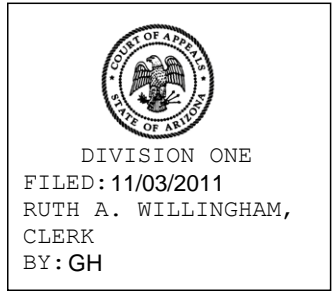


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



In re the Marriage of: ) 1 CA-CV 10-0618  
)  
BRIAN MCGUCKIN, ) DEPARTMENT D  
)  
Petitioner/Appellant, ) **MEMORANDUM DECISION**  
) (Not for Publication -  
v. ) Rule 28, Arizona Rules of  
) Civil Appellate Procedure)  
MITCHELLE MCGUCKIN, )  
)  
Respondent/Appellee. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. FC2009-090188

The Honorable M. Jean Hoag, Retired Judge

**AFFIRMED**

Brian McGuckin, Petitioner/Appellant  
*In Propria Persona*

Tempe

O'Quinn Law, P.C.  
by Kathy M. O'Quinn  
Attorney for Respondent/Appellee

Phoenix

**P O R T L E Y**, Judge

¶1 Brian McGuckin ("Husband") appeals from the decree dissolving his marriage to Michelle McGuckin ("Wife") and challenges the orders involving spousal maintenance, child

support, debt division, and attorneys' fees. For the following reasons, we affirm.

### FACTS AND PROCEDURAL HISTORY

¶2 Husband and Wife married on July 27, 1996. They separated in January 2009, and Husband filed for divorce the following month. At the October 2009 temporary orders hearing, the family court ordered Husband to pay \$30.90 a month in child support for their two children and \$1,100 per month in spousal maintenance, both retroactive to September 1, 2009.

¶3 After the completion of the trial, the family court dissolved the marriage; granted the parties joint custody of their children with Wife as the primary residential parent; ordered Husband to pay \$418.25 a month in child support;<sup>1</sup> ordered Husband to pay spousal maintenance of one dollar a month for two years;<sup>2</sup> ordered Husband to assume the community credit card debt of \$5,709, as well as the loan on the vehicle in his possession; ordered Wife to assume the \$11,421 education loan she acquired while attending school during the marriage; and, after considering their tax refunds and offsets paid, ordered that Husband pay Wife an equalization sum of \$3,162. The court also

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<sup>1</sup> Additionally, the court entered judgment against Husband for \$2,175.92 plus interest because he failed to pay the temporary child support.

<sup>2</sup> Husband also failed to pay any temporary spousal maintenance, and the decree awarded Wife a judgment against Husband for \$3,196.26 plus interest.

awarded Wife \$4,500 in attorneys' fees. Husband filed an appeal. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1) (West 2011).<sup>3</sup>

#### DISCUSSION

¶4 Husband's opening brief does not comply with Arizona Rule of Civil Appellate Procedure 13(a).<sup>4</sup> Additionally, he did not provide trial transcripts. See ARCAP 11(b)(1);<sup>5</sup> *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995) ("A party is responsible for making certain the record on appeal contains all transcripts or other documents necessary for us to consider

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<sup>3</sup> The Arizona Legislature recently renumbered A.R.S. § 12-2101. See 2011 Ariz. Sess. Laws, ch. 304, § 1 (1st Reg. Sess.) (effective July 20, 2011).

<sup>4</sup> Husband failed to support his statements of fact with citations to the record. See ARCAP 13(a)(4). He failed to support his arguments with legal authority, neglected to include the proper basis for this court's jurisdiction over the appeal, and did not include a table of citations in the brief. See ARCAP 13(a)(2)-(4). Further, it is difficult to discern the issues Husband challenges and the relief he seeks.

<sup>5</sup> ARCAP 11(b)(1) provides:

No later than 10 days after filing the notice of appeal, the appellant shall order an original and one copy of a certified transcript, if any, of such parts of the proceedings as the appellant deems necessary for inclusion in the record. *If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a certified transcript of all evidence relevant to such finding or conclusion.*

(Emphasis added.)

the issues raised on appeal. When a party fails to include necessary items, we assume they would support the court's findings and conclusions." (citations omitted). Although we could find that his arguments are waived, we briefly address each issue.

#### I. Spousal Maintenance

¶15 The family court found that Wife qualifies for spousal maintenance pursuant to A.R.S. § 25-319 (West 2011). After considering the length of the marriage, their lifestyle, and the monthly incomes and expenses of both,<sup>6</sup> the court determined that Wife "lacks sufficient property to provide for her needs." As a result, and to preserve her request without increasing Wife's taxable income or reducing child support significantly, the court awarded Wife nominal spousal maintenance for two years. We review an award of spousal maintenance for an abuse of discretion. *In re Marriage of Pownall*, 197 Ariz. 577, 583, ¶ 31, 5 P.3d 911, 917 (App. 2000) (citation omitted).

¶16 The crux of Husband's argument is that the family court was misled because Wife failed to disclose the full extent of the tips she received as a massage therapist, which would increase her monthly income. The family court had information about Wife's income as a massage therapist and considered the

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<sup>6</sup> The court noted that Husband's income was temporarily lower than what he had historically earned.

information as well as the trial testimony in determining Wife's monthly income. Husband's assertions of fact in his brief are insufficient to support a conclusion that the court abused its discretion because we are required to assume the missing transcripts support the court's findings and conclusions. See *Baker*, 183 Ariz. at 73, 900 P.2d at 767 (citation omitted). As a result, we find no abuse of discretion in the nominal award of spousal maintenance.

## II. Child Support

¶7 The family court ordered Husband to pay \$418.25 a month in child support, and entered a judgment against him for failing to pay temporary child support. He again asserts the family court incorrectly computed their monthly incomes. We review an order for child support for an abuse of discretion. *McNutt v. McNutt*, 203 Ariz. 28, 30, ¶ 6, 49 P.3d 300, 302 (App. 2002) (citation omitted). In fact, "[w]hen we review the trial court's findings, we adopt a deferential standard of review. Our duty begins and ends with inquiring whether the trial court had before it evidence that might reasonably support its action when viewed in the light most favorable to sustaining the findings." *Federoff v. Pioneer Title & Trust Co. of Ariz.*, 166 Ariz. 383, 388, 803 P.2d 104, 109 (1990) (citation omitted).

¶8 Husband's Affidavit of Financial Information listed a gross monthly income of \$5,867. After trial, the court found

that his gross monthly income was \$5,900, even though the court recognized that his income was lower than it had been historically. We must assume the transcript would support the finding that his monthly income was higher than indicated on the financial affidavit. Accordingly, we find no abuse of discretion in the child support calculations.

### III. Division of Debt

¶9 Husband challenges the division of debt. He argues that the family court erred because he was ordered to pay half of Wife's student debt, and that Wife had made purchases with the WAMU credit card that were not for the community. "The family court has broad discretion in determining what allocation of property and debt is equitable under the circumstances." *In re Marriage of Inboden*, 223 Ariz. 542, 544, ¶ 7, 225 P.3d 599, 601 (App. 2010) (citation omitted). As a result, we review the division of debt for an abuse of discretion. *Id.*

¶10 Contrary to Husband's argument, the decree ordered Wife to pay her student loan.<sup>7</sup> Moreover, although he complains

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<sup>7</sup> The court outlined its reasoning in the final decree:

#### Debt

\$11,421.00 (ABOVE) to Apollo College;  
\$5,709.86 WAMU credit card; \$17,130.86  
divided by two = \$8,565.43. Both kept tax  
refunds from the other: [Husband] kept  
\$9,162.08 (giving [Wife] \$1,000.00 of that  
refund); [Wife] kept \$6,000.00 (and was

about Wife's use of the WAMU credit card, the court made its ruling after both parties testified and after receiving written closing arguments. Because we must assume the missing transcripts would support the findings and determinations, we find no abuse of discretion. See *Baker*, 183 Ariz. at 73, 900 P.2d at 767 (citation omitted).

#### IV. Attorneys' Fees

¶11 The family court awarded Wife \$4,500 as her reasonable attorneys' fees plus interest pursuant to A.R.S. § 25-324 (West 2011), and Husband did not respond to her application for fees. He now argues that Wife took unreasonable positions earlier and he, too, has attorneys' fees to pay. We review an award of attorneys' fees pursuant to § 25-324 for an abuse of discretion.

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ordered to give [Husband] credit of \$1,000.00 against his spousal maintenance arrearage.) The total of refunds is \$15,162.00 divided by two = \$7,581.00. [Husband] has more gains than [Wife]: \$8,162.00 to [Husband]; \$5,000 to [Wife] after offsets for the \$1,000.00 paid to each party results in an amount owed to [Wife] of \$3,162.00. After consideration of these calculations,

**IT IS ORDERED** [Husband] shall assume all credit card debt, the debt of the vehicle, and [Wife] shall assume the Apollo College debt. [Husband] shall pay to [Wife] an equalization payment in full (in addition to the \$1,000.00 already Ordered) \$3,162.00 by August 1, 2010 or \$632.40 monthly beginning April 1, 2010. [Wife] is hereby granted Judgment [sic] against [Husband] in the sum of \$3,162.00.

*In re Marriage of Pownall*, 197 Ariz. at 583, ¶ 26, 5 P.3d at 917 (citation omitted).

¶12 Despite Husband's argument, the family court had the information about the reasonableness of the positions the parties took throughout the proceedings as well as their financial circumstances. We find no abuse of discretion in the attorneys' fee ruling.

V. Appellee's Request for Attorneys' Fees

¶13 Wife requests attorneys' fees and costs on appeal. She, however, does not state a basis for an award. Even if we assume fees are requested pursuant to § 25-324, we, in the exercise our discretion, decline to award fees. Wife is, however, entitled to her appellate costs upon compliance with Arizona Rule of Civil Appellate Procedure 21.

**CONCLUSION**

¶14 Based on the foregoing, we affirm the judgment of the family court.

/s/

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MAURICE PORTLEY, Judge

CONCURRING:

/s/

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JON W. THOMPSON, Presiding Judge

/s/

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JOHN C. GEMMILL, Judge