring opening briefs to present significant arguments supported by authority); *Trantor v. Fredrikson,* 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994) ("[A]bsent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal."); *Cullum v. Cullum*, 215 Ariz. 352, 355 n.5, ¶ 14, 160 P.3d 231, 234 n.5 (App. 2007) ("We will not consider arguments posited without authority.").

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[3] For example, because custody and parenting time determinations are governed by specific statutory factors, the motion should have included an application of the legal constraints that the trial court faced to the evidence in the record. *See* A.R.S. § 25-403.

¶13 But the rules that allow us to decline to address Mother's issues are procedural, not jurisdictional, and we may consider the issues she raises as an exercise of our discretion. *Harris v. Cochise Health Sys.,* 215 Ariz. 344, 349, ¶ 17, 160 P.3d 223, 228 (App. 2007). Although we rarely do so, *id.*, we do so here because the "primary consideration" in a child custody proceeding is the best interests and welfare of the child. *Clifford v. Woodford,* 83 Ariz. 257, 262, 320 P.2d 452, 455 (1957). *See also Hays v. Gama,* 205 Ariz. 99, 104, 102, 67 P.3d 695, 700, 698 (2003) (holding it improper to impose preclusive sanctions for nondisclosure when preclusion was "not necessary to vindicate the court's authority" and noting "[w]e have repeatedly stressed that the child's best interest is paramount in custody determinations.").

¶14 Our refusal to consider Mother's requested relief because of the deficiencies of the briefing would not serve the interests of justice or the best interests of the child. *See Hoffman v. Hoffman,* 4 Ariz. App. 83, 85, 417 P.2d 717, 719 (1966) (refusing to treat mother's failure to file an answering brief in child custody appeal as a confession of error because doing so would not serve the interests of justice and would have an adverse effect on the children). We therefore consider in turn Mother's assignment of error on five issues, specifically whether the family court abused its discretion when it (1)

ordered equal parenting time; (2) refused to admit Mother's trial exhibits; (3) failed to order retroactive child support; (4) denied Mother's request to be H.M.'s provider of first choice; and (5) entered judgment contrary to the court's pronouncement at trial and the parties' binding agreement.

I. EQUAL PARENTING TIME

¶15 Mother first contends the court abused its discretion by allowing Father to "change his position" on custody "with notice to Mother on the eve of trial." We disagree.

¶16 "The court shall determine custody . . . in accordance with the best interests of the child" after considering "all relevant factors." A.R.S. § 25-403(A). "The court may issue an order for joint custody over the objection of one of the parents if the court makes specific written findings of why the order is in the child's best interests." A.R.S. § 25-403.01(B).

¶17 Here, the record demonstrates that Mother and Father agreed to joint legal custody.[4] That agreement has never been disturbed or challenged. While Father originally proposed parenting time on alternate weekends and two weeknights, he changed his request in his pretrial statement filed three days

[4] Joint custody means joint physical or legal custody, or both. A.R.S. § 25-402(1). Joint physical custody means that the child has "substantially equal time and contact with both parents." A.R.S. § 25-402(3). Joint legal custody means shared legal custody where neither parent's rights are superior, except as prescribed by court order. A.R.S. § 25-402(2).

before trial.[5] He also testified at trial that he wanted "50/50" parenting time and that alternating parenting time weeks with Mother was in H.M.'s best interests.

¶18 Mother neither objected to the timeliness of Father's request nor challenged the benefit of equal parenting time during her extensive cross-examination of him or in her own narrative testimony. *See Winters v. Ariz. Bd. of Educ.,* 207 Ariz. 173, 177, ¶ 13, 83 P.3d 1114, 1118 (App. 2004) ("When a challenge is not raised with specificity and addressed in the trial court, we generally do not consider it on appeal."); *Higgins v. Higgins*, 194 Ariz. 266, 270, ¶ 12, 981 P.2d 134, 138 (App. 1999) (holding a *pro per* litigant to the same standard as an attorney). Mother never told the court that she was unprepared to address Father's request and she did not ask for a

[5] This document is not part of the record on appeal. In her opening brief, however, Mother concedes she received a non-conformed copy of it the night before trial, and cites to it. The family court referenced this document during trial and in its denial of Mother's motion for new trial. Mother did not raise any challenge to this document below, and does not now challenge the family court's reliance on it even though she asserts that she could not find "any record" that it had been filed. *See Schabel v. Deer Valley Unified Sch. Dist. No. 97,* 186 Ariz. 161, 167, 920 P.2d 41, 47 (App. 1996) ("Issues not clearly raised and argued in a party's appellate brief are waived.").

continuance. After the court's ruling, Mother filed her motion for new trial.[6]

¶19 Custody determinations are made by the court "in accordance with the best interests of the child" after considering "all relevant factors." A.R.S. § 25-403(A). The court is vested with the authority to "issue an order for joint custody over the objection of one of the parents." A.R.S. § 25-403.01(B). Here the court conducted a trial during which Mother presented evidence, raised objections, cross-examined Father, and testified. At the trial's conclusion, the court explained why equal parenting time was in H.M.'s best interests, and documented those reasons in its written ruling.

¶20 On this record, the court's decision reveals no abuse of discretion. The level of conflict between Mother and Father is high. Though there is no real dispute that both parents should enjoy substantial parenting time, the evidence reveals that exchanges are difficult both for the parents and their child. The parenting schedule that the trial court imposed

[6] As she did below, Mother contends generally that the trial court's handling of this matter deprived her of a fair trial. She further contends that the trial judge gave the "appearance of being biased." Neither Mother's motion below nor her appellate briefs cite any authority or examples from the record to support the argument. Our review of the trial transcript reveals nothing to suggest that the trial was not fair, and we note that allegations suggesting potential judicial misconduct should not be advanced casually, and never without support. Suffice to say, our review of the entire record yields no suggestion of bias.

appears well calculated to permit the child maximum interaction with each parent while minimizing conflict, and we see no reason to disturb its ruling on the merits.

II. TRIAL EXHIBITS

¶21 Mother next contends the family court abused its discretion when it precluded her trial exhibits because they were not timely disclosed or submitted to the court, but allowed Father to admit documents Mother received "late the night before" trial.

¶22 During trial, Mother sought to admit copies of text messages, letters written by her mother and sister, and copies of daycare receipts and cancelled checks that were unmarked and offered in the midst of trial. Although the court admonished Mother for not complying with orders to share and mark exhibits prior to trial, it allowed her to present the text messages, receipts and cancelled checks subject to Father's objection, but it summarily rejected the letters as hearsay.[7] Father objected to the records because Mother did not comply with court orders to provide them before trial. The court sustained Father's objection.

[7] The court also suggested that the receipts and canceled checks may have been previously provided to the court. We note that copies of canceled checks and school payments were attached to Mother's Settlement Conference Memorandum that details her request for "arrearages" from the years 2006 through 2009.

¶23 In general, exclusion of untimely-disclosed evidence pertaining to the best interests of a child is not permitted. *Hays,* 205 Ariz. at 103-04, ¶¶ 21-23, 67 P.3d at 699-700. Here, however, the court effectively considered the admissibility of the evidence when it was offered at trial, and we discern no abuse of discretion in its rulings. Moreover, Mother failed to object during trial to the court's decision to preclude her evidence and did not explain why it should otherwise be admitted. Mother's motion for new trial failed to detail substantively her objections or provide legal authority to support her arguments.[8] Finally, Mother has not demonstrated

[8] Mother's motion explained that she was "unaware" the exhibits had to be submitted before trial and that the rules were different in "family court," where "judges regularly allow" parties to bring or add exhibits on the day of trial. But the record before the court below demonstrates that court notices sent to Mother fully detailed the deadlines. Additionally, the court warned Mother during the resolution management conference that any evidence not properly disclosed could be rejected. The court advised Mother to disclose "any evidence" she planned to present to the court:

> THE COURT: So that way [counsel will] be prepared for it, and the last thing we want is for you to show up on that day with a bunch of exhibits and a bunch of witnesses, and Counsel's going to stand up and say, "Hey, none of this was disclosed. She shouldn't be able to allow the Court to hear or see any of this evidence."
>
> And there's a good chance the Court will say, "Yeah, I agree.

prejudice – she nowhere suggests the manner in which the excluded evidence would have changed the result. Against this background, we see no basis for reversal.

¶24 Mother contends on appeal that Father did not comply with court deadlines to exchange exhibits before trial and that his noncompliance excuses hers, or that the court should have declined to admit his evidence, too. As before, Mother provides no legal authority to support her position. She also fails to recognize the difference between these two situations. Mother did not mark her exhibits or provide copies to Father before trial, but Father did. Mother failed to comply with the court's September order to disclose the checks and receipts to Father, and explained during trial that she failed to do so "because [her] life is extremely hectic." And Father objected to the admission of Mother's evidence on these grounds at trial, but Mother did not.[9]

> I'm not going to hear from the witnesses. I'm not going to review the documents." So you want to make sure you disclose everything to Counsel that you want to present . . . .
>
> [MOTHER]: I understand.

[9] Mother did question the authenticity of text messages and copies of checks Father sought to admit, but the court overruled her objection because Mother could cross-examine Father about them -- which she did -- and testify whether she received them.

III. CHILD SUPPORT ORDERS

¶25 Mother contends the family court erred by refusing to order "retroactive" child support for the three years prior to the filing of the petition. She concludes that the court "did not understand" her claim and "mistakenly believed that [its] only authority was to issue an order for 'arrearages' based on past orders." This argument overstates the record.

¶26 Mother's Settlement Conference Memorandum sought reimbursement of "outstanding *arrearages*" and asked the court to "determine additional *arrearage* amount." (Emphasis added.) "Arrearages" denotes something different from retroactive child support. *See* A.R.S. § 25-500(1) ("'Arrearage' means the total unpaid support *owed* . . . .") (emphasis added), and § 25-503(A) (providing that a child support "obligation" begins to accrue on the first day of the month following entry of "the order," unless otherwise determined by the court). During court appearances Mother requested "back" child support. A colloquy between Mother and the court at the conclusion of trial indicates that the court, too, may have been confused:

> [MOTHER]: So, ma'am, with the child support, do I need -- is that another date that I would have to do the back child support?
>
> THE COURT: I have not ordered any back child support. There is no back child support. *There*

> *were no orders entered in regards to child support, so there were no arrearages.*
>
> [MOTHER]: Okay.
>
> THE COURT: The child support does have to be calculated back to the date of the filing of the petition. And that was -- you -- I think it was May, May 12, 2009. So, child support will be calculated back to the filing of the petition.
>
> It can't be calculated back, *there were no orders,* so there were no ––
>
> [MOTHER]: I understand.
>
> THE COURT: -- arrearages.

(Emphasis added.) This issue was further clouded by Mother's failure to object to the court's characterization of her request as one for "arrearages" and her failure to cite to any authority in her motion for new trial.

¶27 Mother's motion *was* sufficient, however, to prompt the court to review A.R.S. § 25-809.[10] That statute requires the

[10] The court's ruling stated:

> While [Mother] cites no authority, the court finds that pursuant to A.R.S. 25-809(B), the court must order support for the period between the commencement of the proceeding and the date that current child support is ordered to begin. This requirement is mandatory.

court to enter child support orders when parentage is admitted. It further provides:

> B. The court shall enter an order for support determined to be due for the period between the commencement of the proceeding and the date that current child support is ordered to begin. The court shall not order past support retroactive to more than three years before the commencement of the proceeding unless the court makes a written finding of good cause after considering all relevant circumstances, including:
>
> 1. The circumstances, conduct or motivation of the party who claims entitlement to past support in not seeking an earlier establishment of maternity or paternity.
>
> 2. The circumstances, conduct or motivation of the party from whom past support is sought in impeding the establishment of maternity or paternity.
>
> 3. The diligence with which service of process was attempted on the respondent.

The plain language of this statute requires the court to order back support to the date the petition is filed, but leaves to the court's discretion whether to award support for earlier periods. The statute requires written findings only when the court decides to go back further than three years.

¶28 Here, the court did order support back to the date the petition was filed, but its ruling did not address its discretion to order additional retroactive support. Nothing in A.R.S. § 25-809(B) requires it to do so, unless the court "order[s] past support retroactive to more than three years

before" the filing date. *Cf. Lopez v. Barraza,* 150 Ariz. 291, 292, 723 P.2d 109, 110 (App. 1986) ("The statute merely gives the trial court the power to order such awards and does not make them mandatory. Suppose, for example, the mother does not want any payments for past care and support of the child. Is the judgment then void for failure to include such a provision? We think not.").

¶29 This record provides ample support for a conclusion that additional retroactive support was not appropriate. For example, Mother admitted that she and Father "had a verbal agreement" after their separation that he would pay "an arbitrary amount in child support of what he felt was necessary." Throughout the proceedings below, Mother requested "reimbursement" in the amount of $13,729.32 for expenses incurred from 2006 through 2009. At trial, Father submitted evidence that he paid $14,920.50 in child support and $4,920.50 for school expenses since January 2004.[11] *See Ortiz v. Rappeport,* 169 Ariz. 449, 452, 820 P.2d 313, 316 (App. 1991) ("Back child support . . . is for money and services actually expended for the care and support of the child . . . .").

[11] Even if Father's payments were restricted to the three years prior to filing the petition, he would still have paid a total of $13,915 -- an amount that exceeds Mother's request for reimbursement for those time periods.

¶30 On appeal, Mother relies on A.R.S. § 25-320(C) to support her contention that the court "may" order retroactive support "going back three years." Mother did not rely on this statute below, and she does not explain why that statute provides her any rights beyond those contained in A.R.S. § 25-809(B) -- Mother admits that even under A.R.S. § 25-320(C) the court's authority was discretionary. We infer that she now relies on it because of the court's statement that child support "can't be calculated back, there were no orders," and because A.R.S. § 25-320(C) allows the court to order child support for three years prior to the date of filing if "the parties lived apart before the date of the filing for . . . child support and if child support *has not been ordered* by a child support order." (Emphasis added.) But the court's express reference to A.R.S. § 25-809(B) erases any doubt that it recognized its discretionary authority.

IV. PROVIDER OF FIRST CHOICE

¶31 Mother next contends it was an abuse of discretion for the family court to deny her request to have "first right of refusal" to care for H.M. if Father was unavailable to do so during his parenting time. We disagree.

¶32 The family court "is given broad discretion in determining what will be most beneficial for the child," but the primary consideration must be the child's welfare. *Ward v.*

Ward, 88 Ariz. 130, 135, 353 P2d. 895, 898-99 (1960)*. See also* A.R.S. § 25-403(B) (requiring the court in contested cases to "make specific findings on the record about all relevant factors and the reasons for which the decision is in the best interests of the child"); *Jordan v. Rea*, 221 Ariz. 581, 588, ¶ 16, 212 P.3d 919, 926 (App. 2009) ("All terms in a parenting plan are subject to the court's approval to ensure that they are in the best interests of the child.").

¶33 Here, Mother included this request in her response to Father's petition. She made a similar request at trial, but the court summarily dismissed that request stating, "I don't believe in right of first refusal. . . . those arrangements will have to be discussed and made between you and [Father]." Mother now objects that the court's ruling was based on "personal opinion" rather than the best interests of H.M. Though we would agree with Mother if the court's rigid belief were the only basis for the decision, the record in this case demonstrates that Mother and Father had an abnormally contentious relationship, that they were unable to agree about parenting time, and that they could not effectively communicate about issues relating to H.M.'s welfare. In such circumstances, the viability even of joint legal custody is tenuous, and the court acted well within its

discretion when it declined to order a system that could have invited further conflict.[12]

V. RULINGS NOT SUPPORTED BY RECORD

¶34 Mother correctly points out two areas in which the Judgment contradicts the court's pronouncement of its ruling at the conclusion of trial.

¶35 "To determine that there has been an abuse of discretion . . . the record must be devoid of competent evidence to support the decision of the trial court." *Fought v. Fought,* 94 Ariz. 187, 188, 382 P.2d 667, 668 (1963). When there is a discrepancy between the Judgment and a reporter's transcript, "the circumstances of the particular case determine which shall govern." *State v. Rockerfeller,* 9 Ariz. App. 265, 267, 451 P.2d 623, 625 (1969). We "interpret all parts of the record together, giving effect, if possible, to all and a deficiency in one place may be supplied by what appears in another." *Id*.

A. Amount of Retroactive Support

¶36 First, Mother contends the family court abused its discretion by ordering child support payments of $140.80 rather than $510.06 for May 2009 through February 2010. We agree.

¶37 At trial, the court stated that child support payments "calculated back" to the filing date would be in the amount of

[12] We note that the court did not *prohibit* this kind of arrangement if Mother and Father can agree to it.

$510.06, and Father agreed this was the appropriate amount based on the temporary custody orders then in place. The court asked Father to include that amount in the proposed Judgment and he agreed to do so. But the resulting Judgment did not reflect this order. Mother's motion for new trial generally objected to the court's failure to "issue a retroactive child support order," but did not point out the discrepancy between the court's pronouncement and the Judgment, or otherwise specify the amount or time frame that was missing. While the court granted Mother's motion to "correct the child support obligation mandated by statute," it ordered support back to the date of filing in the amount of $140.80, not $510.06.

¶38 The trial transcript is explicit. The court's ruling noted that child support was ordered in accordance with the Guidelines, which would require the court to "apply the guidelines to the factual circumstances as they existed in the previous months for which the court is ordering child support." *Simpson v. Simpson,* 224 Ariz. 224, 226, ¶ 9, 229 P.3d 236, 238 (App. 2010). *See also Ortiz,* 169 Ariz. at 452, 820 P.2d at 316 ("[S]upport awarded under the guidelines is based on the child's needs."). No additional proceedings occurred between the time the court entered its order and the time judgment was entered that could have caused the court to adjust the amount of retroactive support. This record supports the conclusion that

any discrepancy between the court's pronouncement and the written Judgment is simple clerical error.

¶39 We therefore remand for entry of an amended order.

B. Rule 69 Agreement

¶40 Likewise we agree that the record supports Mother's contention that portions of the Judgment contradict the parties' binding agreement. *See* Ariz. R. Fam. L.P. 69 (2010)("Agreements between the parties shall be binding if they are in writing or if the agreements are made or confirmed on the record before a judge . . . .").

¶41 Here, Mother and Father agreed to joint custody and a holiday parenting schedule, the details were entered into the record, and the court found that the parties had "knowingly, voluntarily and intelligently entered into a binding agreement." At the beginning of trial, the court acknowledged the binding nature of the agreement as it related to "custody and holiday parenting time" and incorporated that agreement into its ruling. The court also asked Father to incorporate the Rule 69 agreement and its orders into a decree for the court's signature, and Father agreed to do so.

¶42 Mother now correctly points out discrepancies between the Judgment and the agreement relating to summer vacation, Thanksgiving and Christmas parenting time, and deadlines for information sharing. We therefore remand for the court to amend

the Judgment to reflect the binding agreement between the parties.

CONCLUSION

¶43 For the foregoing reasons, we affirm the court's decisions in all respects and remand for entry of an amended judgment pursuant to Section V of this decision.

¶44 Both Mother and Father request attorney's fees and costs on appeal pursuant to A.R.S. § 25-324. In the exercise of our discretion, we deny both requests.

/s/
_____
PETER B. SWANN, Presiding Judge

CONCURRING:

/s/
_____
DANIEL A. BARKER, Judge

/s/
_____
PATRICIA K. NORRIS, Judge