IN THE

# ARIZONA COURT OF APPEALS

DIVISION TWO

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IN RE THE MARRIAGE OF

YOUNG PARK,
*Petitioner/Appellee*,

*and*

JOSEPH MENDOZA,
*Respondent/Appellant*.

No. 2 CA-CV 2020-0140-FC
Filed August 20, 2021

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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NOT FOR PUBLICATION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 Pima County
No. D20182463
The Honorable Jane Butler, Judge Pro Tempore
The Honorable Dean Christoffel, Judge Pro Tempore
The Honorable Randi Burnett, Judge Pro Tempore

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

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COUNSEL

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Joseph Mendoza, Tucson
*In Propria Persona*

**MEMORANDUM DECISION**

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

E P P I C H, Presiding Judge:

**¶1** Joseph Mendoza appeals from the trial court's decree of dissolution, arguing the court erred in awarding Young Park thirty percent of his future net yearly profit from any law firm at which he may work and spousal maintenance without Park's affidavit of financial information (AFI) in evidence. For the following reasons, we affirm in part, vacate in part, and remand.

## Factual and Procedural Background

**¶2** We view the evidence in this case in the light most favorable to sustaining the trial court's ruling. *See Lehn v. Al-Thanayyan*, 246 Ariz. 277, ¶ 14 (App. 2019) (property division); *Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶ 14 (App. 1998) (spousal maintenance). Mendoza and Park married in 2003. In August 2018, Park filed a petition for dissolution of the marriage and a petition for temporary orders regarding, among other things, spousal maintenance. In December 2018, Mendoza and Park entered into a stipulation "with regard to temporary orders," that vacated the temporary orders hearing and provided that Mendoza would pay Park "$1,500.00 a month in indefinite spousal support" and that Park would receive "30% of [Mendoza's] net yearly profit from any law firm he may work at."[1] The stipulation indicated that a consent decree would be forthcoming with details of the final agreements of the parties. In April 2019, Park filed a notice indicating that she wished to proceed to trial.

[1]Although it is not readily apparent whether the stipulation was intended to be only temporary, we treat it as a temporary agreement because on appeal Park argues Mendoza's "proposed temporary orders are an acknowledgment that the court has the authority to order . . . 30% of his net yearly profit from his law practice" and she does not argue Mendoza was bound to the terms of this agreement in a final decree due to the temporary stipulation.

**¶3** In 2019, a two-day dissolution trial was held and, in 2020, the trial court issued a ruling explaining its findings regarding dissolution. The ruling ordered, among other things, that Park be awarded "30% of [Mendoza's] net yearly profit from any law firm he may work at" and spousal maintenance from Mendoza "in the amount [of] $1,500.00 per month for an indefinite term." These orders were subsequently incorporated into the final decree from which Mendoza appeals. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).[2]

**Percentage of Yearly Profits**

**¶4** Before trial, Park filed a discovery motion requesting Mendoza provide various documents including his personal tax returns; expenses for their children; income and profit sharing from his current law firm; and income from a collection agency. Approximately three weeks later, Park filed another motion stating Mendoza "ha[d] failed to make any attempt to provide the required documentation nor ha[d] he given [her] any timeframe in which she can expect to be provided with the required documents." As a result she requested, among other things, that the trial court order Mendoza to immediately produce the requested documents and issue sanctions for his failure to comply. After a hearing, the court ordered Mendoza disclose certain information[3] and pay a fine of $100 per day, to a charity of his choosing, until Park reported to the court that he had complied.

**¶5** Park subsequently notified the trial court that, shortly after the sanctions were ordered, Mendoza "made efforts to ensure that he was substantially in compliance" with the court's order by providing some of the documentation. Park requested the court sanction Mendoza for one

[2]In May 2021, we stayed this appeal and revested jurisdiction in the trial court, for fifteen days, to enter a final order containing language pursuant to Rule 78(c), Ariz. R. Fam. Law P. The trial court subsequently issued an order reciting no matters remained pending and entering judgment under Rule 78(c). Because certifying the judgment as final pursuant to Rule 78(c) was a purely ministerial act, this cured Mendoza's premature notice of appeal. *See McCleary v. Tripodi*, 243 Ariz. 197, ¶ 9 (App. 2017).

[3]This included profit and loss statements from the firm he worked at, any investment accounts, various closing documents, income received from a collection agency, and bank account statements.

day, hold him responsible for any cost associated with Park obtaining the requested information by alternative means, and grant any other relief it deemed just and proper. The court ordered Mendoza pay a $100 fine to a charity as a sanction, and Mendoza complied.

**¶6** During opening remarks at trial, Park argued that due to Mendoza's "financial behaviors" she was put in a position without a way "to collect anything" because there was "no property to be able to put liens against." She also argued the "profit sharing" no longer existed because Mendoza no longer worked at the same firm.[4] She requested the court "try to do some offset through the 30 percent that originally was agreed to in the Temporary Orders as far as the profit sharing goes" and, if possible, to "just move the profit sharing to [his current law firm] instead." Mendoza responded that the thirty-percent agreement only applied to the temporary orders.

**¶7** After taking the matter under advisement, the trial court awarded Park "30% of [Mendoza's] net yearly profit from any law firm he may work at." The court observed the parties had previously agreed to that award in the stipulated temporary orders. It also noted it had reviewed the parties' assets and "all real property has been sold or foreclosed upon, there is no community savings or investments and [Mendoza] has always been the primary income earner in the family." Additionally, citing *Lehn*, 246 Ariz. 277, the court found Mendoza had "engaged in obstructionist behavior that prevent[ed] an accurate determination of the community assets" and noted it had held Mendoza in contempt once for "failing to timely comply with a discovery request."

**¶8** On appeal, Mendoza contends this award violated A.R.S. § 25-211(A)(2) and exceeded the trial court's jurisdiction. Specifically, he argues Park is not entitled to these earnings because they will be acquired after the petition of dissolution was served, thereby rendering them separate property. Park counters that Mendoza's "obstructionist efforts" made it impossible for the court to value the community interest in Mendoza's law practice, including the goodwill therein,[5] and thus the

[4]By the first day of trial, Mendoza was no longer with his previous firm and had begun his own law practice.

[5]The professional goodwill of a lawyer acquired during the marriage is a community asset that may be divided upon marital dissolution.

award was proper as a lien on his separate property under A.R.S. § 25-318(E)(1). *See Weaver v. Weaver*, 131 Ariz. 586, 587 (1982) (trial court's jurisdiction with respect to separate property is limited to assigning it under § 25-318(A) and impressing a lien).

**¶9** "We review the trial court's division of property for an abuse of discretion," but its characterization of property de novo. *In re Marriage of Pownall*, 197 Ariz. 577, ¶ 15 (App. 2000). A trial court abuses its discretion if "the record fails to provide substantial evidence to support [its] finding." *Walsh v. Walsh*, 230 Ariz. 486, ¶ 9 (App. 2012) (quoting *Flying Diamond Airpark, LLC v. Meienberg*, 215 Ariz. 44, ¶ 27 (App. 2007)).

**¶10** Section 25-211(A)(2) states that "property acquired by either husband or wife during the marriage is the community property of the husband and wife except for property that is . . . [a]cquired after service of a petition for dissolution of marriage . . . if the petition results in a decree of dissolution of marriage." "Generally, property acquired during the marriage is presumed to be community property, and property acquired after service of a petition for dissolution is presumed to be separate property." *Helland v. Helland*, 236 Ariz. 197, ¶ 11 (App. 2014).

**¶11** Here, the trial court granted Park thirty percent of Mendoza's "net yearly profit from any law firm he may work at." Assuming, without deciding, that Park had a community interest in Mendoza's law practice and any goodwill therein, the award is improper because it provides no quantifiable portion of community property that she was entitled to up until service of the petition for dissolution. *See* § 25-211(A)(2); *cf. Carpenter v. Carpenter*, 150 Ariz. 62, 62, 64 (1986) (portion of retirement benefit earned up until dissolution was community property and former spouse entitled to the *value at that time*). Rather, because the award lasts as long as Mendoza practices law and makes a profit, it provides an unknown sum—thirty percent of an unknown value. Because the award is unquantifiable and "the record fails to provide substantial evidence to support [it]," the court abused its discretion. *Walsh*, 230 Ariz. 486, ¶ 9 (quoting *Meienberg*, 215 Ariz. 44, ¶ 27).[6]

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*See Mitchell v. Mitchell*, 152 Ariz. 317, 320-21 (1987); *Walsh v. Walsh*, 230 Ariz. 486, ¶ 11 (App. 2012).

[6]Because the unquantifiable award constitutes an abuse of discretion, we need not reach Park's assertion that the award was properly imposed as

**¶12** Nevertheless, Park argues this award was proper because Mendoza engaged in "obstructionist efforts," preventing the court from making an accurate determination of Park's interest in the community asset and thus the court properly awarded her a "greater share of community assets." *See Hrudka v. Hrudka,* 186 Ariz. 84, 93–94 (App. 1995).

**¶13** In making the award, the trial court cited *Lehn* and found Mendoza had engaged in "obstructionist behavior." *See* 246 Ariz. 277, ¶ 18 ("Where a party's own 'obstructionist behavior' prevents an accurate determination of the community's interest in an asset, the court may award one party a greater share of community assets."). In *Lehn*, the husband appealed the trial court's unequal allocation of community assets arguing, in part, that the court erred by failing to value his business interests. *Id.* ¶¶ 1, 15, 17. We concluded that the husband could not complain about the lack of valuation because he had attempted to hide his business interests, he was "recalcitran[t] in disclosing information" making any valuation impossible, and he had not presented any evidence of the value of his business interests while the wife had presented evidence that he had business interests with $3.8 million in capital. *Id.* ¶¶ 18-19. We affirmed the court's order that the husband pay the entire balance of a $241,000 community debt and its award to wife of eighty-five percent of a community credit union account, which contained over $21,000, to compensate the wife for her interests in the businesses after it concluded that the husband's insufficient disclosure prevented a valuation of those interests. *Id*. ¶¶ 8, 19.

**¶14** We accept the trial court's finding that Mendoza had "engaged in obstructionist behavior that prevent[ed] an accurate determination of the community assets." *See Deluna v. Petitto*, 247 Ariz. 420, ¶ 9 (App. 2019) (we accept the court's findings of fact unless clearly erroneous). However, unlike in *Lehn*, the court here did not order a fixed award due to the husband's failure to comply with disclosure, rather, as explained above, it ordered an unquantifiable award. As such, this case is distinguishable from *Lehn*. The court and Park cite no authority for this unquantifiable award and we are unaware of any that allows such a broad ruling with ostensibly no limit if Mendoza continues making a profit practicing law. Although the sanctions rule is seemingly broad, *see* Ariz. R. Fam. Law P. 65(b), we doubt that it can be reasonably construed to allow

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a lien. And, in any event, we note that nowhere in the ruling did the court indicate it was ordering a lien.

such a potentially steep punishment.[7] And it is irrelevant that the parties initially stipulated to the thirty percent figure because that agreement was merely for purposes of a temporary order.

**¶15** Accordingly, we vacate the award and remand to the trial court to award a definitive sum to equitably compensate Park of her community interest, if any, in Mendoza's former law practice. Further, because the court apparently relied on this award as part of its reasoning for denying Park's request for attorney fees, we vacate the attorney fees portion of the decree and remand for reconsideration of that question.

**Spousal Maintenance**

**¶16** At trial, both parties agreed spousal maintenance was an outstanding issue to resolve. On the first day of trial, Mendoza stated during opening remarks that because Park had not submitted an updated AFI, she could not "ask for spousal maintenance if [she did not] submit an AFI at the trial." Park responded that an AFI had been filed in August of 2018, her income had only changed slightly since then, and "nothing has substantially changed as far as costs and expenses." Sometime that day, Park filed an updated AFI but never offered it into evidence.

**¶17** The trial court found that Park was entitled to an award of spousal maintenance under A.R.S. § 25-319(A) because

> she lacks sufficient property[,] including property apportioned to her, to provide for her reasonable needs, is unable to be self-sufficient through appropriate employment, contributed to the educational opportunities of the other spouse and had a marriage of long duration and is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.

The court then noted its findings for each of the § 25-319(B) factors and concluded Park "is entitled to an award of spousal maintenance in the

[7]Moreover, Park stated at trial that the disclosure issues related to the pretrial sanction were "no longer an issue" because Mendoza was no longer employed by his previous law firm.

amount of $1,500.00 per month" for an indefinite term because she does not or will not "have the ability to achieve financial independence."

**¶18** On appeal, Mendoza contends the trial court erred in awarding Park spousal maintenance because she failed to admit an AFI into evidence.[8] He contends that without the AFI "the court lacked the financial information required to award spousal maintenance." His main contention appears to be that without the AFI the court had to "assume that [Park's] expenses exceeded her income." Park counters that sufficient evidence of her income and expenses, independent of the AFI, supported the award under § 25-319 and, even assuming an AFI was required to be admitted into evidence, the failure to introduce it was harmless. *See* Ariz. R. Fam. Law P. 86 ("Unless justice requires . . . [any] error by the court or a party . . . is not grounds for . . . vacating, modifying, or otherwise disturbing a judgment or order.").

**¶19** We review an award of spousal maintenance for an abuse of discretion, viewing the evidence in the light most favorable to sustaining the award. *Leathers v. Leathers*, 216 Ariz. 374, ¶ 9 (App. 2007). We will affirm the award if there is any reasonable evidence to support it. *Id.* Awards of spousal maintenance are governed by § 25-319 and in making an award determination, the court must consider the relevant factors in the statute. *Id.* ¶ 10.

**¶20** Mendoza argues that, because Park did not offer an AFI into evidence, the court "lacked the financial information required to award spousal maintenance." To support this proposition he mainly relies on *Gutierrez*, 193 Ariz. 343; however, his reliance on that case is misplaced. In *Gutierrez*, we concluded there was no abuse of discretion in the trial court's award of spousal maintenance to wife because the evidence supported the

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[8]For the first time on appeal, Mendoza argues that failure to admit an AFI violated his right to cross-examination. Because this argument was not raised below, it is waived. *See Winters v. Ariz. Bd. of Educ.*, 207 Ariz. 173, ¶ 13 (App. 2004) (waiving argument first raised on appeal). Mendoza also summarily contends that this failure violated his right to notice, but does not specifically explain how or cite supporting authority. Because he has failed to meaningfully develop this argument on appeal, it is waived. *See* Ariz. R. Civ. App. P. 13(a)(7) (opening brief must contain "supporting reasons for each contention" and "citations of legal authorities"); *In re $26,980 U.S. Currency*, 199 Ariz. 291, ¶ 28 (App. 2000) (argument waived when party did not elaborate or cite legal authorities).

court's application of § 25-319. *Id.* ¶¶ 14-25. The husband argued the court erred in failing to consider his expenses in making the award. *Id.* ¶ 26. Husband had filed an AFI, but did not admit it into evidence or offer any evidence of his expenses. *Id.* ¶ 26. As a result, we concluded the court did not err in failing to consider his expenses. *Id.* ¶¶ 26-27.

**¶21** Contrary to Mendoza's assertion, *Gutierrez* does not stand for the proposition that an AFI must be admitted for the court to make a spousal maintenance award; it stands for the proposition that the court cannot consider evidence not properly admitted. *See id.* ¶¶ 15-24, 26. Accordingly, Park's AFI did not have any evidentiary value, *see id.* ¶ 26, but the testimony and other evidence admitted at trial did, *see Cullum v. Cullum*, 215 Ariz. 352, ¶¶ 19-24 (App. 2007) (spousal maintenance award sustained where court heard testimony and appropriately applied § 25-319, even though husband did not submit financial affidavit); *cf. In re Marriage of Kells*, 182 Ariz. 480, 482-84 (App. 1995) (considering other evidence in the record when affidavit had no evidentiary value to determine whether child support award was supported).

**¶22** Even if we assume the trial court improperly considered Park's AFI for Park's income and expenses, such reliance was harmless error in this case and Mendoza was not prejudiced because that information was cumulative to properly admitted evidence at trial. *See Walsh*, 230 Ariz. 486, ¶ 24 ("Not all errors in the superior court warrant reversal, however. We will reverse only if the complaining party suffers prejudice as a result of the error. Prejudice must appear affirmatively from the record." (quoting *Molloy v. Molloy*, 181 Ariz. 146, 150 (App. 1994))); *cf. Fuentes v. Fuentes*, 209 Ariz. 51, ¶ 28 (App. 2004) ("[T]he erroneous admission of evidence that is substantially cumulative may constitute harmless error."). Because there was reasonable evidence of Park's income and expenses in the record aside from the AFI, Mendoza has not established that the court abused its discretion.

**¶23** At the time of trial, Park was fifty-one years old, and she testified that since 2018 her sole employment was at a call center where she earned approximately $1,143 in gross pay every two weeks. *See* § 25-319(B)(3) (age, earning ability). She also testified that although she had previously worked as a part-time realtor in Sierra Vista, her license was inactive because she could not afford to pay for it, she had not worked as a realtor in over four years, and she was currently living in Tucson rather than Sierra Vista—a different real estate market. She testified about her previous employment as an unsuccessful business owner and restaurant

worker and stated that, even though she had a Korean college degree, it was difficult for her to find "adequate employment" because she had a "very thick accent" and her English was not "good enough" compared to other Americans. *See id.* (employment history and earning ability).

**¶24** Based on various tax filings and letters from his prior firm and income from a collection agency, Mendoza had historically maintained an average income above $100,000 per year.[9] Park testified that her take-home pay every two weeks was approximately $647, which amounted to approximately $1,294 per month. *See* § 25-319(B)(5) (comparative earning abilities in labor market). She also testified that she regularly approached Mendoza and told him, "I'm having problems . . . making ends meet." There was reasonable evidence admitted at trial, notwithstanding the lack of the AFI, to support this. Park testified that her monthly expenses included a rent payment of $839 and a car payment of $296, and her bank statements support that she had other expenses—food, clothing, car insurance, recreation, entertainment—that surpassed her take-home pay.

**¶25** Exhibits offered at trial established that as of September 2019, Park only had a modest sum in her bank accounts with considerable debt in her name. She testified that credit cards used for community expenses were in her name because of Mendoza's bad credit and they no longer owned two houses in Sierra Vista because one had been foreclosed upon and the other had been sold.

**¶26** Based on our review of the record, there was reasonable evidence to support the trial court's findings with respect to Park's expenses and income. Therefore, we cannot say that the court abused its discretion.[10] *See Leathers*, 216 Ariz. 374, ¶ 9.

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[9]On appeal, Mendoza does not challenge the trial court's finding that he could "maintain an income of at least $100,000 per year."

[10]To the extent the trial court considered the property award to Park that we have vacated in determining spousal maintenance, *see* § 25-319(A)(1) (providing for consideration of property apportioned to spouse in determining need for spousal maintenance), after the court addresses the property award on remand, the parties may request the court reconsider the spousal maintenance calculation in light of changed circumstances. *See McNeil v. Hoskyns*, 236 Ariz. 173, ¶ 10 (App. 2014) (trial court maintains

**Attorney Fees and Costs**

**¶27** Park requests attorney fees and costs on appeal pursuant to A.R.S. § 25-324 and Rule 21, Ariz. R. Civ. App. P. Having reviewed the record as to the financial resources of both parties and having considered the reasonableness of the parties' positions, in our discretion, we deny the request. *See* § 25-324(A). We also deny Park's request for an award of costs on appeal, concluding neither party should be considered the prevailing party on appeal.

**Disposition**

**¶28** For the foregoing reasons, we affirm in part, vacate in part and remand.

jurisdiction over spousal maintenance awards and may modify them if the parties' circumstances substantially change).