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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 05/19/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

In re the Marriage of:) 1 CA-CV 10-0532
)
MARIO A. MADRIGAL,) DEPARTMENT C
)
Petitioner/Appellant,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules
) of Civil Appellate
MARTHA C. MADRIGAL,) Procedure)
)
Respondent/Appellee.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FC2009-093329

The Honorable James P. Beene, Judge

AFFIRMED IN PART; REMANDED IN PART

Mario A. Madrigal Mesa
Appellant

Martha C. Madrigal Mesa
Appellee

O R O Z C O, Judge

¶1 Mario A. Madrigal (Husband) appeals the family court's findings and orders entered pursuant to a decree of dissolution

of marriage (the Decree). For the reasons that follow, we affirm in part and remand in part.

FACTS AND PROCEDURAL HISTORY

¶2 In August 2009, Husband petitioned for dissolution of his marriage to Martha C. Madrigal (Wife). Husband and Wife have one child. The marriage was dissolved by the Decree in June 2010. Husband filed a motion to reconsider numerous findings and orders entered pursuant to the Decree and the family court denied his motion. Husband timely appealed and we have jurisdiction in accordance with Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes (A.R.S.) sections 12-120.21 (2003) and -2101.B (2003).

DISCUSSION

¶3 Husband challenges the award of joint custody to Wife, arguing that the family court erred in failing to consider Wife's alleged history of domestic violence. "We review the [family] court's decision regarding child custody for an abuse of discretion." *Owen v. Blackhawk*, 206 Ariz. 418, 420, ¶ 7, 79 P.3d 667, 669 (App. 2003). "We will defer to the [family] court's determination of witnesses' credibility and the weight to give conflicting evidence." *Gutierrez v. Gutierrez*, 193 Ariz. 343, 347, ¶ 13, 972 P.2d 676, 680 (App. 1998).

¶4 Arizona Revised Statutes § 25-403.03.A. (2007) provides, in part, that "joint custody shall not be awarded if

the court makes a finding of the existence of significant domestic violence . . . or if the court finds by a preponderance of the evidence that there has been a significant history of domestic violence." Furthermore, "[i]f the court determines that a parent who is seeking custody has committed an act of domestic violence against the other parent, there is a rebuttable presumption that an award of custody to the parent who committed the act of domestic violence is contrary to the child's best interests." A.R.S. § 25-403.03.D. However, "[t]o determine if the parent has rebutted the presumption the court shall consider," among other things, "[w]hether the parent has demonstrated that being awarded . . . joint physical or legal custody is in the child's best interests." A.R.S. § 25-403.03.E. Section 25-403 (Supp. 2010) outlines a series of factors for the family court to consider when determining the child's best interests.

¶15 In this case, the family court did not find a history of significant domestic violence. Rather, the family court set forth mandatory findings pertaining to the child's best interests, as prescribed by A.R.S. § 25-403, in deciding the issue of custody. In so doing, the family court found it was in the child's best interests to be placed in the joint legal custody of Husband and Wife, with Wife serving as the primary residential parent.

¶16 Husband argues that the family court was required to take judicial notice of an order of protection against Wife and make a finding that there is a history of significant domestic violence. However, the family court was well within its discretion in declining to find a history of significant domestic violence and accordingly awarding joint custody to Wife. That is, nothing in the record indicates that the family court deemed the history of domestic violence as "significant." Moreover, it may be inferred from the family court's findings regarding the child's best interests that Wife rebutted the consequent statutory presumption against her having custody. Indeed, the presumption against Wife having custody arose out of Husband's showing of a prior instance of domestic violence in the order of protection, but the family court's analysis of the statutory factors pertaining to the child's best interests indicate that Wife was able to rebut the presumption. Thus, the family court did not abuse its discretion by awarding joint custody.¹

¹ Husband further argues that the family court violated Article 6, Section 21, of the Arizona Constitution by not timely ruling on his "motion for findings of fact, conclusions of law and an appropriate judgment based thereon for cause," regarding the order of protection issued against Wife. Husband's first motion was filed on February 1, 2010. When Wife did not respond and the family court did not rule on the matter, Husband filed a second motion on May 15, 2010, which Wife this time opposed. At the end of May 2010, the family court ordered that Husband's motion be stricken. Though the family court failed to timely rule on Husband's first motion; because he did not object before the family court ruled, his argument on appeal is waived.

¶7 Husband also challenges the family court's findings pertaining to child support and the division of property. The record on appeal does not include any hearing or trial transcripts. "Pursuant to ARCAP 11(b), the duty to order and include the transcript in the record on appeal was Husband's." *Kline v. Kline*, 221 Ariz. 564, 572, ¶ 33, 212 P.3d 902, 910 (App. 2009). "When no transcript is provided on appeal, the reviewing court assumes that the record supports the trial court's decision." *Id.* (quotation marks and citation omitted).

¶8 Child support awards are reviewed for an abuse of discretion. *Hetherington v. Hetherington*, 220 Ariz. 16, 21, ¶ 21, 202 P.3d 481, 486 (App. 2008). Husband seems to argue that the family court erred in ordering him to pay child support because he should have been awarded custody.

¶9 In this case, the family court set forth its findings pertaining to the respective income and expenses of Husband and Wife. Based on the child support guidelines, the family court ordered Husband to pay child support to Wife in the amount of \$522 per month. Because we uphold the custody determination, and

Western Sav. and Loan Ass'n v. Diamond Lazy K Guest Ranch, Inc., 18 Ariz. App. 256, 261, 501 P.2d 432, 437 (1972) ("parties should make a record in the [family] court before the decision is announced by the [family] court urging compliance with the rule"). Moreover, because the family court acted in accordance with A.R.S. § 25-403.03, and made findings of fact and conclusions of law, we decline to address Husband's arguments under Arizona Rule of Civil Procedure 52(A) and Arizona Rule of Evidence 201(d).

because Husband has pointed to nothing in the record that indicates error regarding the parties' income or the child support calculation, we find no abuse of discretion.

¶10 Divisions of property are also reviewed for an abuse of discretion. *In re Marriage of Pownall*, 197 Ariz. 577, 581, ¶ 15, 5 P.3d 911, 915 (App. 2000). The family court set forth a division of property. Again, Husband points to nothing in the record indicating error. Moreover, regarding the division of settlement funds, there is no evidence that Husband objected during the trial; as such, his argument on appeal is waived. *Id.* at 583, ¶ 27, 5 P.3d at 917. Thus, again we find no abuse of discretion.²

¶11 Husband also challenges the family court's award of attorneys' fees to Wife. Husband argues this was in error because Wife "made claims or offers of early settlement without substantial justification, brought claims solely or primarily for delay or harassment, unreasonably expanded or delayed the

² Husband argues that the family court had no jurisdiction over property held in Mexico. "The rule is well established that where Arizona has personal jurisdiction over both parties to a dissolution proceeding, it may apply its substantive law in dividing the marital property between the parties—even if that property is located in another state." *Martin v. Martin*, 156 Ariz. 440, 446, 752 P.2d 1026, 1032 (App. 1986). The same rationale applies to property held in another country. See *Noble v. Noble*, 26 Ariz. App. 89, 92, 546 P.2d 358, 361 (1976). Moreover, there is no evidence Husband objected below. His argument on appeal is therefore waived. *Pownall*, 197 Ariz. at 583, ¶ 27, 5 P.3d at 917.

proceeding, engaged in abuse of discovery and the action was prosecuted or defended, in whole or in part, in bad faith." We review the family court's decision "[w]hether to award attorneys' fees and the amount thereof" for an abuse of discretion. *Roden v. Roden*, 190 Ariz. 407, 412, 949 P.2d 67, 72 (App. 1997). Because we find no support in the record for Husband's assertions, we therefore find no abuse of discretion.

¶12 Husband also argues that the family court misstated the year of marriage. The Decree states that Husband and Wife were married in February 1996. An affidavit submitted by Husband to the family court lists the date of marriage as February 1986. Husband's petition for dissolution of marriage is silent as to the date of marriage. We, therefore, remand to the family court for a determination of the date of the parties' marriage, and if necessary, a correction of the Decree.

¶13 Finally, Husband attempts to raise several additional issues, some pertaining to the Arizona Rules of Family Law Procedure, and others that are not ascertainable from a plain reading of the briefs or record; all of which are conclusory and bereft of adequate citation to the facts or law. As such, we decline to address them. See ARCAP 13(a)6. (a brief shall contain arguments with citations to authorities, statutes, and parts of the record relied upon); *Polanco v. Indus. Comm'n of Ariz.*, 214 Ariz. 489, 492 n.2, ¶ 6, 154 P.3d 391, 394 n.2 (App.

2007) (finding an issue waived on appeal because the party mentioned it in passing, cited no supporting legal authority, and failed to develop it further); *Cullum v. Cullum*, 215 Ariz. 352, 355 n.5, ¶ 14, 160 P.3d 231, 234 n.5 (App. 2007) (appellate courts "will not consider arguments posited without authority"); *Schabel v. Deer Valley Unified Sch. Dist.*, 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."); *State Farm Mut. Auto. Ins. Co. v. Novak*, 167 Ariz. 363, 370, 807 P.2d 531, 538 (App. 1990).

CONCLUSION

¶14 For the foregoing reasons, we affirm the family court's findings and orders contained within the Decree, but remand for a determination of the date of the parties' marriage. Wife has requested her attorney fees. Because Wife appeared in this matter in propria persona, we decline to award such fees; however, she is entitled to her appellate costs upon compliance with Arizona Rule of Civil Appellate Procedure 21.

/S/

PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

DONN KESSLER, Judge

/S/

MICHAEL J. BROWN, Judge