

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: 12/22/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

In re the Matter of: ) No. 1 CA-CV 11-0016  
)  
TIMOTHY F. SCHWEITZER, ) DEPARTMENT B  
)  
Petitioner/Appellant, ) **MEMORANDUM DECISION**  
) (Not for Publication -  
v. ) Rule 28, Arizona Rules  
) of Civil Appellate  
KATHLEEN S. SCHWEITZER, ) Procedure)  
)  
Respondent/Appellee. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. FC 2001-003621

The Honorable M. Scott McCoy

**AFFIRMED**

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Gene R. Stratford	Phoenix
Attorney for Petitioner/Appellant	
Law Offices of Don C. Wilkinson	Phoenix
By Don C. Wilkinson	
Attorneys for Respondent/Appellee	

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**D O W N I E**, Judge

¶1 Timothy Schweitzer ("Father") appeals from the dismissal of his petition to modify child support. For the following reasons, we affirm.

## FACTS AND PROCEDURAL HISTORY

¶12 Father and Kathleen Schweitzer ("Mother") divorced in 2002; Father was ordered to pay child support. In December 2009, Father petitioned to modify parenting time and child support. After an evidentiary hearing, the court issued a signed minute entry dated July 30, 2010 (the "July 30 order"), ordering, *inter alia*, that Father pay child support of \$1398.90 per month.

¶13 Father filed a motion for new trial and a motion for clarification. Among other things, he argued that the court had erred in calculating child support by allocating sums for child care and tutoring expenses. The family court denied both motions.

¶14 Father did not appeal from the July 30 order or from the denial of his motion for new trial. Instead, on October 5, 2010, he filed a "Petition to Modify Child Support." Father again argued that the court had erred in calculating child support, and he sought to correct certain findings in the July 30 order, including those relating to child care and tutoring expenses. Father argued these findings were "based upon erroneous information . . . without any evidentiary support."

¶15 Mother moved to dismiss Father's petition. By ruling dated November 22, 2010, the family court dismissed the petition. The court noted that Father had alleged no changed

circumstances warranting modification of child support and ruled his petition was "an impermissible collateral appeal."

¶16 Father appealed from the November 22 order dismissing his modification petition. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(2).

#### DISCUSSION

¶17 Father's brief does not include citations to the record or legal authority. We could consider his appellate arguments waived. See ARCAP 13(a)(6) (a brief shall contain arguments with citations to authorities, statutes, and parts of the record relied upon); *Ritchie v. Krasner*, 221 Ariz. 288, 305, ¶ 62, 211 P.3d 1272, 1289 (App. 2009) (failure to support arguments with legal authority may constitute abandonment and waiver of that claim). In the exercise of our discretion, though, we address the clear propriety of the superior court's dismissal order.

¶18 Father's appeal is from the dismissal of his petition to modify child support, not from the July 30 order or the denial of his motion for new trial. As such, the only issue before us is whether the court erred by dismissing the modification petition.

¶19 The family court may modify child support "only on a showing of changed circumstances that are substantial and continuing." Ariz. Rev. Stat. § 25-327(A). The court dismissed

