

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF:

MARIANNE BRYANT,
Petitioner/Appellant,

and

JASON MARTIN-HAILE BRYANT,
Respondent/Appellee.

No. 2 CA-CV 2014-0090
Filed January 14, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Cochise County
No. DO201000903
The Honorable Kimberly A. Corsaro, Judge Pro Tempore

AFFIRMED

COUNSEL

Pahl & Associates, Tucson
By Danette R. Pahl
Counsel for Petitioner/Appellant

Jason M.H. Bryant, Hereford
In Propria Persona

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MEMORANDUM DECISION

Judge Howard authored the decision of the Court, in which Presiding Judge Kelly and Judge Vásquez concurred.

H O W A R D, Judge:

¶1 Marianne Bryant appeals from the trial court’s order awarding attorney fees and costs to her former husband, Jason Bryant, in the amount of \$11,339.11. Marianne argues the court abused its discretion because it failed to make specific findings of fact and conclusions of law citing the basis for the award and because John’s affidavit in support of the award was untimely. For the following reasons, we affirm.

Factual and Procedural Background

¶2 “We view the facts in the light most favorable to upholding the trial court’s ruling.” *Hammoudeh v. Jada*, 222 Ariz. 570, ¶ 2, 218 P.3d 1027, 1028 (App. 2009). In 2008, Marianne and Jason dissolved their marriage and entered into a parenting plan by which they both retained joint legal custody over their minor son, T.B. In 2010, Jason petitioned the court for, *inter alia*, sole legal and physical custody of T.B., which initiated a series of post-decree petitions by both parties. In an October 2013 ruling, the court awarded Jason his attorney fees and costs incurred during the litigation of a petition and request for hearing Marianne filed in January 2012 (“Petition”) and a petition and motion to show cause Jason filed in March 2012 (“Counterpetition”) pursuant to A.R.S. § 25-324.

¶3 More than three months after the October 2013 ruling, Jason filed an Affidavit of Attorney Fees and Costs requesting a total of \$38,497.36. Marianne moved to strike the affidavit as untimely, arguing that Rule 12.4, Cochise Cnty. Super. Ct. Loc. R. P., had required Jason to file the affidavit within ten days of the ruling. She also objected to the amount requested because only \$11,339.11 of the fees and costs requested concerned litigation of the Petition and

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Counterpetition. The trial court awarded Jason \$11,399.11. Marianne then filed a motion for reconsideration, which the court stayed pending her appeal.¹ We have jurisdiction over Marianne's appeal pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(2).

Specific Findings Concerning the Basis of the Award

¶4 Marianne first argues the trial court abused its discretion in ordering the award because it “made no explicit findings of fact and conclusion[s] of law” and “failed to cite that [Marianne’s] unreasonable behavior during the time period of January 1, 2012 through April 8, 2013 warranted an award of one hundred percent . . . attorney[] fees and costs.” Marianne contends § 25-324(A) required the court to make explicit, detailed findings of fact and conclusions of law because Jason had filed a Request for Findings of Fact and Conclusion of Law pursuant to Rule 82, Ariz. R. Fam. Law P., during the proceedings on the Petition and Counterpetition.

¶5 A party is precluded from raising the lack of specific findings pursuant to § 25-324(A) as an issue on appeal if she has failed to object below to the lack of findings. *In re Marriage of Pownall*, 197 Ariz. 577, ¶ 27, 5 P.3d 911, 917 (App. 2000); *see also MacMillan v. Schwartz*, 226 Ariz. 584, ¶ 39, 250 P.3d 1213, 1221 (App. 2011) (failure to object to inadequacy of specific findings waives the issue). Here, Marianne did not object to the trial court’s failure to make specific findings in support of the award. Her only response to the court’s order on the amount of fees was a motion for reconsideration in which she argued that Jason failed to submit evidence sufficient to support the fees and costs requested, that his request was unethical, that he incurred the fees by initiating the litigation, and that she did not behave unreasonably. Because she failed to object to the lack of specific findings concerning the basis

¹The trial court correctly noted that Marianne’s filing of her Notice of Appeal effectively stayed consideration of her Motion for Reconsideration. *See City of Phoenix v. Leroy’s Liquors, Inc.*, 177 Ariz. 375, 381, 868 P.2d 958, 964 (App. 1993).

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for the award, Marianne waived any alleged error the court may have made in failing to issue specific findings pursuant to § 25-324(A) and is precluded from raising this issue on appeal. See *Pownall*, 197 Ariz. 577, ¶ 27, 5 P.3d at 917; see also *MacMillan*, 226 Ariz. 584, ¶ 39, 250 P.3d at 1221.²

Timeliness of Jason’s Affidavit

¶6 Marianne further argues the trial court abused its discretion in awarding Jason attorney fees because his affidavit in support of the award, filed more than ten days after the October 2013 ruling, was untimely under Rule 12.4, Cochise Cnty. Super. Ct. Loc. R. P. “We review the award of fees pursuant to A.R.S. § 25-324 . . . for abuse of the court’s discretion.” *Breitbart-Napp v. Napp*, 216 Ariz. 74, ¶ 35, 163 P.3d 1024, 1033 (App. 2007). Yet “we review questions of law, including the court’s authority to award attorney

²In support of her argument concerning the lack of specific findings, Marianne asserts in her opening brief that she “prevailed with regard to several positions taken throughout the litigation.” And in her reply brief she refers to certain findings in the trial court’s October 2013 ruling regarding the meritless nature of allegations she made during post-decree proceedings that were separate from the proceedings on the Petition and Counterpetition. To the extent that these references are intended to challenge the basis for the award, rather than the lack of specific findings, the challenge is waived for lack of adequate argument. See *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, ¶ 28, 181 P.3d 219, 229 (App. 2008) (failure to adequately develop argument waives review of issue). Further, we note that Marianne has not provided any transcripts for the hearings on the Petition and Counterpetition. Thus we presume the transcripts support any conclusions the court may have made pursuant to § 25-324 concerning the reasonableness of Marianne’s positions and thereby presume sufficient support for the award. See *Myrick v. Maloney*, 235 Ariz. 491, ¶ 11, 333 P.3d 818, 822 (App. 2014) (“We presume the items not included in the appellate record support a trial court’s ruling.”).

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fees . . . de novo.” *Bennett Blum, M.D., Inc. v. Cowan*, 235 Ariz. 204, ¶ 5, 330 P.3d 961, 962 (App. 2014).

¶7 Rule 12.4 requires a participant in Cochise County’s alternative dispute resolution (“ADR”) program to file his application for attorney fees and costs “[w]ithin ten (10) days from the date stamped Notice of Decision.” Rule 12.4, as well as Rule 12 and its other subparts, applies only to ADR proceedings. *See Cochise Cnty. Super. Ct. Loc. R. P. 12, 12.1 through 12.7.* Here, the proceedings on the Petition and Counterpetition took place before the trial court and were not submitted to Cochise County’s ADR program. Rule 12.4, therefore, was inapplicable. Thus, the court did not err under Rule 12.4 and did not abuse its discretion in failing to invoke the rule to bar consideration of Jason’s affidavit. *See Breitbart-Napp*, 216 Ariz. 74, ¶ 35, 163 P.3d at 1033.

Requests for Attorney Fees and Costs on Appeal

¶8 Both parties request their attorney fees and costs on appeal pursuant to Rule 21, Ariz. R. Civ. App. P., and § 25-324. Jason is not entitled to an award of attorney fees because he appears before us pro se, *see Munger Chadwick, P.L.C. v. Farwest Dev. & Constr. of the Sw., LLC*, 235 Ariz. 125, ¶ 5, 329 P.3d 229, 230 (App. 2014), and, in our discretion, we decline to grant Marianne’s request for attorney fees, *see Myrick v. Maloney*, 235 Ariz. 491, ¶ 16, 333 P.3d 818, 823 (App. 2014). As the successful party, Jason is entitled to his costs on appeal, contingent upon his compliance with Rule 21. *See Kent v. Carter-Kent*, 235 Ariz. 309, ¶ 25, 332 P.3d 56, 61 (App. 2014).

Disposition

¶9 For the foregoing reasons, we affirm the trial court’s ruling.