

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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IN RE THE MARRIAGE OF

MERCI JEAN WALKER NKA GARCIA,  
*Petitioner/Appellee,*

*and*

SHANE EVANS WALKER,  
*Respondent/Appellant.*

No. 2 CA-CV 2016-0180-FC  
Filed May 23, 2017

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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NOT FOR PUBLICATION  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).*

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Appeal from the Superior Court in Graham County  
No. DO200900019  
The Honorable D. Corey Sanders, Judge Pro Tempore

**AFFIRMED**

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COUNSEL

Travis W. Ragland, Safford  
*Counsel for Petitioner/Appellee*

Shane Walker, Pueblo, Colorado  
*In Propria Persona*

IN RE MARRIAGE OF WALKER  
Decision of the Court

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**MEMORANDUM DECISION**

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

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S T A R I N G, Presiding Judge:

¶1 Shane Walker appeals from the trial court's August 2016 order regarding parenting time for two children he shares with Merci Garcia, his former spouse. For the reasons that follow, we affirm.

**Factual and Procedural Background**

¶2 We review the record in the light most favorable to upholding the trial court's ruling and will affirm if any reasonable evidence in the record supports its decision. *Johnson v. Johnson*, 131 Ariz. 38, 44, 638 P.2d 705, 711 (1981). The parties married in 2001 and had two children, T.E., born in 2006, and T.J., born in 2009. Merci filed for dissolution in January 2009, and the trial court entered a decree of dissolution in December 2009. The court awarded Merci the majority of parenting time, and subsequently made adjustments increasing Shane's time.

¶3 In March 2016, Shane petitioned to modify parenting time and support, asserting that alternating weeks during the summer was too difficult because he anticipated an increase in his personal responsibilities, and could no longer drive to Safford every week.<sup>1</sup> The trial court held a hearing over two days in June and July, and issued a ruling and signed a final order in August, denying Shane's requests. Shane filed a timely notice of appeal, and we have jurisdiction pursuant to A.R.S. § 12-2101(A)(2). *See Cone v. Righetti*, 73 Ariz. 271, 275, 240 P.2d 541, 543 (1952) (order modifying parenting time, visitation, and support appealable as special order

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<sup>1</sup>Shane's petition listed his residence as being in Queen Creek, Arizona.

IN RE MARRIAGE OF WALKER  
Decision of the Court

after judgment); *In re Marriage of Dorman*, 198 Ariz. 298, ¶ 4, 9 P.3d 329, 331-32 (App. 2000) (post-decree order temporarily modifying parenting time appealable as special order after judgment).

**Discussion**

¶4 On appeal, Shane contends the trial court erred by: (1) finding Shane did not submit a proposed parenting plan; (2) declining to modify the parenting time schedule pursuant to Shane's request; (3) ordering that either parent could provide the children with a mobile telephone; (4) prohibiting both parents from consuming alcohol while exercising parenting time; and (5) allowing testimony of the children's counselor. We review a court's parenting-time decision for an abuse of discretion. *Baker v. Meyer*, 237 Ariz. 112, ¶ 10, 346 P.3d 998, 1002 (App. 2015).

¶5 Shane's argument concerning his failure to submit a proposed parenting plan appears to refer to a finding in the trial court's August under-advisement ruling. Shane objected in his motion for clarification, and the court's final order does not contain the challenged finding. Thus, to the extent the court made an erroneous finding concerning Shane's failure to submit a proposed plan, the court has already corrected the error.

¶6 With respect to the remaining issues, Shane's brief contains little more than conclusory assertions, and he does not develop any argument to support his contentions. Thus, we conclude his claims are waived or abandoned on appeal.<sup>2</sup> See Ariz. R. Civ. App. P. 13(a)(7) (appellate brief must contain argument with citation to authority); *FIA Card Servs., N.A. v. Levy*, 219 Ariz. 523, n.1,

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<sup>2</sup>We recognize that Shane represents himself in this appeal, as he did in the trial court. Although we make accommodations for self-represented parties, we are required to consider the merits of his appeal the same as if he were represented by counsel. See *Copper State Bank v. Saggio*, 139 Ariz. 438, 441, 679 P.3d 84, 87 (App. 1983); see also *Guide for Self-Represented ("Pro Se" or "Pro Per") Appellants and Appellees* iii (rev. ed. 2015), <http://www.azcourts.gov/Portals/89/PDFs/PostedByASCFeb2016.pdf>.

IN RE MARRIAGE OF WALKER  
Decision of the Court

200 P.3d 1020, 1021 n.1 (App. 2008) (failure to develop argument on appeal constitutes abandonment). Moreover, Shane's contentions primarily reflect disagreement with the trial court's conclusions about witness credibility and the weight of conflicting evidence, which we do not reweigh on appeal. *Hurd v. Hurd*, 223 Ariz. 48, ¶ 16, 219 P.3d 258, 262 (App. 2009). Finally, in light of Shane's failure to provide a copy of the transcript of the hearing below, we must presume the record supports the court's ruling, including the parenting time schedule and restrictions. *See Bliss v. Treece*, 134 Ariz. 516, 519, 658 P.2d 169, 172 (1983) (appellate court presumes missing portion of record supports trial court decision).

¶7 With respect to the trial court's consideration of the counselor's testimony, Shane is also prohibited from raising this issue on appeal because he failed to object below. *See Trantor v. Fredrikson*, 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994) ("[A]bsent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal.").

**Attorney Fees**

¶8 Merci requests an award of attorney fees and costs on appeal pursuant to Rule 21(a), Ariz. R. Civ. App. P., and A.R.S. §§ 25-324(B), 25-411(M). She asserts such an award is appropriate because Shane adopted unreasonable positions not grounded in fact or law, which were "harassing and vexatious," and increased litigation costs. Although Shane's petition and appeal were unsuccessful, we do not conclude his petition was filed in bad faith or for an improper purpose, or that it completely lacked factual or legal basis. Accordingly, in our discretion, we deny Merci's request for an award of attorney fees as a sanction. However, we grant Merci her costs on appeal subject to her compliance with Rule 21(b), Ariz. R. Civ. App. P.

**Disposition**

¶9 For the foregoing reasons, we affirm the trial court's August 2016 parenting time order.