IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE THE MARRIAGE OF

MONICA WILSON,
Appellee,

and

RONALD WILSON,
Appellant.

No. 2 CA-CV 2021-0002-FC
Filed January 31, 2022

Appeal from the Superior Court in Pima County
No. D20182977
The Honorable Gilbert Rosales Jr., Judge Pro Tempore

AFFIRMED

COUNSEL

Connelly Law Office PLLC, Mesa
By Lawton Connelly
Counsel for Appellant

MEMORANDUM DECISION

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

B R E A R C L I F F E, Judge:

¶1 Appellant Ronald Wilson appeals from the trial court's denial of his petition to modify child support.[1] For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the trial court's ruling. *See Little v. Little*, 193 Ariz. 518, ¶ 5 (1999). In September 2018, Monica Wilson filed a petition for dissolution of her marriage with Ronald Wilson. The trial court set the dissolution trial for March 2020 on all issues not resolved at the mandatory settlement conference. At the settlement conference in December 2019, in accord with the agreement the Wilsons reached, the settlement conference judge, Judge Sakall, ordered the Wilsons to share joint legal decision-making and parenting time over their three children. Also by agreement, but without prejudice to either party's right to seek modification, Judge Sakall ordered Ronald to pay $3,212 per month in child support from January 1, 2020 to June 30, 2020. Judge Sakall vacated the pending dissolution trial date and set a status conference in January to resolve any disputes as to the final decree. And, because Ronald's job at the University of Arizona was contracted to end on June 30, 2020, the court also set a review hearing for June 2020 to determine if Ronald's child support should be modified.

¶3 At the January status conference, the parties alerted the trial court that they had not reached an agreement on the final decree. The court ordered Monica to lodge a form of decree, and allowed Ronald to file any

[1]Although Monica did not file an answering brief, in our discretion, we decline to treat that failure as a confession of error and instead address the merits of Ronald's appeal. *See Savord v. Morton*, 235 Ariz. 256, ¶ 9 (App. 2014); *see also Hoffman v. Hoffman*, 4 Ariz. App. 83, 85 (1966) (not mandatory to find confession of error for failure to file brief when minor children are interested but not represented in the action).

objections to it. Monica lodged a form of decree on February 4, 2020. Ronald filed an objection because, among other reasons, the child support Monica stated exceeded that on both parties' submitted child support worksheets, and Monica's supporting worksheet did not reflect that Ronald was now unemployed. He also submitted a competing form of decree. Monica replied that the child support amount sought ($3,212 per month) was bargained for and in exchange for other concessions she made, and that, although it deviated from the Child Support Guidelines, the amount "serve[d] the best interests of the children." Monica objected to Ronald's form of decree for a number of reasons, including that it did not provide for $3,212 in child support.

¶4 Ronald also filed a verified petition to modify child support in February 2020. Ronald stated that he had been terminated from his job at the University of Arizona on January 6, 2020 and, on the attached child support worksheet, stated his income at minimum wage ($12 per hour) by imputation. Ronald requested that the trial court adopt his worksheet and modify his child support obligation to $416 per month. Monica filed an objection to Ronald's petition, stating that it was premature because the divorce decree and final orders had not yet been entered. At the hearing on the modification petition, the assigned judge, Commissioner Rosales, ordered that the previously ordered child support remain in place until June 2020 when the review hearing would be held. On agreement of the parties, Commissioner Rosales also referred the matter of the competing dissolution decrees to Judge Sakall for resolution, given his superior knowledge of the agreements reached at the settlement conference.

¶5 At a March 2020 hearing on the decree, Judge Sakall resolved the disputes over Monica's form of decree, ordering her to incorporate certain changes, and to submit a revised form of decree. The final divorce decree was entered on March 30, 2020, including Ronald's child support obligation of $3,212 per month. Notwithstanding, either party was expressly permitted to seek a modification of child support after July 1, 2020.

¶6 The previously scheduled June 2020 review hearing was delayed until August and, at that hearing, the parties provided testimony and evidence regarding Ronald's petition to modify child support. The trial court denied Ronald's petition to modify child support. The court found that, although Ronald testified that his employment division at the University of Arizona had been "dissolved" and that "he was given no warning his position would expire early," Ronald provided no evidence that his job was involuntarily terminated. This appeal followed, and we

have jurisdiction pursuant to A.R.S. § 12-2101(A)(2); *see also In re Marriage of Dorman*, 198 Ariz. 298, ¶¶ 3-4 (App. 2000).

Analysis

Child-Support Modification

¶7 Ronald first argues that the trial court abused its discretion by declining to modify the child support amount. "The decision to modify an award of child support rests within the sound discretion of the trial court and, absent an abuse of that discretion, will not be disturbed on appeal." *Jenkins v. Jenkins*, 215 Ariz. 35, ¶ 8 (App. 2007). For a trial court to grant a petition to modify child support, the party seeking the modification must show a substantial and continuing change in circumstances. *Nia v. Nia*, 242 Ariz. 419, ¶ 9 (App. 2017). Whether those changed circumstances have occurred is a question of fact and "[w]e will accept the court's findings of fact unless they are clearly erroneous." *Id.* ¶¶ 7, 9 (quoting *Nash v. Nash*, 232 Ariz. 473, ¶ 5 (App. 2013)).

¶8 At the University of Arizona, Ronald had been making $210,000 annually. He argues that the trial court abused its discretion by attributing this annual income to him because his job at the University of Arizona ended on January 6, 2020.[2] After that job ended, he began work at the Southwest University of Visual Arts (SUVA) on May 26, 2020, reportedly earning $48,000 per year. But the job at SUVA also ended, on June 29, 2020. Because he was then unemployed, Ronald argues that his former University income should not have been attributed to him.

¶9 Typically, a reduction in salary alone is not sufficient to justify a reduction in child support payments. *Platt v. Platt*, 17 Ariz. App. 458, 459 (1972). Under the Arizona Child Support Guidelines, "when a parent is unemployed or working below his or her full earning potential, a trial court calculating the appropriate child support payment may impute income to that parent, up to full earning capacity, if the parent's earnings are reduced voluntarily and not for reasonable cause." *Little*, 193 Ariz. 518, ¶ 6 (citing Arizona Child Support Guidelines).

¶10 The only evidence Ronald submitted to the trial court as to the loss of his University job was a memorandum from the University of

[2]Given the procedural history, the trial court appeared to be considering any changes in circumstances arising since the entry of the temporary support order, not from the final support order incorporated into the dissolution decree.

Arizona's human resources department confirming that his employment there had ended on January 6, 2020. That memorandum did not, however, state whether he had been terminated or resigned voluntarily. Records from SUVA also did not specify the reason for that job loss, stating only that his employment had "been terminated." Monica, alternatively, presented a contemporaneous news article which stated that Ronald had "resigned his position" at the University of Arizona. "We defer to the superior court's 'determination of witnesses' credibility and the weight to give conflicting evidence." *Nia*, 242 Ariz. 419, ¶ 14 (quoting *Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶ 13 (App. 1998)).

¶11 Based on the record, we cannot say it was clearly erroneous for the trial court to find that Ronald had left his position at the University voluntarily and without reasonable cause. Therefore, we cannot say the court abused its discretion in declining to modify Ronald's child support obligation based on his voluntary salary reduction.[3]

¶12 Furthermore, Ronald argues that the trial court abused its discretion in entering an upward deviation in child support because it "failed to make the requisite findings per paragraph 20(A) of the Arizona Child Support Guidelines." It appears that Ronald is arguing the court made this error in the original child support order (either the temporary order or the order incorporated into the decree), not in the order denying his request for modification.[4] If Ronald's argument is referring to the

[3]Ronald also argues the trial court erred because it "failed to make the appropriate findings under the *Little* case." Ronald does not develop this argument further and therefore—because waiver would not impact the best interests of the children—this argument is waived on appeal. *See* Ariz. R. Civ. App. P. 13(a)(7); *see also Nold v. Nold*, 232 Ariz. 270, ¶ 10 (Ariz. 2013) ("[I]f the best interests of the child trump the consequences ordinarily imposed for violations of the rules, then they should not be ignored under the discretionary doctrine of waiver.").

[4]If Ronald's argument is that the trial court failed to make the necessary findings under paragraph 20(A) of the Child Support Guidelines when it denied his petition for modification, we disagree. The Child Support Guidelines require that these findings be made "only if [the court] intends to deviate from the Guidelines." *Pearson v. Pearson*, 190 Ariz. 231, 234 (App. 1997). Because the court was not deviating from the Guidelines when it denied Ronald's request for modification but merely keeping the child support amount the same, the court was not required to make these findings anew in denying Ronald's petition for modification.

original child support order, he failed to raise such an argument below and it is therefore considered waived on appeal. *See Van Loan v. Van Loan*, 116 Ariz. 272, 274 (1977). However, regardless of waiver, the original child support order made the findings required by Paragraph 20(A) to deviate from the guidelines.

¶13 Section IX(B) of the Arizona Child Support Guidelines requires a court to order child support in a different amount than is provided in the guidelines only if the following criteria are met:

> 1. Applying the Guidelines is inappropriate or unjust in the particular case;
>
> 2. The court has considered the child's best interests in determining the amount of a deviation. . . .
>
> 3. The court makes written findings regarding 1. and 2. above in the Child Support Order, Minute Entry, or Child Support Worksheet;
>
> 4. The court shows what the Order would have been without the deviation; and
>
> 5. The court shows what the Order is after deviating.

§ 25-320 app. § IX(B)(1)-(5).[5] The child support order issued at the time of the decree states that "[a]pplication of the child support guidelines in this case is inappropriate or unjust," and that "[t]he Court has considered the best interests of the children in determining that a deviation is appropriate," thereby satisfying the first three requirements. The order also meets the fourth and fifth requirements by showing that, without the deviation, Ronald would be ordered to pay child support in an amount between $2,120 and $2,896 but, with the deviation, he is ordered to pay $3,212.

[5]"We cite to the current version of applicable statutes or rules when no revision material to this case has occurred." *Bobrow v. Bobrow*, 241 Ariz. 592, n.2 (App. 2017).

¶14 Because the required findings are in the record, and were made by the trial court at the appropriate time, we cannot conclude that the court erred in maintaining Ronald's established support obligation.

Child-Care Expenses

¶15 Ronald also argues, as he did below, that the trial court abused its discretion "by attributing child care when none was being paid by [Monica]." He asserts that Monica testified there were then no childcare expenses because, due to COVID-19, the children were not in the after-school program. Therefore, "the court abused its discretion and erred as a matter of law by attributing childcare and not modifying child support because none was neither being incurred nor paid by [Monica]." A court is permitted to include in the child support childcare costs "appropriate to the parents' financial abilities." § 25-320 app. § III(B)(4)(c). The trial court has "broad latitude to fashion an appropriate award of child support, and we will uphold the award unless it is 'devoid of competent evidence.'" *Nash*, 232 Ariz. 473, ¶ 16 (quoting *Jenkins*, 215 Ariz. 35, ¶ 8).

¶16 At the hearing on Ronald's petition to modify child support, Monica testified that, despite being online for a few weeks due to school closures, their children had returned to in-person school and that they would be returning to the after-school program "[a]fter Covid is over." And, although she did not have an exact date for when the children would return to the after-school program, Monica assumed it would be in "December-ish." Monica also presented evidence of how much the after-school program cost. No other testimony or evidence was admitted regarding the after-school program and the trial court had no reason to conclude—based on the evidence—that the child care costs would not resume as expected. Because the court's findings regarding child care costs were not devoid of competent evidence, the court did not abuse its discretion when it did not deduct these costs from the calculation of Ronald's child support obligation.

Attorney Fees and Costs

¶17 Ronald requests an award of his reasonable attorney fees and costs pursuant to A.R.S. § 12-348(A)(1) and Rule 21, Ariz. R. Civ. App. P. Section 12-348(A)(1) awards fees to a party that prevails in a "civil action brought by this state or a city, town or county against the party." Because § 12-348(A)(1) is inapplicable here and does not provide us a basis to award attorney fees, and because Ronald is not the prevailing party on appeal in any event, we deny Ronald's request for attorney fees and costs.

Disposition

¶18 For the foregoing reasons, we affirm the trial court's denial of Ronald's petition to modify child support.