IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE THE MARRIAGE OF

DEANNA M. GULLI,
Appellee,

and

RONALD P. GULLI,
Appellant.

No. 2 CA-CV 2020-0141-FC
Filed December 22, 2021

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NOT FOR PUBLICATION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. D20123789
The Honorable Sean E. Brearcliffe, Judge
The Honorable Wayne E. Yehling, Judge

AFFIRMED IN PART; VACATED IN PART AND REMANDED

COUNSEL

Deanna M. Gulli, Tucson
In Propria Persona

Ronald P. Gulli, Florence
In Propria Persona

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 Ronald Gulli appeals from the trial court's under-advisement ruling denying his motion to alter its previous order granting his former wife Deanna Gulli's request to terminate her ongoing military retirement payments to him. For the following reasons, we vacate the under-advisement ruling and remand for further proceedings, but we affirm with respect to the remaining issues Ronald raises.

Factual and Procedural Background

¶2 Ronald and Deanna were married in May 1987. In 2014, Ronald was sentenced to a total of 482 years of imprisonment for numerous counts of sexual conduct with and exploitation of a minor. The next year, following Deanna's petition, the trial court entered a decree dissolving the parties' marriage. In the decree, the court awarded Ronald "[o]ne half of the community interest in" Deanna's military retirement plan. The court ultimately signed a corresponding qualified domestic relations order (QDRO), which recognized Ronald's interest in the retirement account and provided instructions for him to begin receiving payments.

¶3 In 2019, Deanna filed a petition to modify the monthly retirement payments. Pursuant to A.R.S. § 25-318.02, which provides that a "spouse making . . . installment payments [to a convicted spouse] may petition the court for a modification of that ongoing payment," she requested that the trial court "modify the award of community property retirement payments to R[onald] to $0, and enter an Order to cancel the Qualifying Order for the Division of Military Pay." The court granted this motion as reflected in a minute entry.

¶4 Thereafter, Ronald, pursuant to Rule 83, Ariz. R. Fam. Law P., filed a motion to alter the trial court's ruling. After a hearing on the matter, the court issued an under-advisement ruling denying Ronald's motion and eliminating his "right actually to receive any amount from [Deanna]'s

military retirement." This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).[1]

Division of Parties' Debt

¶5 Ronald first argues the trial court erred in equalizing the past-due amount of Deanna's retirement payments at dissolution with Deanna's share of the community debt. However, he has waived this argument due to insufficient briefing. *See* Ariz. R. Civ. App. P. 13(a)(7); *Ritchie v. Krasner*, 221 Ariz. 288, ¶ 62 (App. 2009).[2]

¶6 An opening brief must include arguments consisting of the "[a]ppellant's contentions concerning each issue presented for review, with supporting reasons for each contention, and with citations of legal authorities." Ariz. R. Civ. App. P. 13(a)(7)(A). Moreover, each contention must include "the applicable standard of appellate review with citation to supporting legal authority." Ariz. R. Civ. App. P. 13(a)(7)(B). Here, Ronald fails to provide the applicable standard of review or any citations to legal authority. Although we generally prefer to resolve cases on their merits, *DeLong v. Merrill*, 233 Ariz. 163, ¶ 9 (App. 2013), it is not incumbent upon us to develop a party's arguments, *Ace Auto. Prods., Inc. v. Van Duyne*, 156 Ariz. 140, 143 (App. 1987); *see also Higgins v. Higgins*, 194 Ariz. 266, ¶ 12

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[1]We note that Ronald's notice of appeal only challenges the trial court's initial under-advisement ruling on the motion to alter, which cites Rule 78(c), Ariz. R. Fam. Law P., but does not specify "that no further matters remain pending." *See McCleary v. Tripodi*, 243 Ariz. 197, ¶ 7 (App. 2017) (to be final and appealable, judgment must state no further matters remain pending). Nonetheless, Ronald filed his notice after the court had issued its formal "order terminating qualifying order for the division of military retired pay"—entered the same day as its under-advisement ruling and referenced therein—which was later amended to include proper Rule 78(c) certification. *See* Ariz. R. Civ. App. P. 9(c). The notice's sole reference to the under-advisement ruling is a technical defect and does not impair our jurisdiction. *See* Ariz. R. Civ. App. P. 8(d); *Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶ 30 (App. 1998) (notice of appeal liberally construed if result is neither misleading nor prejudicial to opposing party); *DeLong v. Merrill*, 233 Ariz. 163, ¶ 9 (App. 2013) ("resolution of cases on their merits is preferred").

[2]*Ritchie* discusses Rule 13(a)(6). However, Rule 13 has since been amended, and the pertinent requirements are now found in Rule 13(a)(7). *See* Ariz. Sup. Ct. Order R-14-0017 (Sept. 2, 2014).

(App. 1999) ("One who represents [him]self in civil litigation is given the same consideration on appeal as one who has been represented by counsel.").

Motion to Alter

¶7 Ronald next claims the trial court erred in granting Deanna's petition to modify and subsequently denying his motion to alter because the initial QDRO stated she "will not pursue any course of action that would defeat, reduce, or limit [his] right to receive the share of [the] military retired pay."[3] As an initial matter, we note that Deanna declined to file an answering brief, instead informing this court, "I am not responding to Ronald Gulli's opening brief. The questions were directed to the judges, not myself. Please revert back to my initial response which was filed by my lawyer." "[W]hen an appellant raises a debatable issue, the court, in its discretion, may find that an appellee's failure to file an answering brief constitutes a confession of error." *State ex rel. McDougall v. Superior Court* (*Blendu*), 174 Ariz. 450, 452 (App. 1993); *see also* Ariz. R. Civ. App. P. 15(a)(2) ("If the appellee does not timely file an answering brief, the appellate court may deem the appeal submitted for decision based on the opening brief and the record.").

¶8 Here, the trial court noted that while the initial QDRO was entered in 2017, the amendment to § 25-318.02(B) removing the requirement that "the convicted spouse's conviction occur[] after the order to make the installment payments" to permit the other spouse to file a petition for modification took effect in 2019. 2019 Ariz. Sess. Laws, ch. 28, § 1. Thus, the court concluded "in approving the Qualified Order . . . [Deanna] did not, absent an express provision in the Qualified Order to the contrary, intend to waive any rights that did not exist at the time the Order was filed but became available later." The court further "acknowledge[d] that [Deanna] took active efforts to have . . . § 25-318.02(B) amended for her benefit," and concluded "that it would be against public policy to interpret the Qualified Order as prohibiting [her] from exercising her right to contact her legislator and to address the legislature." In our discretion, we determine Ronald has raised a debatable issue, and Deanna has therefore confessed error.

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[3] Ronald also raised this argument in his response to Deanna's petition to modify.

Remaining Issues

¶9 Ronald further argues that based on the parties' circumstances, the trial court erred in terminating his interest in Deanna's retirement, and that "§ 25-318.02([B]) . . . is a special law . . . as defined in" article IV, § 19 of the Arizona Constitution. However, he does not identify any portion of the record showing the court considered these issues. *See* Ariz. R. Civ. App. P. 13(a)(7)(B) (opening brief must include, "[f]or each contention, references to the record on appeal where the particular issue was raised and ruled on"). And, although we are not obliged to search the record to determine if each issue was raised below, *see Gibson v. Boyle*, 139 Ariz. 512, 521 (App. 1983), our review has nonetheless not clearly shown these claims were presented.[4] Therefore, we do not consider these arguments. *See State ex rel. Brnovich v. Miller*, 245 Ariz. 323, ¶ 5 & n.1 (App. 2018).

Disposition

¶10 For the foregoing reasons, we affirm the decree of dissolution but vacate the trial court's under-advisement ruling denying Ronald's motion to alter, and we remand for proceedings consistent with this decision. Because Ronald obtained partial success on appeal, we award him taxable costs upon his compliance with Rule 21, Ariz. R. Civ. App. P. *See Henry v. Cook*, 189 Ariz. 42, 44 (App. 1996); A.R.S. § 12-341.

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[4]The trial court's under-advisement ruling mentions hearings where, conceivably, these issues might have been raised, and states, "The Court expresses no opinion as to whether A.R.S. § 25-318.02 is a special law prohibited by Article 4, Part 2, Section 19 of the Arizona Constitution, even though at the December 13, 2019, hearing in this matter Petitioner's counsel emphatically argued that the statute was tailored to and passed specifically for the benefit of her client." However, our record does not include transcripts of these hearings. It is therefore unclear whether Gulli brought the issue forth below and, thus, whether the parties had an opportunity to raise their respective arguments. "It is the appellant's burden to ensure that 'the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised.'" *Blair v. Burgener*, 226 Ariz. 213, ¶ 9 (App. 2010) (quoting *Baker v. Baker*, 183 Ariz. 70, 73 (App. 1995)).