IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

JUSTIN EVANS,
Petitioner/Appellant,

and

KAYLA JOYCE EVANS,
Respondent/Appellee.

No. 2 CA-CV 2020-0090-FC
Filed March 31, 2021

Appeal from the Superior Court in Cochise County
No. DO201900014
The Honorable Timothy B. Dickerson, Judge

AFFIRMED

COUNSEL

Justin Evans, Hereford
In Propria Persona

Pahl & Associates, Tucson
By Danette R. Pahl
Counsel for Respondent/Appellee

MEMORANDUM DECISION

Vice Chief Judge Staring authored the decision of the Court, in which Presiding Judge Espinosa and Judge Eckerstrom concurred.

S T A R I N G, Vice Chief Judge:

¶1 Justin Evans appeals from the trial court's decree of dissolution of marriage designating Kayla Evans as the primary residential parent of the parties' minor son, ultimately asking us to grant him "[p]hysical custody of his son . . . and/or . . . a new trial with a new judge outside of Cochise County." For the reasons stated below, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to affirming the trial court's ruling. *See In re Marriage of Downing*, 228 Ariz. 298, ¶ 2 (App. 2011). Justin and Kayla were married in 2016, and have one child together, E., born in October 2017. In November 2018, Kayla moved to Kansas, taking E. with her. Justin subsequently filed for dissolution in Arizona. The court issued temporary orders providing Justin with monthly parenting time centered around Kayla's monthly trips to Arizona for duties related to her service in the Army Reserves. In April 2020, following a two-day bench trial, the court entered a decree of dissolution in which it made findings pursuant to A.R.S. §§ 25-403, 25-403.01, and 25-403.03, designating Kayla as E.'s primary residential parent. Justin appealed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Improper Consideration, Weighing, and Rejection of Evidence

¶3 Justin first argues the trial court "did not properly consider or weigh all of the admitted evidence," "abused [its] discretion depriving [him] of a fair trial," and "err[ed] in the rejection of evidence." Specifically, Justin contends the court erred by: (1) considering evidence of his alcohol use and ignoring evidence that Kayla also used alcohol; (2) improperly weighing and ignoring evidence related to a domestic violence incident at a campsite in 2018; (3) admitting and improperly weighing evidence of a phone call between Justin and his former wife; (4) declining to admit evidence he had not committed child abuse in "over disciplining" W., his son from a previous marriage, using his discipline of W. "unfairly against [him]" in determining custody of E., including misquoting the Bible and

holding his religious beliefs about discipline against him;[1] and (5) failing to enforce its visitation orders, ignoring evidence related to an order of protection issued in Kansas, improperly weighing a recorded phone call between Justin and Kayla in which "Kayla was lying to him about having moved to Kansas and having a house in Sierra Vista," and ignoring "Justin's testimony and lack of proof that [he] was harassing Kayla."

¶4 An opening brief in this court must contain an argument with "[a]ppellant's contentions concerning each issue presented for review, with supporting reasons for each contention, and with citations of legal authorities and appropriate references to the portions of the record on which the appellant relies." Ariz. R. Civ. App. P. 13(a)(7)(A). "We generally decline to address issues that are not argued adequately [and] with appropriate citation to supporting authority." *In re J.U.*, 241 Ariz. 156, ¶ 18 (App. 2016).

¶5 Justin has failed to comply with the rules of appellate procedure to such an extent that he has waived these arguments on appeal.[2] *See Ritchie v. Krasner*, 221 Ariz. 288, ¶ 62 (App. 2009) (failure to comply with Rule 13(a)(7) may constitute abandonment and waiver of claim).[3] He does

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[1]In connection with these arguments, Justin appears to contend the final decree of dissolution entered on April 14, 2020, erroneously states that "[d]esignation of [Kayla] as primary residential parent" is supported, in part, by Justin's "excessive use of physical discipline with [E.]." We note that although the evidence presented at trial and correctly described in the trial court's January 28, 2020 ruling establishes Justin used physical discipline in punishing his son W. and Kayla's son H., it does not establish he used such discipline to punish E. Because the court properly discussed the evidence presented at trial in its January 28 ruling designating Kayla as E.'s primary residential parent, the mischaracterization appearing in the final decree does not affect our analysis on appeal.

[2]It is not incumbent on this court to develop legal arguments for a party. *See Ace Auto. Prods., Inc. v. Van Duyne*, 156 Ariz. 140, 143 (App. 1987). Moreover, although self-represented, Justin is "given the same consideration on appeal as one who has been represented by counsel" and "is held to the same familiarity with court procedures and the same notice of statutes, rules, and legal principles as is expected of a lawyer." *Higgins v. Higgins*, 194 Ariz. 266, ¶ 12 (App. 1999).

[3]*Krasner* references Rule 13(a)(6), however Rule 13 has since been amended. The pertinent requirements are now found in Rule 13(a)(7).

not develop any discernable legal argument, nor does he cite to any "relevant supporting authority" to establish the trial court erred in these instances. *Polanco v. Indus. Comm'n*, 214 Ariz. 489, n.2 (App. 2007); *see* Ariz. R. Civ. App. P. 13(a)(7)(A). Indeed, Justin appears to rely on Rule 83, Ariz. R. Fam. Law P., a procedural rule which provides that the *trial court* "may on its own or on motion alter or amend all or some of its rulings" if it "did not properly consider or weigh all of the admitted evidence" or if it "err[ed] in the admission or rejection of evidence." This rule lends no support to his arguments on appeal. In any event, Justin primarily asks us to reweigh the evidence, which we will not do. *See Hurd v. Hurd*, 223 Ariz. 48, ¶ 16 (App. 2009). Moreover, we presume the court considered all admitted evidence. *See Fuentes v. Fuentes*, 209 Ariz. 51, ¶ 18 (App. 2004).

Misconduct of Opposing Party

¶6 Justin asserts both Kayla and her attorney committed misconduct in this case. His primary allegations against Kayla appear to be that she purposely kept E. from him, "misled the court [by] saying she was transferring Reserve units from Arizona to Kansas," and provided false testimony during trial. Additionally, Justin alleges that Kayla's attorney committed misconduct, including that she "advised Kayla to keep [E.] from Justin by using semantics in the judge's order and mis-quoting the judge during the trial," used Justin's attorney's personal domestic violence case "to detour the deputies from Kayla" when Justin reported custodial interference, and falsely stated in the final decree that judgment was entered in favor of Kayla "due to [Justin] over disciplining the minor child." He also argues Kayla and her attorney "made up that [he] had a gun . . . [and was] sitting in his truck threatening suicide to persuade the court" in Kayla's favor. And, he appears to contend a conflict of interest was created when his previous attorney withdrew during the case and went to work for the law firm representing Kayla in the dissolution proceeding.

¶7 Again, Justin fails to develop legal arguments as to why he is entitled to the relief he seeks and cites only Rule 83, which describes the procedure by which a trial court may alter or amend a judgment, and Rule 85, Ariz. R. Fam. Law P., which describes the procedure and circumstances under which a trial court may relieve a party from a judgment. Justin did not file a motion pursuant to either of these rules below, and they do not support his arguments on appeal. Based on his failure to comply with Rule 13(a)(7)(A), we consider these arguments waived. *See In re J.U.*, 241 Ariz. 156, ¶ 18; *Ritchie*, 221 Ariz. 288, ¶ 62.

Misconduct of Justin's Attorney

¶8 Justin further argues he was deprived of a fair trial based on "misrepresentation" by his own attorney. Specifically, he asserts his attorney's arrest for domestic violence in March 2019 resulted in media attention that negatively affected his case. Further, he contends, his attorney was "often distracted and emotional and missed crucial steps," including petitioning for a "physiological evaluation for Kayla amid the [d]omestic [v]iolence and emotional trauma she encountered" and a "custody evaluation of [E.] to help the court better establish [his] best interest[s]." He also alleges his attorney "left out pertinent questions for expert witnesses" and failed to make Justin's requested changes to the dissolution decree. However, because Justin again fails to make legal arguments "with appropriate citation to supporting authority," *In re J.U.*, 241 Ariz. 156, ¶ 18, his arguments are waived for failure to comply with Rule 13(a)(7)(A).

A.R.S. § 25-403 Factors

¶9 Next, Justin challenges the trial court's findings as to several factors under § 25-403(A), ultimately contending it is in E.'s best interest "to be with his father and brother in Arizona."[4] We will not overturn the court's decision regarding parenting time absent a clear abuse of discretion. *In re Marriage of Diezsi*, 201 Ariz. 524, ¶ 3 (App. 2002). "An abuse of discretion occurs when the court commits an error of law in reaching a discretionary decision," *DeLuna v. Petitto*, 247 Ariz. 420, ¶ 9 (App. 2019), 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," *Little v. Little*, 193 Ariz. 518, ¶ 5 (1999) (quoting *Fought v. Fought*, 94 Ariz. 187, 188 (1963)). As noted, we do not reweigh the evidence on appeal. *See Hurd*, 223 Ariz. 48, ¶ 16. Because the trial court is in the best position to determine issues related to child custody, *see Black v. Black*, 114 Ariz. 282, 284 (1977), we defer to its assessment of witness credibility and the weight given to conflicting evidence, *see Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶ 13

[4]Although Justin largely fails to cite legal authority in support of his arguments and fails to identify "the applicable standard of appellate review with citation to supporting legal authority" as required under Rule 13(a)(7), and such defects are appropriate grounds for this court to find his arguments waived, *see Ritchie*, 221 Ariz. 288, ¶ 62, we exercise our discretion and address the merits of his claims related to the trial court's application of § 25-403(A) and best interests of the child.

(App. 1998). We also uphold its factual findings unless they are clearly erroneous. *See* Ariz. R. Fam. Law P. 82(a)(5).

¶10 Section 25-403(A) provides that the trial court shall determine parenting time "in accordance with the best interests of the child." The statute enumerates eleven factors for the court to consider, including: the parents' past, present, and future relationship with the child; whether the child is adjusting to home and school; the "mental and physical health of all individuals involved"; the likelihood the parent will "allow the child frequent, meaningful and continuing contact with the other parent"; whether a parent "intentionally misled the court" to cause delay, increase the cost of litigation, or persuade the court to rule in their favor; and whether there have been acts of domestic violence or child abuse. *Id.* In a contested case, the court must make "specific findings on the record about all relevant factors and the reasons for which the decision is in the best interests of the child." § 25-403(B). Justin challenges the court's findings as to the following factors.

Relationship Between Child and Parents

¶11 Evaluating the past, present, and potential future relationship between E. and his parents under § 25-403(A)(1), the trial court found E. "is bonded to both parents and both parents have a close and loving relationship" with him. It further stated that "[t]here is no reason to believe that each parent's close relationship [with E.] will not continue." Justin argues the court's statement regarding the parties' continuing relationship with E. is inaccurate based on "significant evidence that shows that Kayla will keep [E.] from Justin because she will do whatever she wants without regard to their relationship," and therefore this factor should weigh in his favor.

¶12 However, Kayla testified Justin had exercised parenting time with E. in April, May, June, July, and August of 2019. And, she testified she had not kept E. from Justin in the past. This testimony was sufficient to support the court's finding that there was "no reason to believe" Justin's close relationship with E. would not continue in the future. *See Lewis v. Midway Lumber, Inc.*, 114 Ariz. 426, 429 (App. 1977) ("A finding of fact cannot be clearly erroneous if there is substantial evidence to support it, even though there also might be substantial conflicting evidence."); *Castro v. Ballesteros-Suarez*, 222 Ariz. 48, ¶ 11 (App. 2009) ("Evidence is substantial if it allows 'a reasonable person to reach the trial court's result.'" (quoting *Davis v. Zlatos*, 211 Ariz. 519, ¶ 18 (App. 2005))). And, as noted, we do not reweigh the evidence on appeal and defer to the court's assessment of

witness credibility; thus, we find no error here. *See Hurd*, 223 Ariz. 48, ¶ 16; *Gutierrez*, 193 Ariz. 343, ¶ 13.

Child's Adjustment

¶13 As to E.'s adjustment to home, school, and community under § 25-403(A)(3), the trial court found he "is doing well at his current childcare and enjoys attending it." Justin argues the court should have decided this factor in his favor because "Kayla absconded with [E.] to Kansas unbeknownst to [him]" and it "was not [his] choice or preference that [E.] be living in Kansas." Further, he contends the court's conclusion is inconsistent with its previous statement made at the end of the first day of trial indicating the time E. spent in Kansas between trial dates "would not count against [Justin]," and E. "is also well adjusted to Arizona where he has family, friends and community."

¶14 First, as Kayla points out, Justin's argument that she "absconded" with E. and that it was not his "choice or preference" for E. to live in Kansas is irrelevant to E.'s adjustment to home, school, and community under § 25-403(A)(3). As to Justin's argument that the trial court's conclusion is inconsistent with its statement that it would not hold the time E. spent in Kansas against Justin, we note that the purpose of the court's statement is not entirely clear. However, regardless of any time E. spent in Kansas between trial dates, Justin fails to show E. had not been well adjusted to his daycare at the time of the first trial date.

¶15 Moreover, substantial evidence presented at trial supports the court's finding that E. is well adjusted to his current childcare arrangement, and as Kayla notes, Justin "fail[s] to identify any evidence that would render the trial court's assessment 'clearly erroneous.'" *See* Ariz. R. Fam. Law P. 82(a)(5); *Lewis*, 114 Ariz. at 429. Again, we defer to the court's credibility determinations, *see Gutierrez*, 193 Ariz. 343, ¶ 13, presume it considered all admitted evidence, *see Fuentes*, 209 Ariz. 51, ¶ 18, and do not reweigh evidence on appeal, *see Hurd*, 223 Ariz. 48, ¶ 16.

Likelihood of Parent Allowing Contact

¶16 Pursuant to § 25-403(A)(6), the trial court considered which parent is more likely to allow E. frequent, meaningful, and continuing contact with the other parent, finding:

> [Kayla] denied [Justin] parenting time with [E.] by taking [E.] to Kansas without [Justin]'s consent or knowledge. [Kayla]'s actions were

> justified once the [order of protection] was issued and [Justin] did not contest [it]. The court acknowledges that it would have been difficult for him to have contested the out-of-state OP, but the OP is a judicial finding of an act or threat of [domestic violence]. [Justin] has been inflexible when [Kayla] has requested an adjustment to her time to have contact with [E.]. The court concludes that both parents will obey court orders.

¶17 Justin argues the trial court "inaccurately describe[d] the [order of protection] and the results in the findings when those certain questions were never presented at trial." Specifically, he contends he did challenge the order of protection, but the "Kansas court told [him] that the [order] would remain in effect until Arizona took over the case, then it would be dismissed." Justin raised a similar argument below in a motion for reconsideration, and the court acknowledged it had "misstated the evidence when it at least implied in its decision that [Justin] took no action to challenge the order of protection which [Kayla] obtained in Kansas." The court ultimately concluded these "facts [did] not change the finding . . . that the order of protection was 'a judicial finding of an act or threat of [domestic violence]' and that the order of protection justified [Kayla]'s denial of parenting time to [Justin]." We find no error. *See Hurd*, 223 Ariz. 48, ¶ 16.

¶18 Justin also challenges the trial court's statement that he "was inflexible with Kayla regarding parenting time," contending this statement was false because "Kayla had kept [E.] from Justin for over six months" and "ask[ed] for visitation during Justin's visitation." Further, he argues the court's conclusion that "both parents will obey court orders" is "inaccurate with the evidence" because the "evidence shows that Kayla will use semantics and control to determine if Justin gets to see [E.] or not." In support of his argument, Justin points to "multiple motions to compel and enforce that were denied by the [court]" and claims "Kayla continues to give parenting time on her terms, does not work with [him] fully, and [he] has evidence to support it."[5]

[5]Additionally, Justin contends the trial court "incorrectly states the facts of the evidence" related to Kayla absconding with E., but fails to develop any argument as to specific facts he alleges are incorrect; we do not

¶19 Kayla testified that she had recently tried to discuss parenting-time issues with Justin, but "he would not have the conversation" with her. She also stated that when she had asked to change Justin's video calls with E. "by 15 minutes or things of that nature," Justin did not respond if he did not "feel like responding." And, Kayla testified that before she had moved to Kansas in November 2018, she "would contact Justin and ask him when he would want to spend time with [E.]" and "would offer him any time during the week when he wasn't in any type of child care during [her] work day." She also stated she had "offered multiple weekends, and there were multiple occasions where Justin would already have something planned or would decline the time with [E.]," primarily between October and November 2018.

¶20 Moreover, Kayla testified Justin had exercised parenting time with E. in April, May, June, July, and August of 2019. As to why she had not brought E. with her to Arizona for the October trial date, Kayla testified the parties had not yet reached an agreement on how to divide the cost of E.'s plane tickets and she was unable to afford the cost of E.'s travel on her own. Kayla confirmed she had "allowed additional time for Justin to spend with [E.]" at "any opportunity that's been available" and informed Justin he was "welcome" to come visit E. in Kansas. Finally, Kayla agreed that she believed the parenting time she had proposed would grant Justin "frequent, meaningful, continuing contact with [E.]," and if the court granted her "primary residential custody of [E.]," she "would comply with the orders and give Justin his frequent and meaningful parenting time to which he is entitled." Thus, substantial evidence supports the trial court's conclusion that both Kayla and Justin will follow court orders, and we reject Justin's contention that this factor should weigh in his favor and against Kayla. *See Lewis*, 114 Ariz. at 429; *Hurd*, 223 Ariz. 48, ¶ 16; *Gutierrez*, 193 Ariz. 343, ¶ 13.

Misleading the Court

¶21 As to "[w]hether one parent intentionally misled the court to cause an unnecessary delay, to increase the cost of litigation or to persuade the court to give a legal decision-making or a parenting time preference to that parent" under § 25-403(A)(7), the trial court found this factor was inapplicable "based on the evidence presented." Justin, however, contends this factor weighs in his favor because Kayla's attorney successfully

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further address this argument. *See In re J.U.*, 241 Ariz. 156, ¶ 18; Ariz. R. Civ. App. P. 13(a)(7)(A).

continued the case three times and attempted to obtain additional continuances "to allow more time to gather more evidence against Justin." Further, he asserts Kayla and her attorney attempted to mislead the court by claiming he possessed a gun and had threatened suicide, as shown by the fact Kayla admitted "the gun was an assumption, and evidence has shown that [he] does not have suicidal ideation." Justin also claims Kayla "misled the court about transferring her reserve unit in order to persuade the court to not give month on[,] month off visitation around her drilling schedule," "lied about where [E.] got [h]and[,] foot, and mouth disease," and "misled the court and all parties that Justin would be getting visitation each month when she attended her battle assembly for the Army Reserves."

¶22 Kayla counters that Justin "fails to identify how the continuances or the attempts to gather evidence were the result of 'intentional misleading,'" and therefore his argument fails. We agree. Justin has not established Kayla requested such continuances in order to intentionally mislead the trial court "to cause an unnecessary delay." § 25-403(A)(7). Similarly, Justin fails to point to specific evidence in the record before us on appeal establishing Kayla intentionally misled the court in any of the instances he claims.[6] *See* Ariz. R. Civ. App. P. 13(a)(7)(A) (argument in opening brief must contain "appropriate references to the portions of the record on which the appellant relies"). We cannot say the court erred in concluding the evidence did not support a finding that Kayla had intentionally misled it.

Domestic Violence

¶23 Under § 25-403(A)(8), a trial court must consider "[w]hether there has been domestic violence or child abuse pursuant to § 25-403.03." Here, the court concluded that both Justin and Kayla had committed domestic violence. The court found Justin had "committed domestic violence/disorderly conduct" based on "his actions of yelling and cussing" at Kayla during a camping trip in 2019. It found Kayla had "committed domestic violence/disorderly conduct and criminal damage by throwing

[6]Indeed, Kayla's alleged assertion that Justin had possessed a gun and threatened suicide would have nonetheless found support in testimony of Justin's former wife as to a phone conversation during which Justin "talked about sitting in his truck drinking" and stated he "wished he would have died in Iraq," "should have ended it all," and "would rather put a bullet in [his] brain." Further, Kayla testified, and Justin confirmed, that he had access to firearms.

an item in anger and breaking glass," as well as "domestic violence/assault by striking [Justin] in the face." The court concluded other allegations of domestic violence were "unsubstantiated due to the conflicting testimony of the parties and the lack of any independent evidence or contemporaneous report."

¶24 Justin argues that the trial court erred in finding he had committed domestic violence/disorderly conduct "due to the fact there is evidence that Kayla was the aggressor" during the campground incident and that "this factor should be overturned and weighted" in his favor. Supporting this argument, he points to Kayla's alleged "pattern of violence," custodial interference, and "emotional . . . and psychological abuse." And, he claims, the court inaccurately found that his report to law enforcement about Kayla's conduct "was self-serving and not to report a crime."

¶25 At trial, Kayla testified that after she had arrived at the campsite, Justin brought up a previous argument "and it turned in to . . . a loud . . . argument where he was raising his voice." She stated Justin had started "getting louder and louder and coming towards [her]," and she decided to leave. She further testified that after she had gotten into her car, Justin approached her while "screaming and yelling" profanities at her and telling her she could not "take [his] kids." Moreover, previous testimony demonstrated that Justin had admitted to "holler[ing]" at Kayla and "call[ing] her names" during the incident.

¶26 As discussed, we defer to the trial court's determination of witness credibility and its weighing of conflicting evidence. *See Gutierrez*, 193 Ariz. 343, ¶ 13. Contrary to Justin's argument, the court did not err in finding he had committed domestic violence during the camping trip. *See Lewis*, 114 Ariz. at 429. And, with regard to his argument that the court inaccurately described his report of domestic violence as self-serving, again, we defer to the court's determination of witness credibility and find no error in the court's conclusion. *See Gutierrez*, 193 Ariz. 343, ¶ 13.

¶27 Justin has not demonstrated the trial court reached its conclusions without considering the evidence or made its findings without substantial support. Thus, the court did not abuse its discretion in designating Kayla as E.'s primary residential parent. *See In re Marriage of Diezsi*, 201 Ariz. 524, ¶ 3; *Little*, 193 Ariz. 518, ¶ 5; *see also Hurd*, 223 Ariz. 48, ¶ 16.

Child Support Arrears

¶28 Justin challenges the trial court's award of child support arrears to Kayla, arguing he was never ordered to pay child support and "[t]here were miscalculations by the court and in the final stages of [the] decree that did not get fully taken into account." However, because Justin fails to identify any alleged miscalculations, make any discernable legal argument, or cite any legal authorities to establish the court erred, his contention that "no past support [should be] allocated to Kayla" is waived. *See* Ariz. R. Civ. App. P. 13(a)(7)(A); *In re J.U.*, 241 Ariz. 156, ¶ 18; *Ritchie*, 221 Ariz. 288, ¶ 62.

Newly Discovered Material Evidence

¶29 Justin argues he has "discovered new evidence" that "could not have been discovered and produced at the trial," and that will "verify [Kayla's] vindictive behavior" and show she "had ulterior motives for leaving . . . and misled the courts for her gain." He contends he now has witnesses "that would testify to conversations with Kayla of vindictive material regarding the custody of [E.]," a recorded phone call showing that Kayla gave false testimony, and evidence suggesting Kayla "was committing adultery during the trial." Further, he asserts he has witnesses who will testify that "Kayla has not, and has no intentions of transferring Reserve units to Kansas, further evidence she misled the court," as well as evidence that she has not engaged in counseling as "directed by the Department of the Army." Justin also claims he now has evidence in the form of emails confirming his allegation that a prosecutor at the Cochise County Attorney's Office threatened to "ensure that [any] case that Justin ever had in Cochise County would not go in [his f]avor" if he continued to pursue prosecution of Kayla in connection with his reports to law enforcement that she had committed domestic violence. In this section of his brief, Justin also asserts the court "used his religious beliefs of discipline" against him in "violation of [his] first amendment rights to exercise his religious beliefs."[7]

[7]Additionally, he reasserts his claims that the trial court erred in rejecting evidence showing he was permitted to use physical force in disciplining W. and using its finding that he excessively disciplined W. "to justify giving physical custody [of E.] to Kayla." Again, Justin's claims are waived for failure to develop legal argument and cite to "relevant supporting authority" to establish the court erred in considering or

¶30 In support of his arguments, Justin again cites Rule 83, which provides, in relevant part, that the trial court may, on its own or upon a party's motion, amend its ruling on "grounds materially affecting a party's rights" including "newly discovered material evidence that could not have been discovered and produced at the trial with reasonable diligence . . . [and] error in the admission or rejection of evidence, or other errors of law at the trial or during the action." Kayla argues that because Justin failed to raise the above-referenced arguments in a motion pursuant to either Rule 83 or Rule 85, and did not otherwise raise these issues below, he cannot raise them in this appeal. We agree. *See CDT, Inc. v. Addison, Roberts & Ludwig, C.P.A., P.C.*, 198 Ariz. 173, ¶ 19 (App. 2000) (we consider only those arguments, theories, and facts properly presented below); *Payne v. Payne*, 12 Ariz. App. 434, 435-36 (1970) (legal argument generally not addressed on appeal unless presented below "so as to give the trial court an opportunity to rule properly"). Accordingly, we do not address these arguments.

Sanctions

¶31 Finally, Justin asks this court to impose sanctions against Kayla and her attorney pursuant to Rule 25, Ariz. R. Civ. App. P., which provides that "[a]n appellate court may impose sanctions on an attorney or a party if it determines that an appeal or a motion is frivolous, or was filed solely for the purpose of delay," or if a party or attorney violates the rules of civil appellate procedure. He asserts his request is based on "misconduct" but does not allege violations of the civil appellate rules or that any filings on appeal were "frivolous" or made "solely for the purpose of delay." *Id.*; *Sotomayor v. Sotomayor-Muñoz*, 239 Ariz. 288, ¶ 13 (App. 2016). In our discretion, we deny his request for sanctions.

Attorney Fees

¶32 Kayla requests attorney fees on appeal pursuant to A.R.S. § 25-324. After considering the parties' financial resources and the reasonableness of their positions, we exercise our discretion and deny attorney fees. As the prevailing party, Kayla is entitled to her taxable costs upon compliance with Rule 21, Ariz. R. Civ. App. P. *See* A.R.S. § 12-341.

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rejecting this evidence. *Polanco*, 214 Ariz. 489, n.2; *see* Ariz. R. Civ. App. P. 13(a)(7)(A).

Disposition

¶33 For the foregoing reasons, we affirm the trial court's order.