

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



DIVISION ONE
FILED: 02/09/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

In re the Matter of:) No. 1 CA-CV 10-0669
)
MANUEL PAUL TORUGA,) DEPARTMENT E
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules
) of Civil Appellate
COKE ANGELA THORNTON,) Procedure)
)
Respondent/Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FC2001-093698

The Honorable James P. Beene, Judge

AFFIRMED

Manuel Paul Toruga
Petitioner/Appellee

Mesa

Coke Angela Thornton
Respondent/Appellant

Apache Junction

O R O Z C O, Judge

¶1 Coke Angela Thornton (Mother) appeals the family
court's order denying her requests to modify parenting time,

child support arrearages and child support. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶12 Mother and Manuel Paul Toruga (Father) were married in 1996 and have two minor children. Father filed for Dissolution of Marriage in 2001. The marriage was dissolved in 2002,¹ at which time the family court granted Mother and Father joint legal and physical custody of the children and designated Father as the primary residential parent during the school year. The court also ordered specific parenting time and ordered Mother to pay Father current child support, plus an additional amount towards child support arrearages owed by Mother stemming from a pendente lite order, until such time as Mother's child support arrearages were paid in full.

¶13 On January 8, 2010, Mother filed a Request for Modification of Current Custody Arrangement, Child Support Order and Arrearages.² An evidentiary hearing on Mother's Request was held on July 13, 2010. The matter was taken under advisement, and in its Order dated August 9, 2010, the family court denied Mother's Request.

¹ The decree was dated December 31, 2002 but it was not filed with the Clerk of the Maricopa County Superior Court until January 7, 2003.

² In the intervening years, Mother's child support obligation has been modified according to the child support guidelines.

¶4 Mother filed a timely notice of appeal. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101.A.1 (2011).³

DISCUSSION

¶5 Mother's entire argument on appeal is a challenge to the sufficiency of the evidence supporting the family court's order and a demand for this court to reweigh the evidence regarding her requests to modify parenting time, her child support obligation, and her child support arrearages.⁴ We are mindful that the family court is in the best position to evaluate the sufficiency of the evidence. *Acuna v. Kroack*, 212 Ariz. 104, 113, ¶ 35, 128 P.3d 221, 230 (App. 2006). "We must consider the evidence in the light most favorable to the non-appealing party and will sustain the judgment if any reasonable evidence supports it." *In re Marriage of Pownall*, 197 Ariz. 577, 583-84, ¶ 31, 5 P.3d 911, 917-18 (App. 2000). We will not reweigh the evidence

³ 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). We cite the current version of applicable statutes when no revisions material to this decision have since occurred.

⁴ Mother frames the first issue presented for review as, "The best interest of the Children was not properly considered in making this decision [to deny Mother's request for modified parenting time] in accordance with A.R.S. [§] 25-403." However, she does not elaborate on this assertion and instead argues that the family court's judgment was incorrect because she presented evidence sufficient to require a modification. Nonetheless, in its order, the family court noted that it considered the factors set forth in A.R.S. §§ 25-403.A and -403.01.B.

on appeal. *Brown v. U.S. Fid. and Guar. Co.*, 194 Ariz. 85, 92, ¶ 36, 977 P.2d 807, 814 (App. 1998).

¶16 When an appellant intends to argue that the family court's factual findings or conclusions are unsupported by the evidence, the appellant must include in the record a transcript of the proceedings and any other items necessary for us to review the court's order. ARCAP 11(b)(1). In this case, the record on appeal from the July 13, 2010 evidentiary hearing contains only the minute entry noting who testified and which exhibits were received in evidence and the signed Order -- Mother failed to order a copy of the transcript from the hearing. "When a party fails to include necessary items, we assume they would support the court's findings and conclusions." *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995). Without the benefit of a transcript to review, we must assume reasonable evidence was presented at the evidentiary hearing in support of the family court's decision to affirm its prior order regarding Mother's child support obligation and denying Mother's requests to modify her parenting time and obligation to pay child support arrearages.

¶17 Moreover, neither the family court nor this court has authority to retroactively modify a child support award. *State ex rel. Dep't of Econ. Sec. v. Dodd*, 181 Ariz. 183, 185, 888 P.2d 1370, 1372 (App. 1994). Therefore, arrearages that accrued prior

to the date Father received notice of the January 8, 2010 modification petition cannot be modified. See *Guerra v. Bejarano*, 212 Ariz. 442, 444, ¶ 7, 133 P.3d 752, 754 (App. 2006).

CONCLUSION

¶8 For the foregoing reasons, we affirm the family court's order.

/S/

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

DIANE M. JOHNSEN, Presiding Judge

/S/

LAWRENCE F. WINTHROP, Judge