

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



DIVISION ONE
FILED: 05/31/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:) No. 1 CA-CV 11-0130
)
BRETT J. GECHA,) DEPARTMENT E
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules
) of Civil Appellate
ANNA I. GECHA,) Procedure)
)
Respondent/Appellant.)
)
_____)

Appeal from the Superior Court in Yavapai County

Cause No. P1300D020020556

The Honorable David L. Mackey, Judge

AFFIRMED

Brett J. Gecha Chino Valley
Petitioner/Appellee

Anna I. Gecha Chino Valley
Respondent/Appellant

O R O Z C O, Judge

¶1 Appellant Anna Gecha (Wife) appeals a family court ruling in which the court: (1) ordered Wife to amend her 2009 federal and state income tax returns so that Appellee Brett Gecha

(Husband) could file amended tax returns claiming two of the couple's three children (the Children) as dependents; (2) denied Wife recovery for the Children's "monthly cell phone bills, sports expenses, school expenses or college expenses"; (3) ordered Husband to reimburse Wife \$11.40 in vision expenses for the Children; and (4) denied Wife any recovery for any other uninsured medical expenses for the Children. For the reasons stated below, we affirm the court's ruling.

PROCEDURAL AND FACTUAL HISTORY¹

¶2 Wife's marriage to Husband was dissolved by decree on March 23, 2005. Pursuant to the decree, Wife was awarded primary physical custody of the Children and Husband was required to pay Wife approximately \$518.00 per month for child support, effective January 1, 2005. The court also ordered Husband to pay fifty-seven percent of the Children's uninsured medical expenses. Finally, the court ordered that "[i]n each year, one parent shall be entitled to use two and the other parent one of the federal [income tax] dependency exemptions for the minor children, beginning with [Wife] receiving two dependency exemptions for 2004 and [Husband] one for such calendar year, and alternating

¹ The statement of facts in Wife's opening brief does not comply with Arizona Rules of Civil Appellate Procedure (ARCAP), Rule 13(a)4. Accordingly, we rely on 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).

hereafter." Husband's right to use the dependency exemptions was conditioned on his remaining current on his child support obligation for the applicable calendar year.

¶13 Sometime in 2009, Wife discovered that Husband had failed to make child support payments for the time period between the January 1, 2005 effective date of the decree and the March 23, 2005 entry date of the decree. As a result, Wife claimed all three of the Children as dependents on her 2009 federal and state income tax returns.

¶14 In April 2010, Husband filed a Motion to Modify/Audit, requesting that the court modify the original child support order to amend the effective date of his support obligation from January 1, 2005 to March 23, 2005, thereby erasing the arrearages incurred during that period. He also asked the court to order Wife to amend her 2009 tax returns so that Husband could claim two Children as dependents for 2009 pursuant to the terms of the decree.

¶15 In May 2010, Wife filed a Petition to Modify a Support Order and a Petition to Enforce Support. In the Petition to Enforce, Wife asserted that Husband incurred child support arrearages from January 1, 2005 through March 23, 2005 and asked the court to order Husband to become current on his support payments. Wife also asked the court to order Husband to reimburse her for fifty-seven percent of the Children's uninsured

medical expenses incurred in 2008 and 2009 and to enforce Husband's verbal agreement to pay for or contribute to the Children's monthly cell phone bills, sports expenses, school expenses and college expenses. In the Petition to Modify, Wife asked the court to increase Husband's support obligation due to an increase in the Children's medical expenses.

¶16 Following an evidentiary hearing on Husband's and Wife's Motions, the court issued its ruling on December 27, 2010. Citing Arizona Revised Statutes (A.R.S.) section 25-327.A (2007), the court found it could not retroactively modify the original support order and Husband was therefore obligated to pay the arrearages incurred between January 1, 2005 and March 31, 2005.² Pursuant to the Arizona Child Support Guidelines (the Guidelines), the court ordered Wife to amend her 2009 federal and state tax returns to permit Husband to claim two of the Children as dependents because Husband had paid the total court-ordered support obligation for the 2009 year. See A.R.S. § 25-320 app. § 27 (2007). The court further found it had no legal authority to order Husband to pay for or contribute to the Children's monthly cell phone bills, sports expenses, school expenses or college expenses. Finally, the court ordered Husband to reimburse Wife

² The court declined to award interest on the arrearages because "neither of the parties contemplated that there was a past due amount until 2009."

for \$11.40 in vision expenses for the Children, but otherwise denied Wife's claim to be reimbursed for the Children's uninsured medical expenses because she failed to establish that she provided Husband with documentation of those expenses.

¶17 Wife filed a notice of appeal.³ We have jurisdiction pursuant to A.R.S. § 12-2101.A.1 (Supp. 2011).⁴

DISCUSSION

¶18 On appeal, Wife asks this court to: (1) reverse the court order requiring her to amend her 2009 tax returns; (2) hold Husband responsible for fifty-seven percent of the Children's uninsured medical expenses incurred after his last payment in April 2008; (3) hold Husband responsible for a portion of the Children's extracurricular and continuing educational expenses; (4) recognize that certain payments made by Husband for the medical expenses of the Children were "allotted and specified for medical expenses not pertaining to this case"; (5) recalculate a modified child support order to reflect Wife's "accurate income";

³ The December 27, 2010 ruling from which Wife appeals was not signed when Wife filed the notice of appeal on January 7, 2011. An unsigned ruling is not a final, appealable order. See Ariz. R. Civ. P. 58(a). Pursuant to *Eaton Fruit Co. v. Cal. Spray-Chem. Corp.*, 102 Ariz. 129, 130, 426 P.2d 397, 398 (1967), this court suspended the appeal and revested jurisdiction in the superior court for the entry of a signed, appealable order. Such an order was entered on May 24, 2011, and the appeal was automatically reinstated.

⁴ We cite the current version of applicable statutes when no revisions material to this decision have since occurred.

and (6) hold Husband accountable for certain orthodontic expenses.

¶9 At the outset, we note that Wife's opening brief does not comply with ARCAP 13(a). Most importantly, 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 (the opening brief shall contain argument with "citations to the authorities, statutes and parts of the record relied on" and identify "the proper standard of review on appeal"). Wife's failure to comply with these rules limits our ability to evaluate her arguments or 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).

¶10 In addition, Wife has failed to provide a transcript of the hearing proceedings. As the appellant, it was Wife'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). Furthermore, to the extent Wife's arguments are essentially requests for a different weighing of the evidence, they are not appropriate arguments on appeal. *Hurd v. Hurd*, 223 Ariz. 48, 52, ¶ 16, 219 P.3d 258, 262 (App. 2009).

¶11 Although Wife 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). 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 Wife's arguments. See *Clemens v. Clark*, 101 Ariz. 413, 414, 420 P.2d 284, 285 (1966).

2009 Income Tax Returns

¶12 Wife first asks us to reverse the court order requiring her to amend her 2009 tax returns. On appeal, Wife claims the court erred because Husband did not pay his portion of the Children's uninsured medical expenses during the 2009 year and

therefore, he should not be entitled to claim any of the Children as dependents. Wife's argument to the family court, however, was that Husband was not entitled to claim the Children as dependents during the 2009 year because that is when she first discovered the arrearages from 2005. Because Wife failed to argue below that Husband was not entitled to claim the Children as dependents because of his failure to pay a portion of their uninsured medical expenses, we find Wife has waived that argument. See *Pflum v. Pflum*, 135 Ariz. 304, 306-07, 660 P.2d 1231, 1233-34 (App. 1982) ("Matters not raised below will not be considered on appeal." (citations omitted)).

¶13 In addition, Wife fails to make any specific argument or cite any evidence or legal authority showing how the court erred by finding that Husband's 2005 arrearages did not entitle Wife to claim all three Children as dependents for her 2009 tax returns. Upon review of the record, we find the family court properly interpreted and applied the 2005 decree pursuant to which Husband was entitled to claim two of the Children as dependents on his 2009 tax returns.⁵ Accordingly, we find no error.

⁵ Pursuant to Guidelines § 27, "[t]he allocation of the exemptions shall be conditioned upon payment by December 31 of the total court-ordered monthly child support obligation for the *current calendar year* and any court-ordered arrearage payments due during that calendar year for which the exemption is to be claimed." (Emphasis added). The relevant inquiry, therefore,

Children's Uninsured Medical Expenses

¶14 Wife next asks us to hold Husband responsible for fifty-seven percent of the Children's uninsured medical expenses incurred after his last payment in April 2008. Wife correctly argues that the 2005 decree obligated Husband to pay fifty-seven percent of the Children's uninsured medical expenses. However, the Guidelines provide that, "[e]xcept for good cause shown, any request for payment or reimbursement of uninsured medical, dental and/or vision costs must be provided to the other parent within 180 days after the date the services occur." A.R.S. § 25-320 app. § 9.A. The family court found that Wife "failed to establish that she provided [Husband] with copies of the medical, dental and vision bills in a timely manner or that there is good cause for her failure to provide [Husband] with proof of those expenses."⁶ Accordingly, the court concluded that Wife failed to establish that she provided Husband with proof of any medical expenses after June 2008 and Husband was therefore not obligated

was limited to only whether Husband had paid his support obligation for the 2009 calendar year. The scope of the inquiry was limited in this way even though Husband incurred arrearages in 2005 because the family court had not ordered Husband to make payments on the 2005 arrearages during the 2009 calendar year. We find the family court correctly interpreted and applied Guidelines § 27 in this case.

⁶ The court noted that although Husband acknowledged receiving copies of a medical bill on June 24, 2008, that bill "[did] not cover the majority of expenses claimed by [Wife] since [those expenses] were incurred after June 24, 2008."

to reimburse Wife for undocumented expenses between January 1, 2005 and October 27, 2010.

¶15 Wife makes no legal argument as to how the court erred in making this finding, and her claim is essentially an improper request for a different weighing of the evidence. *See Hurd*, 223 Ariz. at 52, ¶ 16, 219 P.3d at 262. In addition, because Wife 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 court's finding. *See 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.

Children's Extracurricular and Educational Expenses

¶16 Wife asks us to hold Husband responsible for a portion of the Children's extracurricular and continuing educational expenses. Wife argued to the family court that Husband should be required to make contributions toward these expenses based on an oral agreement between the parties and his continuing duty to support. The family court rejected Wife's argument, finding "no legal basis for the Court to order [Husband to] pay a portion of or all of the monthly cell phone bills, sports expenses, school expenses or college expenses" because "[n]one of those expenditures are included in the orders entered by the Court in the Decree or Child Support Order." The court further found "there is no legal basis for the Court to order [Husband] to pay

those expenses based upon a verbal agreement or duty to support" because an enforceable agreement between parties in family law proceedings must be in writing and signed by the parties or be stated in open court. See Ariz. R. Fam. L.P. 69. The court concluded that the purported oral agreement was unenforceable because it failed to meet the requirements of Rule 69, as well as the requirements set forth in A.R.S. § 25-317.

¶17 Wife argues on appeal, without citation to any authority, that Husband should be "responsible for a portion of the children's extracurricular and college expenses as these activities go beyond requirements of daily living but are of great value for our children's future." To the extent Wife claims the family court made erroneous legal conclusions and findings of law, we are unable evaluate this argument because Wife does not cite any supporting legal authority or otherwise elaborate on her argument. See *In re \$26,980.00*, 199 Ariz. at 299, ¶ 28, 18 P.3d at 93; *Brown*, 194 Ariz. at 93, ¶ 50, 977 P.2d at 815. In any event, we find the court properly interpreted and applied Rule 69 and A.R.S. § 25-317. To the extent Wife argues the court's factual findings were not supported by the evidence, Wife fails to point to any evidence in the record to support such an argument and we will again assume the missing transcript supports the trial court's findings and ruling. See *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.

Husband's Medical Expense Payment

¶18 Wife next asks us to recognize that Husband's purported \$2480.00 payment toward the Children's medical expenses was "allotted and specified for medical expenses not pertaining to this case." Wife apparently directs this argument at the family court's notation in its ruling that "[Husband] asserts that he paid [Wife] \$2480 towards medical bills between January 2007 and April 2008." Because the court also found that "the majority of expenses claimed by [Wife] . . . were incurred after June 24, 2008," we fail to understand how the court's findings conflict with Wife's factual claim.⁷ Nevertheless, we again cannot evaluate the sufficiency of the evidence regarding this issue due to Wife's failure to provide a transcript of the proceedings. See *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.

⁷ Moreover, as previously discussed, the court found that Husband was not obligated to reimburse Wife for any medical expenses incurred between January 1, 2005 and October 27, 2010, including those pertaining to this case, because Wife failed to provide Husband with documentation of those expenses. The court's ruling would presumably be the same regardless of whether Husband actually made the \$2480.00 payment. As a result, even if we were to accept the merits of her argument, we fail to see how Wife's request would have any effect on the court's ruling.

Wife's Income

¶19 Fifth, Wife asks us to modify the child support order to reflect her "accurate income." Because Wife failed to include a transcript of the proceedings, we cannot tell whether this argument was raised below and therefore find it to be waived. See *Pflum*, 135 Ariz. at 306-07, 660 P.2d at 1233-34.

¶20 In addition, Wife's argument appears to be a request for a new modification of the child support order. This court does not have jurisdiction to review an original petition for modification of a child support order. See A.R.S. § 25-502.A (Supp. 2011) ("The superior court has original jurisdiction in proceedings brought by . . . a person having physical custody of a child . . . to establish, enforce or modify the duties of support"). If Wife believes the child support order should be modified, she should file a petition for modification with the family court pursuant to Ariz. R. Fam. L.P. 91.A and A.R.S. §§ 25-502.A and 25-503.E (Supp. 2011).

¶21 Under the same heading, Wife also makes an apparently unrelated assertion that Husband should "be charged interest on the [2005] arrearages as he made no attempt over the years to become current on [h]is payments." The family court found that Husband was not at fault for failing to make payments on the 2005 arrearages when neither party became aware of the arrearages until 2009 and Wife did not file a petition to enforce the child

support order until 2010. We decline to further address this issue because Wife fails to support her assertion with any evidence, argument or citation to legal authority. See *In re \$26,980.00*, 199 Ariz. at 299, ¶ 28, 18 P.3d at 93; *Brown*, 194 Ariz. at 93, ¶ 50, 977 P.2d at 815.

Orthodontic Expenses

¶22 Lastly, Wife asks this court to hold Husband responsible for fifty-seven percent of certain orthodontic expenses. Because Wife does not specify as to which orthodontic expenses she is referring and because she failed to include a transcript of the proceedings, we again cannot evaluate the sufficiency of the evidence regarding this issue. Again we assume the missing portions of the record support the trial court's ruling. See *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.

CONCLUSION

¶23 For the reasons set forth above, we affirm the family court's ruling.

/S/

PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

PHILIP HALL, Judge

/S/

JOHN C. GEMMILL, Judge