IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

STEVEN RAY KUKER,
Petitioner/Appellee,

and

COURTNEY A. KUKER,
Respondent/Appellant.

No. 2 CA-CV 2016-0149-FC
Filed June 28, 2017

Appeal from the Superior Court in Pima County
No. D20150208
The Honorable Lori B. Jones, Judge Pro Tempore

**AFFIRMED IN PART AS MODIFIED;
VACATED IN PART AND REMANDED**

COUNSEL

Wyland Law, P.C., Tucson
By Dawn Wyland
Counsel for Petitioner/Appellee

West, Longenbaugh & Zickerman, PLLC, Tucson
By Anne Elsberry and Joseph N. Mendoza
Counsel for Respondent/Appellant

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Howard[1] concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Courtney Kuker appeals from the decree of dissolution of her marriage to Steven Kuker. She challenges the decree on multiple grounds, including the division of property, the calculation of child support, and the award of attorney fees. Because the trial court erred in dividing a portion of the parties' 2013 federal tax refund, we vacate and modify the decree as described herein. In addition, for the reasons described below, we vacate the child-support award and remand for proceedings consistent with this decision. We otherwise affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to affirming the trial court's rulings. *Bell-Kilbourn v. Bell-Kilbourn*, 216 Ariz. 521, n.1, 169 P.3d 111, 112 n.1 (App. 2007). Courtney and Steven were married in March 2013. They have one minor child. Steven filed a petition for dissolution of marriage in January 2015. At trial, the disputed issues included the disposition of the parties' property and related equalization payments, their regular parenting schedule, child support, and attorney fees. After resolving these issues and several post-trial motions, the court entered a decree of dissolution. This

[1]The Hon. Joseph W. Howard, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21 and 12-2101(A)(1).

Federal Tax Refund

¶3 Courtney first argues that the trial court erred by not equitably dividing Steven's 2014 federal tax refund of $136,488.[2] She contends that "the overpayment of federal income taxes . . . created an asset that was presumptively community property." Although we review the division of property for an abuse of discretion, we review the characterization of property as separate or community de novo. *In re Marriage of Pownall*, 197 Ariz. 577, ¶ 15, 5 P.3d 911, 915 (App. 2000).

¶4 Generally, community property includes "[a]ll property acquired by either husband or wife during the marriage." A.R.S. § 25-211(A); *see also Cockrill v. Cockrill*, 124 Ariz. 50, 52, 601 P.2d 1334, 1336 (1979) ("Property acquired by either spouse during marriage is presumed to be community property . . . ."). Separate property, by contrast, consists of "[a] spouse's real and personal property that is owned by that spouse before marriage and that is acquired by that spouse during the marriage by gift, devise or descent, and the increase, rents, issues and profits of that property." A.R.S. § 25-213(A).

¶5 "[W]here community property and separate property are commingled, the entire fund is presumed to be community property unless the separate property can be explicitly traced." *Cooper v. Cooper*, 130 Ariz. 257, 259, 635 P.2d 850, 852 (1981), *quoting Porter v.*

---

[2]Courtney also argues the trial court erred by "g[iving Steven] half of [her] 2014 refund after the parties filed separately" and by "not divid[ing] the 2014 state tax refund." But Courtney has not developed these arguments, and we therefore deem them waived. *See* Ariz. R. Civ. App. P. 13(a)(7) (argument must include appellant's contentions with supporting reasons, citations of legal authorities, and appropriate record references); *Polanco v. Indus. Comm'n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393 n.2 (App. 2007) (argument not developed in opening brief waived).

Porter, 67 Ariz. 273, 281, 195 P.2d 132, 137 (1948); *accord Roden v. Roden*, 190 Ariz. 407, 410, 949 P.2d 67, 70 (App. 1997). The spouse seeking to overcome the community-property presumption "has the burden of establishing the separate character of the property by clear and convincing evidence." *Schickner v. Schickner*, 237 Ariz. 194, ¶ 22, 348 P.3d 890, 895 (App. 2015); *see also Kennedy v. Kennedy*, 93 Ariz. 252, 255, 379 P.2d 966, 969 (1963) (presumption can be rebutted by strong, satisfactory, convincing, clear and cogent, or nearly conclusive evidence).

¶6 Here, the trial court awarded Courtney an equalization payment of $8,686 for the parties' 2013 and 2014 federal tax refunds. The court's reasoning, based on the position taken by Steven, was as follows: The parties' 2013 federal tax refund was $132,869. Although Steven carried over that amount as a credit toward his 2014 taxes, the court determined what portion of the $132,869 was community property to which Courtney was entitled to half. Steven had previously paid a $95,000 advance toward the parties' 2013 federal taxes. A $4,139 credit was also carried over from Steven's separate 2012 federal taxes. The court treated both of these amounts—totaling $99,139—as Steven's separate property. The 2013 refund, less that amount, equals $33,730. Because the parties had been married for nine of the twelve months of 2013, the court determined that nine-twelfths of that amount, $25,299, constituted the community-property portion of the 2013 refund. The court then concluded that Courtney's half of the community-property portion was $12,649.50.

¶7 For 2014, the parties filed their taxes separately. Steven's federal refund was $136,488, which, as mentioned above, included the $132,869 refund carried over from the 2013 taxes. Because the trial court had already determined the community- and separate-property portions of the 2013 refund, all that remained to be distributed of Steven's 2014 refund was $3,619. Courtney received a federal refund of $11,547. The court added those two amounts—$3,619 and $11,547—to determine the total community refund, $15,166, half of which is $7,583. The court thus concluded that Courtney's summed portion of the 2013 and 2014 refunds was $20,232.50; the court then subtracted the $11,547 Courtney had already received in tax refunds, leaving a total, rounded up, of $8,686 due her.

¶8 On appeal, Courtney relies solely on the community-property presumption to argue that the trial court failed to equitably divide Steven's 2014 federal tax refund of $136,488. She does not suggest in any meaningful way that the court erred in finding Steven had overcome the community-property presumption by establishing the separate-property character of the $95,000 advance for the 2013 taxes.[3] *See* Ariz. R. Civ. App. P. 13(a)(7) (argument must contain appellant's contentions "with supporting reasons for each contention, and with citations of legal authorities and appropriate references to the portions of the record"). Accordingly, we deem this issue waived and do not address it further. *See Polanco v. Indus. Comm'n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393 n.2 (App. 2007).

¶9 Courtney, however, contends that the $4,139 should not be considered Steven's separate property because "that overpayment was used to pay the parties' 2013 tax bill." Although that amount was carried over from 2012 and applied to 2013, the parties owed no taxes for 2013, leaving the $4,139 as a credit. To the extent Courtney is arguing that Steven commingled the $4,139 and failed to overcome the community-property presumption, we disagree. Steven testified that the $4,139 was his separate property from his 2012 tax refund. The parties were not married until March 2013. Steven also provided copies of his 2012 and 2013 tax returns tracking that amount. Steven therefore "explicitly traced" the $4,139 and met his burden of establishing its separate-property character. *Cooper*, 130 Ariz. at 259, 635 P.2d at 852, *quoting Porter*, 67 Ariz. at 281, 195 P.2d at 137; *cf. Kingsberry v. Kingsberry*, 93 Ariz. 217, 223-24, 379 P.2d 893, 897 (1963) (court could find presumption overcome where husband's testimony was supported by exhibits that traced date, source, and amount of separate-property funds).

---

[3]In her reply brief, Courtney asserts that "[t]he party contesting the community nature of [an asset] must overcome the presumption with clear and convincing evidence." But she again fails to relate that principle to the $95,000 advance. In any event, we generally do not consider arguments raised for the first time in a reply brief. *Dawson v. Withycombe*, 216 Ariz. 84, ¶ 91, 163 P.3d 1034, 1061 (App. 2007).

¶10 Courtney additionally argues that the trial court should not have reduced the community-portion share of the $33,736 by three-quarters based on the parties' being married for nine months of 2013. She reasons that Steven did not overcome the community-property presumption because "there was no evidence provided at trial to distinguish between when the income was earned" and "there is [no] basis on the record to assume earnings were equal for every month of 2013." She also asserts, "There is also no evidence which accounts for [her] income taxes paid via her W-2 and the child tax credit for her two children (not of the marriage) which benefitted both parties." We agree.

¶11 Steven presented no evidence to show what portions of the 2013 federal tax refund were the result of pre- and post-marriage earnings or activities. Rather, he simply calculated the community-property amount based on the number of months the parties were married. This is not consistent with the explicit-tracing requirement. *See Cooper*, 130 Ariz. at 259, 635 P.2d at 852. Steven had the burden of presenting clear and convincing evidence to show what portion of the presumptively community-property refund was his separate property. *See* § 25-211(A); *Schickner*, 237 Ariz. 194, ¶ 22, 348 P.3d at 895. Simply put, "[t]he trial court was furnished no intelligent guide which would enable it to separate" the refund. *Evans v. Evans*, 79 Ariz. 284, 287, 288 P.2d 775, 777 (1955).

¶12 Accordingly, the trial court erred in concluding that $25,299 constituted the community-property portion of the 2013 federal tax refund. *See Marriage of Pownall*, 197 Ariz. 577, ¶ 15, 5 P.3d at 915. Instead, the entire $33,736 is community property, of which Courtney is entitled to $16,868. We therefore vacate the $8,686 equalization payment awarded to Courtney and modify it to include an additional $4,218. Courtney is awarded an equalization payment against Steven in the amount of $12,904 for the parties' 2013 and 2014 federal taxes.

Landscaping on the Marital Residence

¶13 Courtney next argues that "[t]he trial court erred when it did not accept [her] evidence regarding $10,000 of the $20,000 of [her] separate property funds which were used to pay for the landscaping

of the marital home, which was [Steven's] sole property." The decision to admit or exclude evidence rests within the trial court's sound discretion, and "we will not disturb its decision absent a clear abuse of its discretion and resulting prejudice." *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 19, 107 P.3d 923, 928-29 (App. 2005).

¶14 In her pretrial statement, Courtney requested reimbursement for amounts she paid "with her separate property funds" to improve the marital residence, which Steven had purchased before the marriage. At trial, Courtney proffered an exhibit containing, among other documents, four checks totaling $20,000. According to Courtney, the checks showed payments to a landscaper for work at the marital residence. Steven objected, arguing that the exhibit was inadmissible because Courtney had not laid the proper foundation and it contained Courtney's "personal notes." Steven also pointed out that there were no corresponding receipts and that the landscaper was not there to testify. The trial court initially appeared to agree with Steven, noting that, although the checks showed this individual was paid, they did not, on their face, establish what he was paid for. However, after further discussion, the court removed from the exhibit two of the checks, which totaled $10,000 and showed "landscaping" in the memo line, and admitted them.

¶15 On appeal, Courtney seems to argue that the trial court erred by excluding the two additional checks. However, she does not explain in any meaningful way why the checks were admissible or how she was prejudiced. *See* Ariz. R. Civ. App. P. 13(a)(7). We therefore could deem the argument waived. *See Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393 n.2. Even assuming the argument were not waived, however, based on our own independent review of the record, we cannot say the court erred in declining to admit two checks that were written from a joint account to an individual who did not testify and was not otherwise identified and that were not substantiated with other documentation. *See Lashonda M.*, 210 Ariz. 77, ¶ 19, 107 P.3d at 928-29; *see also* Ariz. R. Evid. 901(a) ("To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.").

¶16 As part of her argument, Courtney also appears to challenge the trial court's ultimate decision not to credit her—by way of a community lien—with the remaining $10,000 that she alleges had been used to improve the marital residence. But without any properly admitted evidence showing those payments, we cannot say the court erred. *See Hrudka v. Hrudka*, 186 Ariz. 84, 94, 919 P.2d 179, 189 (App. 1995) ("The question of reimbursement is a factual issue of gift and subject to the clearly erroneous standard."). All that supported Courtney's claim was her testimony, and we defer to the trial court's determination of witness credibility. *See In re Marriage of Foster*, 240 Ariz. 99, ¶ 5, 376 P.3d 702, 704 (App. 2016).

¶17 Courtney additionally contends that the trial court erred when it did not credit her with an increase in value, based on the landscaping, to the property. However, as Steven points out in his answering brief, Courtney did not raise this argument before the trial court. It is therefore waived. *See Henderson v. Henderson*, 241 Ariz. 580, ¶ 13, 390 P.3d 1226, 1232 (App. 2017) (we generally do not address arguments not presented below); *Harris v. Cochise Health Sys.*, 215 Ariz. 344, ¶ 17, 160 P.3d 223, 228 (App. 2007) (same).

3043 C. Street Property

¶18 Courtney next argues the trial court erred by ordering her to pay Steven "for the rents collected" on the 3043 C. Street property ("3043 Property") without also requiring Steven to reimburse her for "the payments she made to [Steven] to buy the property or the amounts she paid for repairs on the property and insurance and taxes." Although the parties disputed whether this property was Steven's separate property below, Courtney does not raise this issue on appeal and instead focuses on her right to reimbursement.

¶19 In an inventory of property filed before trial, Courtney stated that Steven had acquired the 3043 Property prior to the marriage but that the parties had verbally agreed Steven would quit claim the property to her once she repaid him the $25,000 he had paid for it. Courtney further maintained that she had paid Steven and made improvements to the property totaling over $30,000. At trial, Courtney moved to admit Exhibit U, which purported to show "large

amounts of money" that she had paid to Steven for purchase of the 3043 Property. However, Courtney acknowledged that she had no contract evincing her purchase. Accordingly, the trial court treated the 3043 Property as Steven's separate property and did not award Courtney any interest therein.

¶20 On appeal, Courtney does not provide any authority—and we are aware of none—suggesting that she is entitled to reimbursement for payments she allegedly made to purchase the 3043 Property from Steven. *See* Ariz. R. Civ. App. P. 13(a)(7). Accordingly, this argument is waived. *See Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393 n.2.

¶21 Similarly, Courtney has not provided sufficient argument or authority for this court to assess whether she is entitled to reimbursement for payments she made to improve or maintain the 3043 Property. *See* Ariz. R. Civ. App. P. 13(a)(7). The trial court did not admit Exhibit U, which is the only evidence Courtney cites as proof that she made payments toward the property, and she does not allege that the court erred by excluding this evidence.[4] This argument is thus waived. *See Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393 n.2.

Child Support

¶22 Courtney next argues that the trial court erred in calculating child support by failing to include Steven's rental-property income in his gross income. We review a child-support award for an abuse of discretion. *In re Marriage of Robinson & Thiel*, 201 Ariz. 328, ¶ 5, 35 P.3d 89, 92 (App. 2001). An abuse of discretion occurs "'[w]here there has been an error of law in the process of reaching [a] discretionary conclusion'" or "when the record, viewed in the light most favorable to upholding the trial court's decision, is devoid of competent evidence to support the decision." *Hurd v. Hurd*, 223 Ariz. 48, ¶ 19, 219 P.3d 258, 262 (App.

[4]On appeal, Courtney seeks reimbursement for money she paid toward property taxes, but at trial she admitted that she did not pay the taxes on the 3043 Property.

2009), *quoting Grant v. Ariz. Pub. Serv. Co.*, 133 Ariz. 434, 455-56, 652 P.2d 507, 528-29 (1982) (alterations in *Hurd*).

¶23 Our supreme court has adopted the Arizona Child Support Guidelines to provide guidance in establishing child support. *Milinovich v. Womack*, 236 Ariz. 612, ¶ 8, 343 P.3d 924, 927 (App. 2015); *see also* A.R.S. § 25-320 app. § 1(C). We interpret the Guidelines de novo. *Strait v. Strait*, 223 Ariz. 500, ¶ 6, 224 P.3d 997, 999 (App. 2010). When doing so, "we seek to determine the intent of the Arizona Supreme Court based on the language and the overall purpose of the Guidelines." *Hetherington v. Hetherington*, 220 Ariz. 16, ¶ 26, 202 P.3d 481, 488 (App. 2008). One of the express purposes of the Guidelines is to set forth a support standard "consistent with the reasonable needs of children and the ability of parents to pay." § 25-320 app. § 1(A).

¶24 "The first step under the Guidelines is to determine the gross income of each parent." *Milinovich*, 236 Ariz. 612, ¶ 11, 343 P.3d at 927; *see* § 25-320 app. § 5. Gross income is broadly defined to include "income from any source," which "may include, but is not limited to, income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits . . . , worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, recurring gifts, prizes, and spousal maintenance." § 25-320 app. § 5(A). However, "[i]ncome from any source which is not continuing or recurring in nature need not necessarily be deemed gross income." *Id.* "[B]y allowing the trial court to consider all aspects of a parent's income, the Guidelines ensure that the child support award is 'just' and based on the total financial resources of the parents." *Cummings v. Cummings*, 182 Ariz. 383, 386, 897 P.2d 685, 688 (App. 1994).

¶25 With regard to a second job, the Guidelines provide:

> Generally, the court should not attribute income greater than what would have been earned from full-time employment. Each parent should have the choice of working additional hours through overtime or at a

> second job without increasing the child support award. The court may, however, consider income actually earned that is greater than would have been earned by full-time employment if that income was historically earned from a regular schedule and is anticipated to continue into the future.
>
> The court should generally not attribute additional income to a parent if that would require an extraordinary work regimen.

§ 25-320 app. § 5(A). The Guidelines thus allow "an already fully-employed parent to work extra hours or a second job without thereby incurring an *increased* support obligation," but they do not "entitle a parent who continues to work the same schedule as he or she consistently worked during the marriage to a *decreased* support obligation." *McNutt v. McNutt*, 203 Ariz. 28, ¶ 14, 49 P.3d 300, 303 (App. 2002) (emphases in original); *see also Lundy v. Lundy*, ___ Ariz. ___, n.1, 394 P.3d 25, 27 n.1 (App. 2017).

¶26 Here, Steven owns a business where he works as a machinist. Steven also owns approximately one dozen rental properties. He presented evidence that the income from these properties varied between 2012 and 2014, earning just short of $400,000 in one year but losing over $45,000 in another. He also provided records showing his mortgage payments and expenses associated with the properties. Because Steven had a full-time job and the rental income was "secondary income," the trial court concluded that it should be excluded from Steven's gross income for child-support purposes. The court likened Steven's rental properties to a teacher working a "second job" in the summer, also noting that the rental income was not "consistent."

¶27 As a starting point, the Guideless plainly permit rental-property income to be included in gross income. *See* § 25-320 app. §§ 5(A) (broadly defining gross income), 5(C) (describing how to calculate gross income for rent); *see also McNutt*, 203 Ariz. 28, ¶ 24, 49

P.3d at 305-06 (allowing trial court to consider whether father received net income from rental properties). Indeed, rental properties provide, by their very nature, "continuing or recurring" forms of income. § 25-320 app. § 5(A); *see Property, Black's Law Dictionary* (10th ed. 2014) (describing rental property as "[p]roperty that produces income").

¶28 Although the Guidelines allow parents to work a second job without increasing their child-support obligations, § 25-320 app. § 5(A), this provision does not necessarily apply to owning rental properties, which is generally more passive than working a second job, *see Gautreau v. Gautreau*, 697 So. 2d 1339, 1349 (La. Ct. App. 1997) (even if husband had not participated in rental management, he would have received some rent as passive investment). Moreover, even if deemed income from a second job, rental-property income may still be included in gross income if it was "historically earned from a regular schedule," "is anticipated to continue into the future," and does not require "an extraordinary work regimen." § 25-320 app. § 5(A).

¶29 Here, the trial court focused on the principle that it generally should not attribute income greater than full-time employment because parents should be able to work a second job without increasing their child support. *See id.* Although the court recognized that it "[s]ometimes" might include such income, it did not identify the relevant factors: whether the income was "historically earned from a regular schedule," "is anticipated to continue into the future," and does not require "an extraordinary work regimen." *See id.* Indeed, the court made no related findings, despite the fact that Steven owned his rental properties prior to and throughout the marriage and, for at least one year, his rental-property income was more than quadruple the income from his full-time employment. *See Granville v. Howard*, 236 Ariz. 29, ¶ 12, 335 P.3d 551, 554 (App. 2014) (although findings of fact and conclusions of law not required, meaningful appellate review will be facilitated if trial court specifies reasoning).

¶30 Although we may affirm a child-support award that is supported by competent evidence, *Hurd*, 223 Ariz. 48, ¶ 19, 219 P.3d at 262, we nonetheless find it inappropriate to do so where the trial

court appears to have failed to fully consider and exercise its discretion, *cf. State v. Garza*, 192 Ariz. 171, ¶ 18, 962 P.2d 898, 903 (1998) (vacating criminal sentence and remanding for resentencing where trial court had discretion and failed to recognize it); *Goodman v. Gordon*, 103 Ariz. 538, 540, 447 P.2d 230, 233 (1968) (trial court's discretionary ruling on motion to dismiss erroneous where court did not fully and completely exercise judicial discretion); *Grand Real Estate, Inc. v. Sirignano*, 139 Ariz. 8, 15, 676 P.2d 642, 649 (App. 1983) (vacating trial court's discretionary denial of attorney fees because court "either abused or failed to exercise the required judicial discretion"). This is particularly true here, where the other apparent basis for the court's decision—that Steven's rental income is not "consistent"—is not supported by the Guidelines. *See Hurd*, 223 Ariz. 48, ¶ 19, 219 P.3d at 262. Although Steven testified that his rental-property income was "sporadic" because "the way renters . . . come and go," the Guidelines provide that "fluctuating income shall be annualized," not that it be excluded. § 25-320 app. § 5(A). In addition, the Guidelines expressly recognize that rental properties have related expenses that reduce their profitability. *See* § 25-320 app. § 5(C) (for rent, "gross income means gross receipts minus ordinary and necessary expenses required to produce income"); *see also McNutt*, 203 Ariz. 28, ¶ 24, 49 P.3d at 305-06. Consequently, the Guidelines explicitly provide for the scenario here, in which a parent earns income from rental properties.

¶31 Accordingly, we vacate the child-support order and remand to the trial court for the limited purpose of exercising its discretion to consider whether to include Steven's rental-property income in his gross income. *See Anderson v. Contes*, 212 Ariz. 122, ¶ 14, 128 P.3d 239, 243 (App. 2006) (where remand based on insufficiency of trial court's explanations, and not insufficiency of evidence, party not entitled to new trial, but court may hold such proceedings as necessary to comply with remand directions). The court should then determine Steven's gross income and recalculate child support.

Attorney Fees

¶32 Finally, Courtney argues that the trial court erred by granting Steven a portion of his attorney fees pursuant to A.R.S. § 25-324. We review an award of attorney fees under § 25-324 for an

abuse of discretion. *Myrick v. Maloney*, 235 Ariz. 491, ¶ 6, 333 P.3d 818, 821 (App. 2014).

¶33 Section 25-324(A) allows a court, "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings," to "order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending" the action. "[C]osts and expenses may include attorney fees . . . ." § 25-324(C).

¶34 Here, after considering both the financial resources of the parties and the reasonableness of their positions, the trial court awarded Steven $5,000 in attorney fees pursuant to § 25-324. The court found that Courtney "acted unreasonably in the litigation" by, "among other things, . . . [t]aking unreasonable positions on community property issues for an 18 month marriage, repeatedly raising issues before the Court that had already been addressed and forcing the Court to manage stacks of loose paperwork submitted as exhibits." It also found "a disparity in financial resources," with Steven having "considerably more income" than Courtney does; consequently, the court granted only a portion of Steven's more than $18,000 in attorney fees.

¶35 As a preliminary matter, although Courtney argued generally against an award of attorney fees to Steven at trial, she never filed a response to his affidavit of attorney fees and costs. Consequently, the particular arguments that Courtney raises on appeal, which challenge the trial court's specific findings, were never raised below. Accordingly, we could deem them waived. *See Myrick*, 235 Ariz. 491, ¶ 11, 333 P.3d at 822.

¶36 In any event, we find no abuse of discretion. *See id.* ¶ 6. The trial court provided several reasons for its finding that Courtney had taken unreasonable positions throughout the action, including, "among other things," that Courtney repeatedly raised issues that had previously been addressed. Evidence in the record supports this finding, and Courtney does not challenge it on appeal. The court also expressly took into account the parties' financial resources, explaining that it was only granting Steven a portion of his attorney fees because he had more income. Because the court carefully balanced these

factors, we cannot say it erred in awarding Steven $5,000 in attorney fees. *See Mangan v. Mangan*, 227 Ariz. 346, ¶¶ 26, 28, 258 P.3d 164, 170-71 (App. 2011) (no abuse of discretion in award of attorney fees to father where trial court balanced father's greater income with mother's unreasonable positions).

Disposition

¶37 We modify the decree's equalization payment of $8,686 against Steven for the parties' federal tax refunds to $12,904. In addition, we vacate the child-support award and remand this case to the trial court for the limited purpose of recalculating the award after considering whether to include Steven's rental-property income in his gross income. We otherwise affirm the decree of dissolution.

¶38 Both parties have requested their attorney fees and costs on appeal pursuant to § 25-324. We have considered the financial resources of the parties and the reasonableness of their positions. *See* § 25-324(A). In our discretion, we decline both of their requests. We also decline Steven's request for costs under A.R.S. § 12-341. *Cf. Gen. Cable Corp. v. Citizens Utils. Co.*, 27 Ariz. App. 381, 385, 555 P.2d 350, 354 (1976) (finding neither party the "successful party").