IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF:

DAVID WILLIAM MEYER,
Petitioner/Appellant,

and

JANICE KAY MEYER,
Respondent/Appellee.

No. 2 CA-CV 2015-0176
Filed May 10, 2016

Appeal from the Superior Court in Pima County
No. D20123302
The Honorable Sean E. Brearcliffe, Judge

AFFIRMED

David Meyer, Hereford
In Propria Persona

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

V Á S Q U E Z, Presiding Judge:

¶1 David Meyer appeals from the trial court's decree of dissolution of his marriage to Janice Meyer. He argues the court erred in determining the value of their community real property, ordering him to pay spousal maintenance to Janice, and making certain evidentiary rulings at the dissolution trial. For the reasons stated below, we affirm.[1]

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the trial court's decree. *See Bell-Kilbourn v. Bell-Kilbourn*, 216 Ariz. 521, n.1, 169 P.3d 111, 112 n.1 (App. 2007). David and Janice were married in June 1981. David filed a petition for dissolution of marriage in September 2012. After a two-day trial in May 2015, the court ordered the marriage dissolved, divided the parties' community property and debt, and awarded Janice spousal maintenance. This appeal followed. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

Discussion

¶3 As a preliminary matter, we note that David has not meaningfully complied with Rule 13(a), Ariz. R. Civ. App. P. In his opening brief, he failed to include references to the record or to develop his arguments on appeal by supporting them with case law or statutory authority. *See* Ariz. R. Civ. App. P. 13(a)(7). Despite

[1] Janice has not filed an answering brief in this court. Although we may consider her failure to do so as an admission of error, in our discretion, we decline to do so. *See In re Marriage of Diezsi*, 201 Ariz. 524, ¶ 2, 38 P.3d 1189, 1190 (App. 2002).

David's pro se status, he is held to the same standards as an attorney. *See Kelly v. NationsBanc Mortg. Corp.*, 199 Ariz. 284, ¶ 16, 17 P.3d 790, 793 (App. 2000). David's lack of compliance with Rule 13(a) could constitute a waiver of the issues on appeal. *See Sholes v. Fernando*, 228 Ariz. 455, ¶ 16, 268 P.3d 1112, 1118 (App. 2011) (appellant's failure to support argument waives issue on appeal). However, because we prefer to resolve cases on their merits, we will attempt to address David's arguments. *See Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984).

Community Property Valuation

¶4 David first contends the trial court used "[i]ncorrect property values" for the parties' community real property, which resulted in an "[un]equal distribution of the marital assets." The division of community property "is left to the sound discretion of the trial court and will not be disturbed unless clearly erroneous." *Baum v. Baum*, 120 Ariz. 140, 142, 584 P.2d 604, 606 (App. 1978); *see also Valento v. Valento*, 225 Ariz. 477, ¶ 11, 240 P.3d 1239, 1243 (App. 2010).

¶5 In a proceeding for dissolution of marriage, the trial court must divide the parties' community property "equitably, though not necessarily in kind." A.R.S. § 25-318(A). This generally means the division must be "substantially equal." *Toth v. Toth*, 190 Ariz. 218, 221, 946 P.2d 900, 903 (1997); *Pangburn v. Pangburn*, 152 Ariz. 227, 230, 731 P.2d 122, 125 (App. 1986). Making such a division necessarily requires the court to determine the value of the community property. *See, e.g.*, *In re Marriage of Thorn*, 235 Ariz. 216, ¶¶ 28-30, 330 P.3d 973, 979-80 (App. 2014).

¶6 Citing their inventories of property, David maintains he and Janice had "stipulat[ed]" to "the values of the five properties that were jointly owned," but the trial court used values "from elsewhere." The parties filed separate inventories of property listing the same values for some of the community real property, but this similarity does not mean they entered into a stipulation. *See Harsh Bldg. Co. v. Bialac*, 22 Ariz. App. 591, 593, 529 P.2d 1185, 1187 (1975) ("'A stipulation is an agreement, admission or concession made in a

judicial proceeding by the parties thereto or their attorneys, in respect to some matter incident thereto, for the purpose, ordinarily, of avoiding delay, trouble and expense.'"), *quoting Bekins Van & Storage Co. v. Indus. Comm'n*, 4 Ariz. App. 569, 570, 422 P.2d 400, 401 (1967).

¶7 Moreover, the trial court was not bound by the values listed in the inventories; rather, it had to make its determinations based on the evidence presented at trial. *See Smith v. Beesley*, 226 Ariz. 313, ¶ 20, 247 P.3d 548, 554 (App. 2011) (court, as trier of fact, not bound by parties' stipulations of undisputed facts); *cf. Breitbart-Napp v. Napp*, 216 Ariz. 74, ¶ 14, 163 P.3d 1024, 1029 (App. 2007) (court not bound by parties' property agreement). This court then reviews to ensure those determinations are supported by the record. *See Little v. Little*, 193 Ariz. 518, ¶ 5, 975 P.2d 108, 110 (1999) (trial court abuses discretion if record devoid of competent evidence to support decision).

¶8 In this case, the trial court appears to have adopted the values David listed in one of his trial exhibits for two Navajo County properties and two Cochise County properties. As for a fifth property in Maricopa County, the court seems to have used its full cash value as identified in a printout attached to that same exhibit. Because we do not have transcripts from the dissolution trial, *see* Ariz. R. Civ. App. P. 11(b) (party required to order transcripts when necessary to support argument), we must assume they support the court's ruling, *see Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995) ("When a party fails to include necessary items, we assume they would support the court's findings and conclusions."). Consequently, we cannot say the court abused its discretion in determining the values of the parties' community real property. *See Valento*, 225 Ariz. 477, ¶ 11, 240 P.3d at 1243; *Baum*, 120 Ariz. at 142, 584 P.2d at 606.

Spousal Maintenance

¶9 David next contends the trial court erred by ordering him to pay Janice spousal maintenance because it relied on "[i]ncorrect sources of income" for him. We review an award of spousal maintenance for an abuse of discretion and will affirm "if

there is any reasonable evidence to support it." *Helland v. Helland*, 236 Ariz. 197, ¶ 22, 337 P.3d 562, 567 (App. 2014).

¶10 In a proceeding for dissolution of marriage, the trial court may order spousal maintenance when a spouse meets any of the four enumerated grounds in A.R.S. § 25-319(A), which generally involve the spouse's ability to be financially independent. In setting the amount and duration of spousal maintenance, the court must then consider the thirteen enumerated factors in § 25-319(B), including the payor spouse's ability to meet the needs of both parties, § 25-319(B)(4), and the parties' comparative financial resources, § 25-319(B)(5).

¶11 David maintains that his monthly retirement income is not enough "to live on and pay spousal support" and that his real property "does not provide income and will need to be sold to pay the back taxes and all of the debt." But evidence of David's retirement income and the value of the real property was presented to the trial court through exhibits. To the extent David asks us to reweigh the evidence or determine witness credibility, that is not our function. *See In re Estate of Newman*, 219 Ariz. 260, ¶ 40, 196 P.3d 863, 874 (App. 2008). Our review is limited to searching the record for reasonable evidence to support the award—something we cannot do here because David has not provided the trial transcripts. We therefore must presume the record supports the award. *See Baker*, 183 Ariz. at 73, 900 P.2d at 767. And, consequently, we cannot say the court abused its discretion in ordering David to pay Janice spousal maintenance. *See Helland*, 236 Ariz. 197, ¶ 22, 337 P.3d at 567.

Evidentiary Issues

¶12 David lastly contends the trial court committed various evidentiary-ruling errors at the dissolution trial. For example, he suggests the court should not have admitted Janice's exhibits because she failed to appear at a settlement conference and should have listened to an audio recording he offered as evidence. And, based on these evidentiary rulings, David maintains the court was "partial[] toward [Janice]."

¶13 Although we have jurisdiction over this appeal, we do not have jurisdiction to review the trial court's evidentiary rulings. David's notice of appeal indicates he is appealing "the trial court's final dissolution orders." The notice then lists the specific issues from the decree of dissolution he sought to challenge: "[a]sset values" and "spousal support." *See Lee v. Lee*, 133 Ariz. 118, 124, 649 P.2d 997, 1003 (App. 1982) (scope of appeal limited to matters contained in notice). Section 12–2102(A), A.R.S., provides that, on appeal from a final judgment, we "shall review any intermediate orders involving the merits of the action and necessarily affecting the judgment, and all orders and rulings assigned as error, whether a motion for a new trial was made or not." *See also Rourk v. State*, 170 Ariz. 6, 13, 821 P.2d 273, 280 (App. 1991). But, although David broadly suggests the court's intermediate evidentiary rulings indicate the court's partiality, he has not explained how that partiality "involv[ed]" or "affect[ed]" the issues he properly raised on appeal. § 12-2102(A); *see* Ariz. R. Civ. App. P. 13(a); *cf. Truck Ins. Exch. v. State Comp. Fund*, 138 Ariz. 116, 118, 673 P.2d 314, 316 (App. 1983) (we may only review those intermediate orders that "necessarily affect the validity of [the] judgment from which an appeal has been taken"). Thus, we do not address these rulings further.

Disposition

¶14 For the reasons stated above, we affirm.