IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

NICOLE LEE HOMAN,
Petitioner/Appellee,

and

WILLIAM DOUGLAS MARCUM,
Respondent/Appellant.

No. 2 CA-CV 2019-0149-FC
Filed February 18, 2020

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NOT FOR PUBLICATION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).

Appeal from the Superior Court in Pima County
No. D20182324
The Honorable Deborah Pratte, Judge Pro Tempore

AFFIRMED

William Douglas Marcum, Tucson
In Propria Persona

MEMORANDUM DECISION

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

E S P I N O S A, Judge:

¶1 William Marcum appeals from the trial court's decree of dissolution of marriage and child support order. For the following reasons, we affirm.

Factual and Procedural Background[1]

¶2 In July 2018, Nicole Homan filed a petition for dissolution of the parties' marriage, requesting joint legal decision-making over their two minor children. In his response, Marcum requested sole legal decision-making over the children, child support, and spousal support. The parties reached a partial settlement agreement as to their personal property but were unable to mediate the remaining issues.

¶3 Following a trial on "the disposition of the marital residence, farmhouse columns, financial accounts, community debt, legal decision making, parenting time, and child support," the court issued a dissolution decree in which Homan was awarded sole legal decision-making authority over the children, with Marcum receiving parenting time. Homan was also awarded the marital residence and the family pets in the division of property. The court divided the remaining property, including retirement accounts, bank accounts, and debt. The court deviated from the Arizona Child Support Guidelines calculations and reduced Marcum's obligation to pay Homan to zero. Marcum's request for spousal maintenance was denied. Marcum was further ordered to contact Homan only regarding the children or when "necessary to effectuate the terms" of the decree. We have

[1]Marcum's brief asserts facts not supported by citations to the record as required by Rule 13(a)(4), Ariz. R. Civ. App. P. We have therefore disregarded them and set out the facts based on our own review of the record. *See Lansford v. Harris*, 174 Ariz. 413, 417 n.1 (App. 1992) (court may disregard statement of facts that does not comply with Rule 13).

jurisdiction over Marcum's appeal pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Discussion

¶4 At the outset, we note that Marcum is not represented by an attorney in this appeal. "[A] party who conducts a case without an attorney is entitled to no more consideration from the court than a party represented by counsel, and is held to the same standards expected of a lawyer." *Kelly v. NationsBanc Mortg. Corp.*, 199 Ariz. 284, ¶ 16 (App. 2000). Additionally, Homan has not filed an answering brief, which we may deem a confession of reversible error if a debatable issue has been raised. *See Nydam v. Crawford*, 181 Ariz. 101, 101 (App. 1994). Because Marcum's claims are not debatable, however, we do not assume reversible error.

Judicial Bias

¶5 Marcum does not challenge the legal basis of any of the trial court's rulings but rather claims they are the result of the court's bias against him.[2] Judicial bias is "a hostile feeling or spirit of ill-will . . . towards one of the litigants." *Simon v. Maricopa Med. Ctr.*, 225 Ariz. 55, ¶ 29 (App. 2010). As a general rule, we presume a trial court is free of prejudice and bias, *State v. Ramsey*, 211 Ariz. 529, ¶ 38 (App. 2005), and the party challenging a court's impartiality must overcome that presumption and "set forth a specific basis for the claim of partiality and prove by a preponderance of the evidence that the judge is biased or prejudiced," *Simon*, 225 Ariz. 55, ¶ 29. Such bias and prejudice must typically arise from an extrajudicial source and not from the judge's rulings and handling of the case. *Stagecoach Trails MHC, L.L.C. v. City of Benson*, 232 Ariz. 562, ¶ 21 (App. 2013).

¶6 Marcum has not carried his burden of demonstrating the trial court was biased or prejudiced against him. His purported evidence of bias is largely limited to the court's rulings and management of the case, including his claims that the court denied "every single one of [his] motions"; "overlooked or ignored" his evidence, claims, and objections; and "refused to listen to requests . . . to allow him to explain" himself.

[2]Marcum's motion for change of judge for cause was denied as untimely and for failing to comply with the Rules of Family Law Procedure and provide grounds "which rise to the level of bias or impartiality such that there is cause for a change of judge." He does not appear to challenge that ruling on appeal.

Accordingly, he seeks to have the decree reversed, a new trial ordered, and "a review of all motions, rulings and judgments" that the court made in the proceeding. But the court's adverse rulings do not overcome the presumption that the court was free from bias. Moreover, nothing in the record supports Marcum's claims that the court and Homan had ex parte communications or that the court favored Homan "due to [her] . . . financial position as Senior Vice President of . . . a very well-known commercial bank."

Factual Findings

¶7 Marcum also contends the trial court's factual findings were "assumptive," "not truthful," and failed to take into account all evidence. We do not, however, reweigh the evidence presented to the court because, as the trier of fact, the court "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4 (App. 2004); *see also Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶ 13 (App. 1998) ("We will defer to the trial court's determination of witnesses' credibility and the weight to give conflicting evidence."). Additionally, absent contrary evidence, "we presume [the trial court] fully considered the relevant evidence." *See In re Marriage of Gibbs*, 227 Ariz. 403, ¶ 21 (App. 2011).

¶8 Marcum has presented no support for his claim that the trial court failed to consider his evidence. And, because he has failed to provide us with the transcripts from any hearing, we must presume the court's findings and conclusions are supported by the testimony at trial. *See* Ariz. R. Civ. App. P. 11(c)(1)(B) ("If the appellant will contend on appeal that a judgment, finding or conclusion, is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record transcripts of all proceedings containing evidence relevant to that judgment, finding or conclusion."); *Baker v. Baker*, 183 Ariz. 70, 73 (App. 1995) ("When a party fails to include necessary items, we assume they would support the court's findings and conclusions.").[3]

[3]Marcum makes two specific allegations of factual error by the trial court, claiming the date of the parties' marriage and the school a child attended were noted incorrectly in the decree. Because Marcum has not supported his claims of error with citations to the record, and the record contains conflicting evidence, we defer to the trial court's rulings; further, we note those facts are not material and any correction would not meaningfully alter the decree.

Attorney Fees and Costs on Appeal

¶9 Lastly, we deny Marcum's request for attorney fees and costs on appeal. As noted above, Marcum is not represented by an attorney on appeal, and he is therefore not entitled to attorney fees. *See Munger Chadwick, P.L.C. v. Farwest Dev. & Constr. of the Sw., LLC,* 235 Ariz. 125, ¶ 5 (App. 2014) ("[P]arties who represent themselves in a legal action are not entitled to recover attorney fees."). Moreover, as he has not prevailed on appeal, Marcum is not entitled to costs pursuant to A.R.S. § 12-341.

Disposition

¶10 The dissolution decree and child support order are affirmed.