NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA ex rel. EDWINA VANDERVORT, Petitioner/Appellee, v. GERARDO GOMEZ HERNANDEZ, Respondent/Appellant.	2 CA-CV 2008-0147 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. D77088

Honorable David R. Ostapuk, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kathryn E. Harris — Phoenix
Attorneys for the State of Arizona

Gerardo M. Gomez Hernandez — Tucson
In Propria Persona

V Á S Q U E Z, Judge.

¶1 In this domestic relations action, Gerardo Gomez Hernandez appeals from the judgment of the Pima County Superior Court requiring him to pay child support arrearages to the state and Edwina Vandervort. Gerardo argues the court erroneously calculated the arrearages. For the following reasons, we affirm.

Facts and Procedural Background

¶2 We view the record in the light most favorable to upholding the superior court's decision. *Little v. Little*, 193 Ariz. 518, ¶ 5, 975 P.2d 108, 110 (1999). Gerardo and Edwina were married in 1979 and had two children. In 1989, the trial court entered a dissolution decree, awarded custody of both children to Edwina, and ordered Gerardo to pay child support. In 1990, Edwina began receiving public assistance from the State of Arizona, and in 1991 the state intervened to enforce the child support order pursuant to A.R.S. § 25-509. The court subsequently entered a number of orders reducing Gerardo's arrearages to judgment and issuing wage assignments and tax refund intercepts for payment of accruing and past due support. In 2007, Gerardo filed a "Request to Stop or Modify Order of Assignment and Notice of Hearing," arguing he had satisfied all arrearages. After three hearings, the court determined that Gerardo still owed a total of $5,882.95, including $71.35 of child support arrears, $5,491.97 in unpaid interest, and clearinghouse fees of $319.63. It therefore ordered Gerardo to pay $300 per month until this sum was paid in full. This appeal followed.

Discussion

¶3 As a threshold issue, we note that Gerardo's opening brief arguably fails to meet the requirements of Rule 13(a), Ariz. R. Civ. App. P. These include a requirement that an appellant's brief include argument containing "the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on." Ariz. R. Civ. App. P. 13(a)(6). In *Mercantile Nat'l Life Ins. Co. v. Villalba*, 18 Ariz. App. 179, 180, 501 P.2d 20, 21 (1972), we found insufficient a brief that contained argument of less than three hundred words supported by "two citations of so-called authority."[1] Similarly, the argument in Gerardo's opening brief barely exceeds three hundred words, cites no case law, and for the limited number of authorities Gerardo does cite, he "does not suggest in a satisfactory manner how th[ey are] . . . applicable to the case at hand." *Id.* Additionally, his statement of facts does not include "appropriate references to the record." *See* Ariz. R. Civ. App. P. 13(a)(4). However, the state did not move to strike the brief, and in our discretion we address Gerardo's specific

[1]Although that case was decided under a prior set of rules, those rules similarly required that briefs contain an argument including the relevant points of fact and of law and citing authorities relied upon. *See Mercantile Nat'l Life*, 18 Ariz. App. at 180, 501 P.2d at 21.

arguments.[2] *See Berryhill v. Moore*, 180 Ariz. 77, 82 n.2, 881 P.2d 1182, 1187 n.2 (App. 1994) (noting appellees could have filed motion to strike briefs "if they felt they were entitled to such relief"); *Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984) ("courts prefer to decide each case upon its merits rather than to dismiss summarily on procedural grounds").

¶4 We review a trial court's rulings on child support arrearages for an abuse of discretion. *Ferrer v. Ferrer*, 138 Ariz. 138, 140, 673 P.2d 336, 338 (App. 1983). When an appellant fails to include necessary documentation for issues raised on appeal, we assume any such documentation would support the court's findings and conclusions. *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995). However, we need not accept factual findings that are clearly erroneous. *McNutt v. McNutt*, 203 Ariz. 28, ¶ 6, 49 P.3d 300, 302 (App. 2002).

¶5 Gerardo first argues there was no basis for the trial court's finding that he owes $319.63 in clearinghouse fees. However, these fees were included in the notice of arrears filed by the state prior to the third hearing, and there is no evidence Gerardo challenged them below. He has therefore waived this argument on appeal. *See Maher v. Urman*, 211 Ariz.

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[2]We acknowledge that the state's argument relied heavily on the fact that Gerardo had failed to provide transcripts of the proceedings below and thus we should assume those proceedings supported the trial court's ruling. And although Gerardo ultimately appended a copy of the relevant transcripts to his opening brief, the state was denied the opportunity to review them before it filed its reply brief. However, the state did not file a motion to strike, and the transcripts in fact did not add anything not otherwise available in the record to either support Gerardo's arguments on appeal or establish he raised them below.

543, ¶ 13, 124 P.3d 770, 775 (App. 2005) (arguments not raised in trial court waived on appeal). Gerardo also argues that the court's inclusion of these fees in its order as part of the total sum he owes erroneously exposes him to interest on them. But he provides no argument or legal authority to support that contention. We therefore do not consider it. *See Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, ¶ 50, 977 P.2d 807, 815 (App. 1998).

¶6 Gerardo next argues the trial court erred by not crediting him with child support payments totaling $365 from his 1996 and 1997 state tax refunds. The court found there was "no basis to conclude [that] the tax intercepts reflected in the documentation submitted by Gerardo have not already been included in all of the pay history submitted by the State." Although he contends this finding should have applied only to his federal taxes, Gerardo has failed to provide any factual or legal basis from which we might conclude either that the court's ruling did not also apply to his state taxes or that the court erred in finding his state tax refund intercepts had been included in his payment history. Furthermore, to the extent Gerardo relies on documentation relating to the 1996 and 1997 state refunds which had not been submitted to the court until after the May 30, 2008 ruling from which he appeals, we may not consider it.[3] *See Brookover v. Roberts Enters., Inc.*, 215 Ariz. 52, n.1, 156 P.3d

[3]In his opening brief, Gerardo states he has "found some Arizona tax returns that . . . would be proof . . . to require the State for a recalculation," and appends to his opening brief a letter from the Arizona Department of Revenue, supporting the $365 figure, that he apparently submitted to the court on June 3, 2008. But, we can find no earlier mention of this figure in the record.

1157, 1162 n.1 (App. 2007) (court of appeals "may not consider evidence not before the trial court when it considered its ruling").

¶7 Finally, Gerardo argues the trial court erred in refusing to give him credit for a period during 2004 and 2005 when the parties' youngest child was living with him. However, he does not dispute the court's finding that there was "no evidence of any court proceeding, or application by [him] to be released from his support duty during that time period." And, he cites no authority to support his apparent argument that the court was nevertheless required to grant such relief retroactively. In any event, relevant authority suggests that, on the contrary, "child support payments may not be altered retroactively." *Baures v. Baures*, 13 Ariz. App. 515, 517, 478 P.2d 130, 132 (1970).

Disposition

¶8 For the reasons stated above, we affirm.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge