DIVISION ONE
FILED: 12/15/2011
RUTH A. WILLINGHAM, CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:	)	No. 1 CA-CV 10-0831
	)	
LAWRENCE F. ABINOSA, JR.,	)	DEPARTMENT E
	)	
Petitioner/Appellee,	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
v.	)	Rule 28, Arizona Rules
	)	of Civil Appellate
EVELYN A. ABINOSA,	)	Procedure)
	)	
Respondent/Appellant.	)	
	)	
_____	)	

Appeal from the Superior Court in Maricopa County

Cause No. FC2010-091954

The Honorable Bruce R. Cohen, Judge

AFFIRMED

Scott L. Patterson, PLLC — Tempe
By Scott L. Patterson
Attorneys for Petitioner/Appellee

Evelyn Ancheta Juan Mabini — Protected Address
Appellant

O R O Z C O, Judge

¶1 Appellant, Evelyn Ancheta Juan Mabini (fka Evelyn A. Abinosa) (Mother), appeals a decree of dissolution (the Decree)

of her marriage to Appellee, Lawrence F. Abinosa (Father). In the Decree, the trial court made various orders and awards, including awarding full custody of the parties' minor child to Father. On appeal, Mother asks this court to: (1) modify the child custody award; (2) modify an award of child support; (3) dismiss restrictions on her parenting time; and (4) reinstate an order of protection against father. For the reasons set forth herein, we affirm the Decree.

PROCEDURAL AND FACTUAL HISTORY[1]

¶2 The Decree was entered following a trial on October 12, 2010 at 8:30 a.m., which Mother did not attend.[2] At trial,

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[1] The statement of facts in Mother's opening brief does not contain any citation to the record, as required by Arizona Rules of Civil Appellate Procedure (ARCAP), Rule 13(a)4. In addition, her unsupported factual assertions are not legally relevant.

Although Mother is a non-lawyer representing herself, she is held to the same standards as a qualified attorney. *See, e.g., Old Pueblo Plastic Surgery, P.C v. Fields,* 146 Ariz. 178, 179, 704 P.2d 819, 820 (App. 1985). While the failure to provide a statement of facts could ordinarily be regarded as sufficient cause for dismissal, we will, in our discretion, review the record to determine if there is merit to the appeal. *See, e.g., Clemens v. Clark*, 101 Ariz. 413, 414, 420 P.2d 284, 285 (1966). Accordingly, we rely on Father's answering brief and our review of the record for our recitation of the facts. *See State Farm Mut. Auto. Ins. Co. v. Arrington*, 192 Ariz. 255, 257 n.1, 963 P.2d 334, 336 n.1 (App. 1998).

[2] Mother's failure to attend the trial is noted and discussed in the Decree. The court states that Mother appeared in court on the day of trial at approximately 11:40 a.m., claiming she erroneously believed the trial was set for 10:30 a.m. The court also notes that "even if Mother's assertions were true, Mother would have missed the trial as she did not appear until over one

Father testified and introduced exhibits into evidence. Based on Father's evidence, the trial court entered various orders and awards addressing Father's requests for relief.

¶3 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

¶4 At the outset, we note that Mother's opening brief does not comply with ARCAP 13(a). The brief does not contain any relevant legal argument or citation to authority, nor does it articulate the proper standard of review. *See* ARCAP 13(a)(6) (argument shall contain "citations to the authorities, statutes and parts of the record relied on"). Mother's failure to comply with these rules limits our ability to evaluate her arguments or

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hour after what she in error thought to be the start time of the trial."

Mother claims she was misinformed of the trial time because the information was sent "to the old address." However, the trial date and time were set during a resolution management conference, which Mother attended. Furthermore, Mother was mailed a copy of the minute entry from the resolution management conference, which included the date and time of the trial. All orders and minute entries from the court clearly admonish that "[a]ll parties representing themselves must keep the Court updated with address changes." Thus, if Mother had moved or changed addresses, it was her duty to so inform the court.

[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.

otherwise address her claims. *See, e.g.*, *In re U.S. Currency in Amount of $26,980.00,* 199 Ariz. 291, 299, ¶ 28, 18 P.3d 85, 93 (App. 2000) (refusing to consider bald assertions offered without elaboration or citation to legal authority); *Brown v. U.S. Fid. & Guar. Co.,* 194 Ariz. 85, 93, ¶ 50, 977 P.2d 807, 815 (App. 1998) (rejecting assertions made without supporting argument or citation to authority). Furthermore, Mother's argument is essentially a request for a different weighing of the evidence, which is not an appropriate argument on appeal. *Hurd v. Hurd*, 223 Ariz. 48, 52, ¶ 16, 219 P.3d 258, 262 (App. 2009).

¶5 In addition, Mother has failed to provide a transcript of the trial proceedings. As the appellant, it was Mother's duty to "mak[e] certain the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised on appeal." *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995); *see also* ARCAP 11(b)(1). When the appellant fails to include all transcripts or other documents necessary for us to consider the issues raised on appeal, we assume the missing portions of the record support the trial court's findings and ruling. *Kohler v. Kohler*, 211 Ariz. 106, 108 n.1, ¶ 8, 118 P.3d 621, 623 n.1 (App. 2005). Accordingly, we will not question the sufficiency of evidence to sustain a court's finding or conclusions when there is no transcript in the record on appeal.

Boltz & Odegaard v. Hohn, 148 Ariz. 361, 366, 714 P.2d 854, 859 (App. 1985).

¶6 Nevertheless, because we prefer to decide cases on the merits, in the exercise of our discretion, we will attempt to discern and address the substance of Mother's arguments. *See Clemens,* 101 Ariz. at 414, 420 P.2d at 285.

Custody

¶7 The standard of review for an award of child custody is whether the trial court abused its discretion. *In re Marriage of Diezsi*, 201 Ariz. 524, 525, ¶ 3, 38 P.3d 1189, 1991 (App. 2002). In this case, Father introduced into evidence a Parenting Conference Report (the Report), which the court adopted as its findings required under A.R.S. § 25-403.A (2011). The Report identified several concerns about Mother's parenting ability and priorities. Because the Report clearly supports the court's order awarding Father sole legal custody of the parties' minor child, and because Mother has cited no evidence and made no argument regarding how the court erred, we conclude the court did not abuse its discretion in awarding custody to Father.

Child Support

¶8 We review a trial court's award of child support for an abuse of discretion. *Kelsey v. Kelsey*, 186 Ariz. 49, 53, 918 P.2d 1067, 1071 (App. 1996). At trial, Father introduced into evidence various financial statements and documents detailing,

among other things, the parties' gross and adjusted incomes and the cost of health insurance for the child. Father also apparently testified about his understanding of the parties' finances, based in part on prior income tax returns. The court listed these factors in the Decree and they clearly support its award of child support.

¶9 Because Mother has failed to make any specific claim that any portion of the award was an abuse of discretion and has failed to cite any evidence to support such a claim, we find the court did not abuse its discretion in awarding child support.

Parenting Time

¶10 We review a trial court's decision to grant or deny visitation for an abuse of discretion. *McGovern v. McGovern,* 201 Ariz. 172, 175, ¶ 6, 33 P.3d 506, 509 (App. 2001).

¶11 As in the case of the custodial award, the Report listed several concerns about Mother's fitness as a parent that are relevant to the order regarding parenting time. This evidence in the record clearly supports the court's order restricting Mother's parenting time, and we conclude the court did not abuse its discretion.

Order of Protection

¶12 We review the dismissal of an order of protection for abuse of discretion. *See Horton v. Mitchell,* 200 Ariz. 523, 526, ¶ 12, 29 P.3d 870, 873 (App. 2001) ("The grant or denial of

injunctive relief 'is within the sound discretion of the trial court, and its decision will not be reversed absent an abuse of that discretion.'") (quoting *Valley Med. Specialists v. Farber,* 194 Ariz. 363, 366, ¶ 9, 982 P.2d 1277, 1280 (1999)); *Twin City Fire Ins. Co. v. Burke,* 204 Ariz. 251, 254, ¶ 10, 63 P.3d 282, 285 (2003) ("We defer to the judge with respect to any factual findings explicitly or implicitly made, affirming them so long as they are supported by reasonable evidence.").

¶13 Because Mother failed to include a transcript of the proceedings, we cannot evaluate the sufficiency of the evidence regarding this issue and assume the missing portions of the record support the trial court's findings and ruling. *Kohler*, 211 Ariz. at 108 n.1, ¶ 8, 118 P.3d at 623 n.1; *Boltz & Odegaard*, 148 Ariz. at 366, 714 P.2d at 859. Given that assumption, we cannot say the court abused its discretion.

Attorney fees

¶14 Lastly, we address Father's request for attorney fees and costs pursuant to A.R.S. § 25-324 (2011) and ARCAP 21(c). Because we have no current financial information from the parties, we decline to award attorney fees. However, as the prevailing party, Father is entitled to his costs upon compliance with ARCAP 21.

CONCLUSION

¶15 For the reasons set forth above, we affirm the decree of dissolution of marriage.

/S/
_____
PATRICIA A. OROZCO, Judge

CONCURRING:

/S/
_____
DIANE M. JOHNSEN, Presiding Judge

/S/
_____
MICHAEL J. BROWN, Judge