IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

DESIREE ALBERTINA WILLIAMS, F/K/A DESIREE ALBERTINA HERNDON,
Petitioner/Appellee,

and

JEFFREY ALAN HERNDON,
Respondent/Appellant.

No. 2 CA-CV 2016-0056
Filed May 23, 2017

Appeal from the Superior Court in Pima County
No. D20143488
The Honorable Jeffrey Bergin, Judge
The Honorable Deborah Bernini, Judge
The Honorable James E. Marner, Judge

AFFIRMED IN PART AS CORRECTED;
VACATED IN PART AND REMANDED

COUNSEL

Mark J. DePasquale, PC, Phoenix
By Mark J. DePasquale
Counsel for Petitioner/Appellee[1]

Solyn Law, PLLC, Tucson
By Melissa Solyn
Counsel for Respondent/Appellant

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Presiding Judge Staring and Judge Espinosa concurred.

M I L L E R, Judge:

¶1 Jeffrey Herndon appeals from the trial court's decree dissolving his marriage to Desiree Williams and several related rulings. In his 125-page opening brief, Herndon challenges virtually all of the court's factual findings, as well as numerous procedural rulings made throughout the litigation. We affirm in part as corrected, vacate in part, and remand for further proceedings.

Factual and Procedural Background

¶2 "We view the facts in the light most favorable to upholding the trial court's decree." *In re Marriage of Foster*, 240 Ariz. 99, ¶ 2, 376 P.3d 702, 703 (App. 2016). Williams filed for dissolution of the twenty-year marriage on October 17, 2014, and the trial court issued a preliminary injunction restricting the transfer of property

---

[1]After the briefing was complete, DePasquale filed a "Notice of Withdrawal as Counsel," but he did not comply with the requirements of Rule 4(h), Ariz. R. Civ. App. P. and Rule 9(A)(2), Ariz. R. Fam. Law P. Therefore, he remains counsel of record.

the same day.[2] Herndon was served with the petition and preliminary injunction on October 22, 2014. The focus of much of the litigation was the proper disposition of the parties' interests in Plum Windows and Doors, Inc. (hereinafter, "Plum"), and in Herndon Investments, LLC (hereinafter, "HI"), which owns the office building where Plum is located. The parties stipulated, and the court found, Plum and HI to be community property.

¶3 After the preliminary injunction had been entered, Herndon, who was then the manager of Plum, worked with Leamon Crooms to create a new entity in 2015 called Plum Arizona North, LLC (hereinafter, "Plum North"). Herndon claimed Plum North was intended to be a vehicle by which to expand Plum's business into the Phoenix-area market. At all relevant times Crooms was the sole member and manager of Plum North, and Plum had no interest in it. Crooms contributed no capital to Plum North and did not bring "anything of value to the deal, other than some consulting services with nebulous value."

¶4 Despite the preliminary injunction, Herndon directed Plum to transfer $30,000 to Plum North in May 2015. Herndon maintained the $30,000 was a loan, but Plum North had no assets with which to repay the purported loan and put down no collateral to secure it. Plum North did not pay Plum any consideration for use of the Plum name, nor for the use of Plum employees in getting Plum North off the ground. Moreover, Herndon caused Plum to enter a lease on a Mesa commercial property that exposed Plum to another $100,000 of potential liability, knowing that Plum's co-signer, Plum North, had no assets at the time. Herndon actively concealed the entire Plum North scheme from Williams and from the parties' joint expert accountant Mark Fleischman, representing

[2] Among other things, A.R.S. § 25-315(A)(1)(a) provides the trial court shall enjoin the parties from "transferring, encumbering, concealing, selling or otherwise disposing of any of the joint, common or community property of the parties except if related to the usual course of business, the necessities of life or court fees and reasonable attorney fees associated with" a dissolution action without the parties' written consent or the court's permission.

as late as June 2015 that "Plum does not do business in Phoenix and the Phoenix metropolitan area."

¶5 Williams became aware of the Plum North transactions soon after and filed a motion for a temporary restraining order on June 24, 2015. The trial court held a hearing on June 29,[3] and the following day the court ordered "that given the threat of destruction of the community property and the depletion of all assets, [Williams] is deemed the sole manager of Plum," and Herndon "is removed as signatory and manager of [HI] and Plum . . . until further order of the Court." Herndon nevertheless continued to hold himself out as the president and owner of Plum, and his interference with Williams's attempts to implement the court-ordered changes before the Arizona Corporation Commission (ACC) and the Arizona Registrar of Contractors (AROC) caused Williams to incur additional attorney fees.[4]

¶6 On October 20, 2015, Herndon moved to continue the trial in order to give Fleischman more time to complete a valuation of Plum. The trial court denied the motion after a hearing. On November 6, Williams requested findings of fact and conclusions of law pursuant to Rule 82, Ariz. R. Fam. Law P. Trial commenced on December 1.

¶7 The trial court issued its under-advisement trial ruling on January 7, 2016. The court found Herndon had "kept [Plum's dealings with Plum North] secret" from Williams and "[t]hese omissions were material to this matter and constitute fraud." It concluded Herndon had "deliberately engaged in a conspiracy to secrete assets [in Plum North] and defraud" Williams "under cloak of secrecy and deception, in breach of the Preliminary Injunction" and other court orders. The court also found that Herndon's characterization of the $30,000 payment to Plum North as a loan was not credible, and that Plum had "no real expectation . . . of repayment." These actions "positioned [Plum] so that [its] value

[3] Herndon was not present at the hearing because he was incarcerated at the time.

[4] The court also later held Herndon in contempt for this interference.

would be based on a business that had been drained of its cash," which would be detrimental to Williams in the property division.

¶8 The trial court awarded Plum to Williams at a value of $115,000. The court also awarded HI to Williams at a value of $350,000. It ordered that Herndon be charged with $375,000 of waste and $265,000 in lost profits. It also made rulings related to particular payments or debts that affect the issues on appeal.

¶9 On January 26, 2016, Herndon filed a motion for clarification of the under-advisement ruling, and on February 2, he appealed. This court suspended the appeal and revested jurisdiction in the superior court to clarify its under-advisement ruling and to address outstanding motions. Herndon filed several more motions in the trial court, citing Rules 83 through 85, Ariz. R. Fam. Law P. Williams also filed a motion for clarification in the court following revestment.

¶10 On August 11, the trial court issued an amended decree that included numerous clarifications of the under-advisement ruling, but few changes to the damages and property division plan previously ordered. The court certified the amended decree as final and appealable pursuant to Rule 78(B), Ariz. R. Fam. Law P., and Herndon filed a new notice of appeal. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).[5]

Dismissal of Appeal

¶11 As a threshold matter, we first address Williams's request that we dismiss this appeal because Herndon is in ongoing

[5]We lack jurisdiction over one issue Herndon raises. He argues the trial court erred in setting the supersedeas bond. However, a challenge to a supersedeas bond must be made via a special action rather than an appeal. *See AOR Direct L.L.C. v. Bustamante*, 240 Ariz. 433, ¶ 2, 380 P.3d 672, 674 (App. 2016). After the briefing in this case was complete, Herndon filed a motion for a stay in this court that included a request for alternative relief under our special action jurisdiction. We denied the motion and declined to exercise our special action jurisdiction.

contempt of various trial court orders. Dismissal of an appeal based on a party's contempt is a discretionary determination that depends on the facts of the particular case. *Stewart v. Stewart*, 91 Ariz. 356, 360, 372 P.2d 697, 700 (1962); *In re Marriage of Margain & Ruiz-Bours*, 239 Ariz. 369, ¶¶ 15, 18, 372 P.3d 313, 316-17 (App. 2016).

¶12 In view of the quasi-equitable nature of the sanction of dismissal, we decline to dismiss an appeal when the requesting party did not come before the court with "clean hands." *Margain*, 239 Ariz. 369, ¶¶ 18-20, 372 P.3d at 317-18, *quoting MacRae v. MacRae*, 57 Ariz. 157, 161, 112 P.2d 213, 215 (1941). Here, the record reveals that Williams (like Herndon) took funds for personal expenses from Plum, a closely held corporate business, and intermingled business and personal expenses. Williams's hands are not entirely clean; therefore, in our discretion, we decline to dismiss the appeal.

Factual Challenges

¶13 As an overarching argument, Herndon maintains the trial court failed to exercise its independent judgment in making findings of fact, instead adopting Williams's proposed findings of fact wholesale. He cites *Elliott v. Elliott*, 165 Ariz. 128, 796 P.2d 930 (App. 1990), but as that case makes clear a court may adopt a party's proposed findings of fact as long as "those findings are consistent with the ones [the court] reaches independently after properly considering the facts." *Id.* at 134, 796 P.2d at 936. Although the court utilized Williams's proposed findings of fact as a template in creating its own, a comparison of the proposed findings and the under-advisement ruling shows that the court did not improperly "delegate[] its obligation to independently weigh the evidence," *cf. Nold v. Nold*, 232 Ariz. 270, ¶ 14, 304 P.3d 1093, 1096-97 (App. 2013), but made numerous significant alterations and additions. The court did not "abdicate its responsibility to exercise independent judgment." *Id.*, *quoting DePasquale v. Superior Court*, 181 Ariz. 333, 336, 890 P.2d 628, 631 (App. 1995).

¶14 Herndon challenges more than a dozen particular factual findings the trial court made.[6] Many of these challenges are requests for this court to credit Herndon's own testimony, which the trial court specifically found not credible. "We will defer to the trial court's determination of witnesses' credibility and the weight to give conflicting evidence." *Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶ 13, 972 P.2d 676, 680 (App. 1998). And we will affirm the court's findings if they are reasonably supported by the evidence. *Id*. ¶¶ 5, 13.

Valuation of Plum

¶15 Herndon argues the trial court abused its discretion in valuing Plum at $115,000. *See Schickner v. Schickner*, 237 Ariz. 194, ¶ 13, 348 P.3d 890, 893 (App. 2015) (business valuation in divorce proceeding reviewed for abuse of discretion). Fleischman, the parties' expert accountant, testified that Plum's adjusted book value was $184,100 as of June 30, 2015, but could have been worth less than that amount. The court adopted Fleischman's calculation that Plum's unadjusted book value as of June 30, 2015 was $26,500. However, the court found insufficient evidence to support an accounts-receivable adjustment Fleischman made that increased the book value to $184,100. The court observed that undoing that adjustment "would result in [an] adjusted book value of $139,754" instead of $184,100.[7] The court stated it was "appropriate to treat

---

[6]Herndon contends Williams in her answering brief primarily cited "the trial court's Rulings and Findings, as opposed to the actual evidence presented in this matter." *See* Ariz. R. Civ. App. P. 13(a)(7)(A), (b)(1) (brief must contain "appropriate references to the portions of the record" on which party relies); *see also Ritchie v. Krasner*, 221 Ariz. 288, ¶ 62, 211 P.3d 1272, 1289 (App. 2009) (noncompliance with Rule 13 can constitute waiver). In our discretion, however, we do not find her arguments waived, because she included many record citations in her brief and in many instances, the portions of the amended decree Williams cites themselves contain references to the record.

[7]Fleischman's calculations also included an adjustment for the $30,000 in bond funds discussed below, which the trial court dealt with separately and were later recovered.

the value [of Plum] on June 30, 2015 as low as book value," but ultimately found "$115,000 was a fair value for Plum as of June 30, 201[5]." The court did not explain what additional calculations it relied upon to discount Plum's adjusted book value—the valuation method on which it purported to rely—from $139,754 to $115,000.

¶16 Williams contends we must affirm the $115,000 valuation because it was "within the range of valuations reasonably supported by the evidence at trial," even though the trial court did not articulate a mathematical basis for the particular figure. She maintains we should infer that the court made whatever additional findings are necessary to affirm its ruling. But we agree with Herndon that where, as here, a party has requested findings of fact and conclusions of law pursuant to Rule 82(A), Ariz. R. Fam. Law P., "[i]t must be clear from the family court's findings how the court arrived at its mathematical figure." *Stein v. Stein*, 238 Ariz. 548, ¶¶ 10-12, 363 P.3d 708, 711 (App. 2015); *accord Elliott*, 165 Ariz. at 135, 796 P.2d at 937, *quoting Urban Dev. Co. v. Dekreon*, 526 P.2d 325, 328 (Alaska 1974) ("[I]t is not enough that the appellate court is able to derive bases on which the trial court could have permissibly reached the decision it did from the record. It must be clear how the court actually did arrive at its conclusions."). The court's findings must include "all of the 'ultimate' facts—that is, those necessary to resolve the disputed issues." *Elliott*, 165 Ariz. at 132, 796 P.2d at 934.

¶17 Nothing in the record explains the mathematical basis for the trial court's determination that the adjusted book value of Plum was $115,000 as of June 30, 2015. For purposes of review, "[t]he trial court effectively made no findings of fact" on that issue. *Miller v. Bd. of Supervisors of Pinal Cty.*, 175 Ariz. 296, 299-300, 855 P.2d 1357, 1360-61 (1993) (construing Rule 52(a), Ariz. R. Civ. P.); *see also Stein*, 238 Ariz. 548, ¶ 10, 363 P.3d at 711 (applying *Miller* in context of Rule 82(A), Ariz. R. Fam. Law P.). We will not "infer reasons" that a $115,000 valuation might be supported by reasonable evidence, because Rule 82(A) was timely invoked. *Stein*, 238 Ariz. 548, ¶ 12, 363 P.3d at 711; *see also Miller*, 175 Ariz. at 300, 855 P.2d at 1361 ("That we might be able to construct a plausible interpretation of the trial court's reasoning does not sufficiently satisfy the trial court's burden."). Accordingly, we vacate the court's $115,000

valuation of Plum and remand for further findings on that issue. *Cf. Stein*, 238 Ariz. 548, ¶¶ 12-13, 363 P.3d at 711-12 (vacating child support order lacking express mathematical basis and remanding for additional findings).

Waste

¶18 Herndon next contends the trial court erred in finding he had committed waste of community assets in the amount of $375,000. He maintains "[i]t is entirely unclear how the trial court even arrived at this figure." The court, however, expressly arrived at this figure by calculating the difference in Plum's value on December 31, 2014, which the court found to be $490,000, and Plum's value on June 30, 2015, which the court found to be $115,000. The court determined that as of the date Williams had assumed control of Plum, the company was in a "deplorable" state—"the cash was depleted, the books were a mess, customer deposits were at an all[-]time low, bidding was in disarray, vendors had been alienated, contracts had mysteriously been placed on hold, employees were being harassed, side jobs were being done without accountability for cash, there was no e-verification compliance," and the Plum North scheme was well underway. In the light most favorable to upholding the judgment, the evidence showed the reduction in Plum's value over the relevant time period was the result of Herndon having "eviscerated" the business through mismanagement and funneling Plum assets and resources into Plum North.[8] The court's method of calculating waste was not an abuse of discretion. *See Cockrill v. Cockrill*, 139 Ariz. 72, 74, 676 P.2d 1130, 1132 (App. 1983) (trial court's selection of particular valuation method reviewed for abuse of discretion).

Lost Profits and Other Damages

¶19 Herndon argues the trial court erred in finding him responsible for $265,000 in "other damages and waste, which may

[8]The trial court used its $115,000 valuation of Plum as of June 30, 2015 as the subtrahend in its waste calculation. If, upon remand, the court determines Plum had a different value as of that date, it should modify the $375,000 waste calculation as well.

include lost profits." As discussed above, when a party has requested findings of fact and conclusions of law pursuant to Rule 82(A), the court's findings must show the mathematical basis for its damages calculations in order to facilitate appellate review. *See Stein*, 238 Ariz. 548, ¶¶ 10-12, 363 P.3d at 711; *Elliott*, 165 Ariz. at 135, 796 P.2d at 937.

¶20 The trial court awarded Williams $265,000 in "additional damages, including in the form of lost profits." This award was designed to compensate her for time spent "dealing with [Herndon's] barrage of harassment and interference," for "the diversion of Plum resources and employees to the business of Plum North," and for "Plum employees working for Plum North's benefit during their Plum work hours." But the court's ruling does not explain how it computed the $265,000 figure or why that amount was appropriate to remedy the stated damages. Williams maintains $265,000 is "well within the scope of what the evidence would support these losses could have been," but when a party has requested findings of fact and conclusions of law, this is not a sufficient basis for affirmance.[9] *See Miller*, 175 Ariz. at 300, 855 P.2d at 1361. We will not infer reasons that might support the court's ruling—the actual mathematical basis for its ruling must be apparent. *Stein*, 238 Ariz. 548, ¶¶ 10-12, 363 P.3d at 711; *Elliott*, 165 Ariz. at 135, 796 P.2d at 937. Because the mathematical basis is not specified, we vacate the court's award of $265,000 in lost profits and other damages, and remand for further findings on that issue. *Cf. Stein*, 238 Ariz. 548, ¶¶ 12-13, 363 P.3d at 711-12.

Plum Funds Used for Personal Expenses

¶21 Herndon next argues there is "no evidence" to support $56,817.48 in "hard damages" to account for the personal expenses he paid for with Plum funds after the date of service. Relying on an exhibit in evidence itemizing the charges, the trial court found that Herndon had used $95,576.66 of Plum funds for personal expenses

[9]Williams's reliance on *Gutierrez*, 193 Ariz. 343, ¶¶ 6-13, 972 P.2d at 679-81, is misplaced on this point because there is no indication that a party requested findings of fact and conclusions of law in that case.

after the date of service, including $30,000 for his criminal bonds that the court found had been subsequently recovered. Based on another itemized exhibit in evidence, the court found Williams had used $8,759.18 of Plum shareholder distributions for personal expenses, which matches the figures from the exhibit. The finding is supported by reasonable evidence.

Credit Card Expenses

¶22 Herndon challenges $7,000 the trial court characterized as property settlement for expenses Williams paid with her personal credit card. The court found these were Plum business expenses Williams had paid on her personal card because Herndon's interference with her management of Plum prevented her from being able to obtain a Plum company credit card. Williams's testimony reasonably supports that finding.

Tucson Country Club Membership

¶23 Herndon next argues it was inequitable that the trial court treated his share of the parties' Tucson Country Club membership as property settlement while treating Williams's share as a community expense. But the court reasonably could have determined this to be an equitable resolution because the evidence showed only Herndon had utilized the golfing privileges. *See McClennen v. McClennen*, 11 Ariz. App. 395, 398, 464 P.2d 982, 985 (1970) (trial court has discretion to divide property equitably, not necessarily evenly; court of appeals will not intervene absent abuse of discretion).

Plum Funds Withdrawn for Criminal Attorney Fees

¶24 Facing criminal charges of aggravated harassment, domestic violence, for having violated an order of protection against Williams, Herndon took $60,000 from Plum to pay a criminal defense attorney. Herndon disputes the trial court's finding that he still had not repaid Plum for $6,812.61 of that $60,000. Bank statements in evidence reasonably support the court's conclusion that Plum had recovered only $53,187.39. The court did not err in ordering Herndon to repay the balance.

Plum North Marketing

¶25 Herndon argues there was no evidence to support the trial court's finding that he caused Plum to spend $19,119.41 on Plum North marketing. That figure exactly matches a Plum check register in evidence. Furthermore, at trial Herndon admitted there was still money owed to a "marketing company that handled [a] direct mail campaign up in Phoenix." Reasonable evidence supports the court's finding.

$12,000 from Plum

¶26 Herndon challenges the trial court's finding that Plum owed Williams $12,000. On June 23, 2015, before trial and while Herndon was still running Plum, the court ordered that in addition to Williams's regular Plum salary, Plum was to pay her $2,000 twice monthly. At trial, Williams testified that after assuming control of Plum, she had not been able to pay herself six of these payments for a total of $12,000. The evidence supports the court's finding.

Criminal Bond

¶27 Herndon argues the trial court abused its discretion by ordering a $10,000 offset in the property division. Herndon had used $10,000 of Plum funds to pay his criminal bond arising out of the aggravated harassment, domestic violence charges. Although the court found Herndon had returned the bond funds, it nevertheless, in the amended decree, ordered a $10,000 offset in the property settlement in favor of Williams on account of those funds. Williams concedes this was error and we agree. We therefore vacate the $10,000 obligation in Order #4 of the amended decree, entitled "Waste/Damages."

Schrader Lane Property

¶28 Herndon argues the trial court erred in deeming certain real estate "joint property." As a question of law, we review de novo the court's classification of property; however, we review the property distribution for an abuse of discretion. *Bell-Kilbourn v. Bell-Kilbourn*, 216 Ariz. 521, ¶ 4, 169 P.3d 111, 113 (App. 2007).

¶29 The parties had jointly purchased a house on Schrader Lane before the marriage. Also before the marriage, Williams had signed a quit-claim deed of her interest in the property to Herndon. During the marriage, the parties paid the mortgage on the property using community funds. Williams's father also loaned the parties $30,000 during the marriage to finish paying off the mortgage.

¶30 Williams testified, and the trial court found, she had not intended to make a gift of her share of the property to Herndon when she signed the quit-claim deed, but signed it only to facilitate refinancing while she was out of town. The court also found Williams's father's loan was inconsistent with Herndon's assertion that the Schrader Lane property was his sole and separate property at the time. The court determined the house was community property, and ordered that it be sold and the proceeds be divided equally, subject to a reimbursement to Williams for $15,000 from Herndon's share of the proceeds—half of the $30,000 loan.

¶31 "A spouse's real . . . property that is owned by that spouse before marriage . . . is the separate property of that spouse," A.R.S. § 25-213(A), and it remains so after the marriage except by operation of law or by agreement, even if mortgage payments are made using community funds, *Drahos v. Rens*, 149 Ariz. 248, 249, 717 P.2d 927, 928 (App. 1985). Although such payments do not convert the property to community property, the community has a right to an equitable lien against the separate property for the capital the community contributed during the marriage. *See id.* at 249-51, 717 P.2d at 928-30; *see also In re Marriage of Pownall*, 197 Ariz. 577, ¶ 22, 5 P.3d 911, 916 (App. 2000).

¶32 Here, Williams quit-claimed "all right, title, or interest" in the Schrader Lane property to Herndon before the marriage, leaving it as Herndon's sole and separate property. Because the language of the quit-claim deed is unambiguous, parol evidence—such as evidence of Williams's rationale for quit-claiming her interest in the property, or testimony about the subsequent $30,000 "loan"—has "no place" in determining the property's character.[10]

[10]Williams attempts to avoid application of the parol evidence rule by arguing reformation following a unilateral mistake in the gift

Valento v. Valento, 225 Ariz. 477, ¶ 22, 240 P.3d 1239, 1245 (App. 2010). The record contains no agreement converting the property into community property, nor did mortgage payments from community funds alter its separate character. *Drahos*, 149 Ariz. at 249, 717 P.2d at 928. The Schrader Lane property was Herndon's sole and separate property before and throughout the marriage, and the trial court's contrary conclusion was incorrect as a matter of law. *See Pownall*, 197 Ariz. 577, ¶ 22, 5 P.3d at 916. We vacate the court's finding that the Schrader Lane property was community or joint property, and we vacate the court's corresponding orders regarding disposition of the proceeds from the sale of the Schrader Lane property. *Drahos*, 149 Ariz. at 250-51, 717 P.2d at 929-30.

¶33 Because the community contributed capital to the Schrader Lane property during the marriage, the community is entitled to an equitable lien against the property. *See id.* at 249-50, 717 P.2d at 928-29. The record on appeal does not contain the necessary facts for us to determine the amount of the community's lien, and thus we remand to the trial court for further proceedings on that issue. *Accord id.* at 250-51, 717 P.2d at 929-30.

Home Equity Line of Credit

¶34 In the amended decree, the trial court ordered Herndon to pay fifty percent of the payments on a home equity line of credit associated with the marital residence until the residence was sold. These payments were $1,638.21 per month. The amended decree stated that Herndon owed $19,713 for five months of these payments. Williams concedes that five multiplied by $1,638.21 equals $8,191.05, not $19,713. We hereby correct Order #4 of the amended decree, entitled "Waste/Damages," to reflect the proper amount.[11]

---

perfected, citing *Yano v. Yano*, 144 Ariz. 382, 385-86, 697 P.2d 1132, 1135-36 (App. 1985). *Yano* is inapposite—there is no evidence that due to a mistake in the language used in the deed Williams conveyed anything other than what she intended to convey. *Cf. id.*

[11]We note, however, that the amended decree already uses the correct $8,191.05 figure in calculating its damages total, so our

CopperPoint

¶35 Herndon argues the trial court erred by finding that a debt to Plum's workers' compensation insurance provider, CopperPoint, had been incurred during the period of his management of Plum, rather than during Williams's tenure. If he were correct, then under the terms of the amended decree the debt would be Williams's responsibility rather than his own. However, CopperPoint notified Plum that it had a balance due of $5,557.76 in a letter dated April 1, 2015, which was later admitted in evidence. Williams became manager of Plum on June 30, 2015. Sufficient evidence supports the finding that the CopperPoint debt had been incurred while Herndon was managing Plum.[12]

Other Factual Issues

¶36 For the sake of judicial economy, we do not address in detail every factual argument Herndon raises in his brief. Instead, we have limited our analysis to the more significant issues above. We have reviewed the record on appeal and determined that reasonable evidence supports all of the trial court's findings of fact not expressly discussed above.

Property Division and Spousal Maintenance

¶37 Herndon next argues the trial court abused its discretion by awarding Plum and HI to Williams. The court found the evidence was "substantial" that Williams "was the more appropriate party to manage and be awarded Plum." The court found she was competent to run the business, and as manager, had "restored vendor relationships, repaired customer alliances[,] united the employees[,] and also managed to turn a profit." The court further found Herndon's management of Plum over the years had "put the company [at] financial risk" in numerous ways and

---

clerical correction to Order #4 does not affect the amount of damages.

[12]The trial court ordered Herndon to pay $5,057.76 for the CopperPoint debt rather than $5,557.76, but Herndon does not challenge this numerical discrepancy on appeal.

"[would] do so again" if he were awarded Plum and HI. All of these findings are reasonably supported by the testimony of Williams and multiple Plum employees.[13] It is not the role of this court to reweigh the evidence.[14] *See Gutierrez*, 193 Ariz. 343, ¶ 13, 972 P.2d at 680.

¶38 Herndon contends the trial court abused its discretion by not awarding him spousal maintenance in light of its award of Plum to Williams. "We review the trial court's rulings on spousal maintenance for an abuse of discretion," and "will affirm the judgment if reasonable evidence supports it." *Boyle v. Boyle*, 231 Ariz. 63, ¶ 8, 290 P.3d 456, 458 (App. 2012). The court found Herndon did not meet any of the statutory eligibility criteria for spousal maintenance under A.R.S. § 25-319(A). Herndon primarily challenges the court's finding that he was able to be self-sufficient through appropriate employment, § 25-319(A)(2), but reasonable evidence supports that finding. For instance, Herndon admitted during the post-revestment litigation that he had already gained an ownership interest in a new door and window glazing business. The court did not abuse its discretion by not awarding Herndon spousal maintenance.

---

[13]For the first time on appeal, Herndon argues the trial court denied him due process when it proceeded with the June 29, 2015 hearing regarding management of Plum despite his being incarcerated at the time. "[A]bsent exceptional circumstances, we will not consider arguments raised for the first time on appeal." *Sobol v. Marsh*, 212 Ariz. 301, n.4, 130 P.3d 1000, 1002 n.4 (App. 2006). Even were we to do so in our discretion, however, Herndon had "an opportunity to be heard at a meaningful time and in a meaningful manner" regarding the future of Plum at trial, at which he was present and testified. *Cruz v. Garcia*, 240 Ariz. 233, ¶ 11, 377 P.3d 1028, 1031 (App. 2016), *quoting Cook v. Losnegard*, 228 Ariz. 202, ¶ 18, 265 P.3d 384, 388 (App. 2011).

[14]Herndon also argues the division of personal property was inequitable, but his argument on this issue amounts to nothing more than another request that we reweigh the evidence, which we again decline. *See Gutierrez*, 193 Ariz. 343, ¶ 13, 972 P.2d at 680.

Procedural Challenges

Motion to Continue

¶39 Herndon argues the trial court erred by denying his motion to continue the trial to give Fleischman's firm additional time to complete the valuation of Plum. We will not reverse a court's ruling on a motion to continue absent a clear abuse of discretion. *In re Yavapai Cty. Juv. Action No. J-9365*, 157 Ariz. 497, 499, 759 P.2d 643, 645 (App. 1988). An employee of the firm testified at a November 2, 2015 hearing on the motion that the valuation could be completed within two weeks of that date. Thus, the court reasonably could have concluded it was not necessary to continue the trial that was set to begin on December 1, 2015 in order to accommodate the valuation process. The court did not abuse its discretion.

Violation of Rule of Exclusion

¶40 Herndon argues the trial court abused its discretion in precluding the testimony of Plum's business accountant, Coleen Krogen, who was to testify as a fact witness about the business, as a sanction after he had communicated about the evidence admitted before she was scheduled to testify. A trial court has discretion to fashion an appropriate remedy for a violation of Rule 615, Ariz. R. Evid., according to the particular circumstances, and we will not disturb its ruling absent an abuse of that discretion. *See Spring v. Bradford*, 241 Ariz. 455, ¶¶ 21-22, 388 P.3d 849, 855 (App. 2017). "An intentional violation of the rule militates in favor of a more significant sanction," which may include preclusion of the testimony. *Id.* ¶¶ 22-24.

¶41 Williams's counsel invoked Rule 615, the exclusionary rule, at the beginning of the first day of trial. After the lunch break that day, the trial court noted it had observed Herndon using his cell phone before lunch and expressed concern "that [he] may have been texting witnesses after the Rule's been invoked." The court warned Herndon it would not hesitate to hold a contempt hearing if it happened again, and Herndon said he understood.

¶42 On the third day of trial, Herndon called Krogen to testify. The trial court asked Krogen whether she had been in contact with Herndon since the beginning of trial. She testified that she had spoken with him by phone and received text messages from him during the evening of the first trial day, after the court had warned Herndon.[15] Williams moved to hold Herndon in contempt and to preclude Krogen from testifying. Herndon made an offer of proof, saying Krogen would testify about the parties' financial dealings with Plum, her impressions of how well Herndon had run the business, the value of Plum, and other topics. The court stated that Herndon could cover those matters with his own testimony, and granted Williams's request to preclude Krogen's testimony.[16] The court noted that Herndon's violation of the rule had taken place after the court had made it "absolutely clear" to him that he was "not to be sharing information, [via] text [message] or otherwise," and that although preclusion of the witness might adversely impact his case, he had "totally brought [it] upon [him]self." The record shows Herndon intentionally violated the court's specific order not to contact witnesses during trial, and the court did not abuse its discretion by precluding Krogen's testimony as a sanction. *See id.* ¶ 22.

Post-Revestment Motions

¶43 Herndon argues the trial court abused its discretion in its rulings on the post-revestment motions. The gravamen of Herndon's motions was that the court made mathematical or factual errors in the original decree—essentially all the same alleged factual

---

[15]Additionally, on the second day of trial, Plum bookkeeper Yolanda Cambensy testified Herndon had sent her a text message the previous evening asking whether she would be coming to testify the next day.

[16]The trial court held in abeyance its decision on the contempt motion, and ultimately held Herndon in contempt in the amended decree. Insofar as he attempts to challenge the contempt finding, it is not an appealable order and he does not request special action relief. *See Stoddard v. Donahoe*, 224 Ariz. 152, ¶ 7, 228 P.3d 144, 146 (App. 2010).

errors already discussed. As explained above, the large majority of the court's findings in the original decree were supported by reasonable evidence, and the court corrected a few errors it had made in its original decree via the amended decree. Above, we have vacated other findings in the amended decree that were not supported by reasonable evidence, rendering any error in the court's failure to do so at an earlier point moot.[17]

Attorney Fees

¶44 Herndon argues the trial court abused its discretion in awarding Williams attorney fees for the dissolution proceedings, the AROC and ACC matters, and the post-revestment litigation, as well as costs including the fees of joint expert Fleischman and joint mediator Frederic Dardis. *See Myrick v. Maloney*, 235 Ariz. 491, ¶ 6, 333 P.3d 818, 820-21 (App. 2014) (attorney fee ruling under A.R.S. § 25-324 reviewed for abuse of discretion). After expressly considering the financial resources of the parties and the reasonableness of their positions throughout the proceedings, *see* § 25-324(A), the court found Herndon had "acted unreasonably in the litigation," including "ongoing violation of court orders, misdirection, dishonesty[,] and harassment of [Williams], to the detriment of the parties' assets and making a reasonable resolution of this litigation all but impossible." The court further found Herndon's conduct had resulted in unnecessary delays, costs, and fees, expressly invoking § 25-324(B). These findings were all supported by reasonable evidence as established above. The court did not abuse its discretion in awarding Williams attorney fees and costs.[18]

---

[17]Herndon also argues the trial court abused its discretion by entering the amended decree because Williams had not filed a notice of lodging of the form of amended decree. But an electronic mail exchange in the record shows his trial counsel stipulated to this procedure and thereby waived any objection.

[18]Herndon also appears to argue the trial court erred by ordering him subject to sanctions, but he does not develop this argument or provide citations to the record, so we do not address it. *See* Ariz. R. Civ. App. P. 13(a)(7) (brief must contain "supporting

¶45 Both parties request attorney fees and costs on appeal pursuant to A.R.S. §§ 12-341 and 25-324(A). In our discretion, we deny both requests under § 25-324(A), but as the successful party in this appeal, Williams is awarded her appellate costs pursuant to § 12-341 upon her compliance with Rule 21, Ariz. R. Civ. App. P.

Disposition

¶46 We vacate the Plum valuation amount and remand for further findings on that amount. We also vacate the trial court's award of $265,000 in lost profits or other damages, and remand for further findings on that amount. We vacate the $10,000 criminal-bond offset Williams concedes was error. We vacate the court's determination that the Schrader Lane property was community property, and remand for a determination of the amount of the community's equitable lien against that property. In all other respects we affirm the court's rulings as corrected herein.

---

reasons for each contention" and "citations of legal authorities and appropriate references to the portions of the record" relied upon).