IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE THE MARRIAGE OF

DOUGLAS M. SANDERS,
Petitioner/Appellant,

and

RUBY PARKS,
Respondent/Appellee.

No. 2 CA-CV 2017-0048-FC
Filed November 24, 2017

Appeal from the Superior Court in Pima County
No. D20080264
The Honorable James E. Marner, Judge

AFFIRMED AS CORRECTED

COUNSEL

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Counsel for Petitioner/Appellant

Elkins & Associates, P.L.L.C., Tucson
By C. Joy Elkins
Counsel for Respondent/Appellee

MEMORANDUM DECISION

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

E C K E R S T R O M, Chief Judge:

¶1 Douglas Sanders appeals the trial court's order modifying child support and awarding medical expenses. For the following reasons, we affirm the court's order as corrected.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the trial court's determination. *See Little v. Little*, 193 Ariz. 518, ¶ 5 (1999). In 2008, the court entered a decree dissolving Sanders's marriage to appellee Ruby Parks, awarding them shared custody of and parenting time with their two minor children in accordance with the recommendations of the Conciliation Court, and ordering Sanders to pay child support. In July 2016, Sanders petitioned the family court to reduce his child-support obligation, claiming to have earned less than $10,000 the previous year, as reported on his tax return. In her response to Sanders's petition, Parks requested that the court deny his motion and, instead, increase his obligation and order him to pay certain medical and dental expenses pursuant to its prior order. In October, the court determined Sanders's annual income was $50,000 and increased his monthly support obligation to $736. The court also ordered Sanders to pay $997.43, thirty-nine percent of the children's medical expenses, pursuant to the prior support order.

¶3 Sanders filed a motion for a new trial, arguing the evidence did not support the trial court's finding that he had earned $50,000 that year, claiming the method the court used to calculate that amount was incorrect. He also asserted the court erred in determining the amount of the children's medical expenses. In her response to Sanders's motion, Parks requested attorney fees she had incurred in responding. In January 2017, the court denied Sanders's motion for new trial and granted Parks's request for attorney fees, instructing her to file an affidavit in support of her claim. In February, Sanders filed a notice of appeal, which was premature because the court had not entered a final order. In March, the court entered a final judgment, resolving all issues as to all parties, and

Sanders filed an amended notice of appeal.[1] We have jurisdiction. A.R.S. §§ 12-120.21(A)(1), 12-2101(A)(1).

Factual Determinations

¶4 Sanders challenges the trial court's determinations of his annual income and its calculation of both the total medical expenses and the portion for which he is responsible.[2] We will not disturb the trial court's factual findings unless they are clearly erroneous. *Strait v. Strait*, 223 Ariz. 500, ¶ 6 (App. 2010). "A finding of fact is not clearly erroneous if substantial evidence supports it, even if substantial conflicting evidence exists." *Kocher v. Dep't of Revenue*, 206 Ariz. 480, ¶ 9 (App. 2003). We will

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[1]Previously, we dismissed Sanders's appeal for lack of jurisdiction because the only relevant notice of appeal in the record was taken from the January 2017 ruling, which was not final because the amount of attorney fees remained to be determined and the order did not contain the requisite language or findings pursuant to Rule 78(B), Ariz. R. Fam. Law. P. *In re Marriage of Sanders and Parks*, No. 2 CA-CV 2017-0048-FC, 1 (Ariz. App. Sept. 25, 2017) (mem. decision); *see also Camasura v. Camasura*, 238 Ariz. 179, ¶¶ 7, 15 (App. 2015). We granted Sanders's motion for reconsideration and reinstated his appeal after the record was expanded to include his timely, amended notice of appeal.

We remind attorneys Rule 13(a)(4), Ariz. R. Civ. App. P., requires appellants to "concisely state . . . the basis of the appellate court's jurisdiction . . . [with] appropriate references to the record." Also, Rule 11(g), Ariz. R. Civ. App. P., allows parties to supplement the record on appeal to cure any omission, and parties should do so if it is necessary to support this court's jurisdiction.

[2] Sanders asserts a myriad of errors, both substantive and procedural, but fails to develop any legal argument or cite any authority in his opening brief. *See* Ariz. R. Civ. App. P. 13(a)(6), (7)(A), (B); *Ritchie v. Krasner*, 221 Ariz. 288, ¶ 62 (App. 2009) ("Opening briefs must present and address significant arguments, supported by authority that set forth the appellant's position on the issue in question."). Accordingly, he has waived these arguments on appeal. *See Rice v. Brakel*, 233 Ariz. 140, ¶ 28 (App. 2013). Nevertheless, in our discretion, we elect to address his central claims of error. *See Azore, LLC v. Bassett*, 236 Ariz. 424, ¶ 7 (App. 2014) ("[W]aiver is a procedural concept that we do not rigidly employ in a mechanical fashion, and we may use our discretion in determining whether to address waived issues.").

not reweigh the evidence on appeal. *Gerow v. Covill*, 192 Ariz. 9, ¶ 24 (App. 1998).

¶5 With respect to his income, Sanders produced a tax return that reflected his income for 2015 was slightly less than $10,000. The trial court found the evidence supporting his claimed income unpersuasive because he "receive[d] many benefits which are significant and reduce his personal living expenses" and "should be counted as income" pursuant to the Arizona Child Support Guidelines, A.R.S. § 25-320 app. § 5(D). Notably, Sanders's testimony established the company had paid approximately $24,000 in rent for a "casita" on his property and had taken deductions for automobile expenses, in-town travel expenses, meals and entertainment, and an assortment of other expenses.[3] Moreover, his company, of which he is the sole employee, had an annual gross profit in excess of $61,000. Accordingly, substantial evidence exists in the record to support the court's finding that, for purposes of determining his child-support obligation, Sanders had an annual income of at least $50,000 in 2015.[4] *See Kocher*, 206 Ariz. 480, ¶ 9.

¶6 With respect to the children's medical expenses, Sanders argues the trial court did not properly account for payments he made when it accepted Parks's summary of the expenses, which totaled $2,557.52, thirty-nine percent of which, or $997.43, represented his share. Although the summary was admissible evidence of the total amount of medical expenses, *see* Ariz. R. Evid. 1006, the uncontroverted testimony and other evidence, revealed two types of accounting errors.

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[3] Also, from January to May 2016, Sanders's profit and loss statements indicate the company paid $484.05 in water bills for his home as well as $468.95 for electricity, $468.40 for internet service, $347.17 for automobile insurance, $190.95 for telephone service, $167.65 for drug prescriptions, and $76 for grooming and wardrobe.

[4] Sanders also disputes the trial court's calculation method; it applied the ratio of his company's revenue to his reported income in 2014 to his company's 2015 revenue. However, we cannot say its determination was clearly erroneous because substantial evidence supported its finding.

Also, responding to Parks's reliance on *Baker v. Baker*, 183 Ariz. 70 (App. 1995), Sanders argues in his reply brief the evidence was insufficient inasmuch as "no expert . . . testified in this case." But *Baker* does not require expert testimony in order to attribute income to a self-employed individual.

¶7 First, in her summary calculating the total amount of medical and dental expenses, Parks did not account for two of Sanders's payments totaling $53.96. Thus, the total for all expenses should have been $2,611.48, of which Sanders's thirty-nine percent share would be $1,018.48. Second, in calculating Sanders's outstanding obligation, Parks did not credit Sanders with $118.96 in payments that Parks acknowledged he had made.[5] Accordingly, to reflect both the corrected total of all medical payments, and to credit Sanders for payments already made, we reduce the court's order respecting medical payments to $899.52.

¶8 Sanders also insists the evidence did not establish that Parks paid $1,000 for the children's orthodontics because receipts submitted to the court totaled $730. But the treatment agreement shows an initial balance of $1,000, and Parks testified she had recently paid the remaining balance. Thus, substantial evidence supports the trial court's adoption of Parks's summary, based as it was on a total of $1,000 in orthodontics payments. *See Kocher*, 206 Ariz. 480, ¶ 9.

Disposition

¶9 For all the above reasons, we affirm the trial court's order as corrected.

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[5]Sanders asserts the trial court erred by failing to credit him with a $28.44 dental payment he made, but the figure he cites represents the balance after his payment, not the total amount paid.

Sanders also challenges two payments to urgent care clinics noted in Parks's summary, totaling $85 because they were "not reflected by the bills themselves." However, he did not challenge these payments below and therefore has waived review on appeal. *See Trantor v. Fredrikson*, 179 Ariz. 299, 300 (1994) ("[E]rrors not raised in the trial court cannot be raised on appeal.").