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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re the Marriage of: OSCAR CHAVEZ, Petitioner/Appellee, and CATHERINE CHAVEZ, Respondent/Appellant.	2 CA-CV 2009-0005 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. D2006-5016

Honorable Karen Nygaard, Judge Pro Tempore

AFFIRMED

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V Á S Q U E Z, Judge.

¶1 Appellant Catherine Chavez appeals from the trial court's decree dissolving her marriage to appellee Oscar Chavez. She contends the trial court erred in: 1) denying her motions to continue; 2) precluding trial exhibits and her pretrial statement; 3) calculating the value of various community assets and obligations; 4) failing to preserve a favorable tax status in a real property transaction; and 5) awarding Oscar $20,680 in attorney fees. For the reasons that follow, we affirm.

Facts and Procedural Background

¶2 Oscar and Catherine were married in 1993. Oscar filed a petition for dissolution of the parties' marriage in November 2006. Before trial, the parties reached an agreement regarding the care, custody, and support of their two minor children. However, they were unable to resolve certain issues concerning Catherine's real estate business and the parties' real and personal property. After a three-day bench trial and two post-trial hearings, the trial court entered a decree of dissolution of marriage on October 2, 2008. The court divided the parties' jointly owned and community property, allocated their debts, and ordered Catherine to pay Oscar an equalization payment of $64,592.72. It also ordered her to pay $20,680 of Oscar's attorney fees. This appeal followed.

Discussion

¶3 Preliminarily, although both parties have cited to and extensively relied on the trial transcripts and related hearings to support their arguments, the transcripts have not been made part of the record on appeal. As the appellant, Catherine was obligated to "mak[e]

certain the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised." *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995); *see also* Ariz. R. Civ. App. P. 11(b). In the absence of the transcripts, we will presume they support the trial court's factual findings and rulings, *Kohler v. Kohler*, 211 Ariz. 106, n.1, 118 P.3d 621, 623 n.1 (App. 2005), and address Catherine's claims accordingly.

I. Motions to Continue

¶4 Catherine first contends the trial court erred in denying her "multiple" motions for a continuance so that she could discharge trial counsel and retain new counsel. We review a trial court's ruling on a motion to continue for an abuse of discretion. *Evans v. Lundgren*, 11 Ariz. App. 441, 445, 465 P.2d 380, 384 (1970).

¶5 In March 2008, less than one month before trial, Catherine's counsel filed a motion to "[c]ontinue [t]rial or [a]lternatively to preclude untimely disclosed expert witness opinion." In the motion, she asserted that Oscar had disclosed his expert's valuation report less than sixty days before trial, in violation of Rule 49(G), Ariz. R. Fam. Law P., and asked the court to either exclude the expert's testimony or grant a continuance so she could depose the expert and give her expert time to review the report. However, at the hearing on this motion, her attorney, Cornelia Honchar, apparently orally requested to withdraw from the case. The court denied the motion to continue, although its order did not specifically mention

the request to withdraw. Catherine contends the denial of Honchar's motion to continue to allow her to withdraw was an abuse of the court's discretion.

¶6 Rule 9(A)(2)(c), Ariz. R. Fam. Law P., provides that an attorney may not withdraw after trial has been set, unless the substituting attorney or the client avers he or she is aware of the trial date and "has made suitable arrangements to be prepared for trial" or the trial court finds good cause to permit withdrawal. However, because the only record of Honchar's reasons for seeking to withdraw is contained in the transcript from the hearing, which is not part of the appellate record, we must presume she failed to establish that new counsel could be ready to proceed by the time of trial or that other good cause existed for the court to grant her request. *See Kohler*, 211 Ariz. 106, n.1, 118 P.3d at 623 n.1. Therefore, we cannot say the court abused its discretion in denying the motion to continue and Honchar's request to withdraw.

¶7 On the second day of trial, Catherine again requested a continuance. She told the trial court she wished to discharge Honchar as her attorney, apparently because she believed Honchar had failed to provide her with adequate representation. The court denied the motion to continue and admonished Catherine that if she discharged Honchar, "she w[ould] be held to the same standards as an attorney." After Catherine indicated she understood, the court granted her request that Honchar be withdrawn and Catherine then represented herself.

¶8 Six days before the third scheduled day of trial, Catherine again moved for a continuance, stating she was physically and mentally unable to represent herself due to a head injury she had sustained in 2004. She submitted a letter from a psychiatrist stating she was "unable to represent herself due to her Post Traumatic Stress Disorder and Panic Disorder." Catherine also indicated she had found counsel willing to take over her case, but that he would not be available for trial until July, three months later. The trial court denied the motion without comment. Catherine eventually found another attorney who agreed to represent her, although he asked for a two-week continuance to prepare the case. This motion, too, was denied. Nonetheless, counsel appeared on her behalf from the third day of trial through the entry of the dissolution decree.

¶9 On appeal, Catherine contends the trial court's denial of her motion to continue on the second day of trial constituted an abuse of discretion because they violated her constitutional right to be represented by an attorney.[1] Additionally, she argues that, in any event, she "should [have] be[en] held to a less stringent standard than that of lawyers."

¶10 Catherine correctly asserts that generally "parties [to civil litigation] are entitled to be represented by counsel."[2] *Strube v. Strube*, 158 Ariz. 602, 606, 754 P.2d 731, 735

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[1]Catherine has made no separate argument concerning the trial court's denial of new counsel's motion on the third day of trial; nor has she cited any authority in support of such an argument. We therefore find it abandoned under Rule 13(a)(6), Ariz. R. Civ. App. P. (brief must contain "contentions of . . . appellant . . . and the reasons therefor, with citations to the authorities . . . [and] statutes . . . relied on").

[2]As the sole authority to support her argument, Catherine cites *Roa v. Lodi Med. Group, Inc.*, 695 P.2d 164 (Cal. 1985). Although *Roa* briefly notes a party's right to counsel

(1988). But this right is not absolute. *Encinas v. Mangum*, 203 Ariz. 357, ¶ 10, 54 P.3d 826, 828 (App. 2002) (in civil case, due process satisfied if litigant given opportunity to either hire attorney or represent self); *see also State ex rel. Corbin v. Hovatter*, 144 Ariz. 430, 431 698 P.2d 225, 226 (App. 1985) (due process does not require appointment of counsel for indigent civil party). Rule 9(A)(2)(c) limits a party's ability to substitute counsel after a case has been set for trial, without infringing upon a party's right to counsel. The trial court gave Catherine the choice to proceed with or without Honchar after informing Catherine it would not grant a continuance so that she could secure new counsel. Although she now complains she did not "want" to pursue either choice, the options which the court presented Catherine are all that due process required. *Encinas*, 203 Ariz. 357, ¶ 10, 54 P.3d at 828.

¶11 Additionally, Catherine has failed to establish that Honchar's alleged inadequate representation and Catherine's subsequent dismissal of her services constituted sufficient cause for a continuance.[3] *See Panzino v. City of Phoenix*, 196 Ariz. 442, ¶ 7, 999 P.2d 198, 201 (2000) (client charged with attorney's inexcusable neglect). Rule 77(C)(1), Ariz. R. Fam. Law P., provides that after an action has been set for trial, "no continuance . . .

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in civil proceedings, a proposition supported by Arizona law, it expressly stated the issue in that case was not the right to counsel but whether a statutory cap on the amount an attorney could recover under a contingency fee agreement was constitutional. *Id.* at 166. Thus, *Roa* has no bearing on the issue presented here.

[3]In the event Honchar rendered ineffective assistance, as Catherine claims, her sole remedy is through a legal malpractice action. *See Glaze v. Larsen*, 207 Ariz. 26, ¶ 20, 83 P.3d 26, 31 (2004) (generally, no post-judgment relief available for attorney's inexcusable neglect).

shall be granted except upon written motion setting forth sufficient grounds and good cause, or as otherwise ordered by the court." In determining whether Catherine had established the good cause necessary to receive a continuance, the trial court, which had observed Catherine during the one-and-a-half-year pendency of this dissolution, was in the best position to weigh and assess the relevant factors. Such factors include: Catherine's ability to represent herself, her motives in seeking a continuance, the potential prejudice to Oscar were a continuance granted, and the past conduct of the parties. *See* 17 Am. Jur. 2d *Continuance* § 6 (2009) (in determining whether continuance appropriate, "court should evaluate the facts of the particular case . . . look[ing] at prior delays and their reasons, hardship to the nonmovant, the good faith of the movant, and the conduct of the moving party"); *see also Bender v. Bender*, 123 Ariz. 90, 94, 597 P.2d 993, 997 (App. 1979) (trial court's province to weigh evidence and assess credibility). In the absence of any evidence tending to show the trial court failed to consider adequately these or any other relevant factors, based on the record before us we cannot say the trial court abused its discretion in denying Catherine's motions to continue.

¶12 Furthermore, it is well established that "[o]ne who represents herself in civil litigation is given the same consideration as one who has been represented by counsel. She 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, 981 P.2d 134, 138 (App. 1999); *see also Copper State Bank v. Saggio*, 139 Ariz. 438, 441, 679

P.2d 84, 87 (App. 1983). We therefore reject Catherine's argument that the trial court should have held her to a "less stringent standard" than that of a licensed attorney.[4]

II. Exclusion of Evidence at Trial

A. Trial exhibits

¶13 Next, Catherine contends the trial court erred in precluding her trial exhibits, which, she asserts, "would have been admissible but for technical disclosure issues." She argues that under the circumstances of this case, the exclusion of her exhibits violated public policy. "We will overturn the trial court's rulings on the exclusion of evidence only for 'abuse of discretion or legal error and prejudice.'" *Zimmerman v. Shakman*, 204 Ariz. 231, ¶ 10, 62 P.3d 976, 980 (App. 2003), *quoting Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, ¶ 7, 977 P.2d 807, 810 (App. 1998).

¶14 Rule 65(C)(1), Ariz. R. Fam. Law P., provides: "A party who fails to timely disclose information required . . . shall not, unless such failure is harmless, be permitted to use as evidence . . . the information or the testimony . . . not disclosed except by leave of court for good cause shown." Catherine does not dispute that the exhibits she sought to introduce had not been disclosed before trial; nor does she suggest her failure to disclose

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[4]*Sherman v. Yakahi*, 549 F.2d 1287, 1290 (9th Cir. 1977), which Catherine cites, is unavailing. There the court noted only that the *allegations* in pro se *complaints* are viewed less stringently than if the complaint had been prepared by counsel. That case does not address the standards to which a pro se litigant is held during a trial. Furthermore, in light of the Arizona precedent directly on point, we do not find *Sherman* persuasive. *See Bunker's Glass Co. v. Pilkington PLC*, 202 Ariz. 481, ¶ 40, 47 P.3d 1119, 1129 (App. 2002) (jurisprudence of other jurisdictions not binding in Arizona).

such evidence was harmless. She argues only that the failure to disclose was the fault of her attorney and that she should not be prejudiced by counsel's failures.

¶15 Catherine is generally correct that, "[w]henever possible, procedural rules should be interpreted to maximize the likelihood of a decision on the merits." *Allstate Ins. Co. v. O'Toole*, 182 Ariz. 284, 287, 896 P.2d 254, 257 (1995). "The disclosure rules are designed to provide parties a 'reasonable opportunity to prepare for trial or settlement—nothing more, nothing less.'" *Zimmerman*, 204 Ariz. 231, ¶ 13, 62 P.3d at 980, *quoting Bryan v. Riddel*, 178 Ariz. 472, 476 n.5, 875 P.2d 131, 135 n.5 (1994). And, the exclusion of evidence is not favored when a disclosure violation does not actually deprive the opposing party of a reasonable opportunity to prepare that party's case. *See Allstate*, 182 Ariz. at 287-88, 896 P.2d at 257-58; *Zimmerman*, 204 Ariz. 231, ¶¶ 14, 16, 62 P.3d at 980-81. Thus, as Catherine asserts, the public policy embodied in the disclosure rules favors the admission of evidence.

¶16 However, the "[f]actors supporting the exclusion of undisclosed evidence 'gain strength as the trial nears.'" *Zimmerman*, 204 Ariz. 231, ¶ 14, 62 P.3d at 981, *quoting* Ariz. R. Civ. P. 37(c), cmt. to 1996 and 1997 amends; *see also* Ariz. R. Fam. Law P. 65(C), committee cmt. (Rule 65(C), Ariz. R. Fam. Law P., derived from Rule 37(c), Ariz. R. Civ. P.). Thus, in determining whether there is good cause to admit untimely disclosed evidence, a court should consider the

> reason for [the] failure to properly disclose evidence[,] . . . the willfulness or inadvertence of a party's (or attorney's) conduct,

> prejudice to either side that may result from excluding or allowing the evidence, the opposing party's (or attorney's) action or inaction in attempting to resolve the dispute short of exclusion, and the overall diligence with which a case has been prosecuted or defended.

Allstate, 182 Ariz. at 288, 896 P.2d at 258.

¶17 In the absence of the transcripts, we must presume that when this issue arose during the second day of trial, the trial court considered the relevant factors. *Hart v. Hart*, 220 Ariz. 183, ¶ 18, 204 P.3d 441, 446 (App. 2009) (appellate court assumes trial court did no wrong in absence of contrary showing). Given Catherine's failure to disclose any exhibits before the second day of trial, the absence of any proffered reason justifying the failure to disclose the exhibits, and the potential prejudice to Oscar's case if the undisclosed evidence had been admitted, we cannot say the court abused its discretion in precluding the undisclosed evidence. *See Panzino*, 196 Ariz. 442, ¶ 7, 999 P.2d at 201 (attorney's inexcusable neglect attributable to client).

B. Pretrial statement and witness examination

¶18 Although conceding it was untimely filed, Catherine also contends the trial court should have considered her pretrial statement because it was Honchar's responsibility to file the statement timely. And, she maintains she should not have been penalized for Honchar's failure to do so. However, Rule 76(C)(1), Ariz. R. Fam. Law P., requires that a pretrial statement be filed "no later than twenty (20) days prior to trial, unless another time is set by the court." Subsection (D) provides that if a "party or attorney fails to obey . . . any

provision of this rule, . . . the court upon motion or its own initiative shall, except upon a showing of good cause, make such orders," including "refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting that party from introducing designated matters in evidence."

¶19 Catherine has not given any reason approaching good cause for her attorney's purported failure to file the pretrial statement timely; and Honchar's failure to do so is attributable to Catherine. *See Panzino*, 196 Ariz. 442, ¶ 7, 999 P.2d at 201. Despite her claim of unfairness, the trial court's exclusion of the pretrial statement and the arguments and evidence derived therefrom is an explicit remedy provided in the rule for untimely disclosure. We therefore cannot say the court abused its discretion. *See Englert v. Carondelet Health Network*, 199 Ariz. 21, ¶ 14, 13 P.3d 763, 769 (App. 2000) (court abuses discretion when exercised in manifestly unreasonable manner, based on untenable grounds, or exercised for untenable reasons).

C. Conduct of Oscar's attorney

¶20 Catherine claims Oscar's counsel inappropriately objected to and interrupted her attempts to present her case. To the extent she is arguing the trial court erroneously sustained counsel's objections and prevented her from introducing admissible evidence, we find no error. As we previously stated, in the absence of a transcript of the trial proceedings, we must assume the record supports the court's rulings. *Kohler*, 211 Ariz. 106, n.1, 118 P.3d at 623 n.1. And, to the extent Catherine is again arguing it was unfair for the court to hold

her to the standards of a licensed attorney, the court, as we discussed above, did not abuse its discretion in doing so. *Higgins*, 194 Ariz. 266, ¶ 12, 981 P.2d at 138; *Copper State Bank*, 139 Ariz. at 441, 679 P.2d at 87.

III. Community Interests and Obligations

A. Valuation of Catherine Chavez, P.L.L.C.

¶21 Catherine next argues the trial court's valuation of her business at $120,000 was erroneous. She contends the business, Catherine Chavez, P.L.L.C., "had absolutely no distinct quality apart from her status as Catherine Chavez, real estate agent for Long Realty," and she was unable to establish this below because "she was not able to effectively cross-examine Oscar's expert witness, and Ms. Honchar had not disclosed a valuation expert, depriving [her] of the ability to offer evidence." As Catherine's reply brief makes clear, she does not argue on appeal "that her business could not have had value," and she recognizes valuation is an appropriate issue for the trial court to resolve. She nevertheless contends she "never had the opportunity to present her case on that issue."

¶22 But, as we have already stated, the trial court did not abuse its discretion in precluding Catherine from introducing evidence not timely disclosed and from making arguments relating to such evidence at trial. Furthermore, although Catherine claims she was prevented from "questioning Oscar and his [expert valuation] witness to the extent necessary," to prove the errors in the valuation, she has failed to provide this court with the transcript and other evidence necessary to demonstrate that the court precluded appropriate

cross-examination or that the court's valuation was incorrect. *See Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995). Therefore, we must presume both that the trial court knew and followed the law, *Hart*, 220 Ariz. 183, ¶ 18, 204 P.3d at 446, and that the missing record supports the court's ultimate rulings, *Kohler*, 211 Ariz. 106, n.1, 118 P.3d at 623 n.1. There is thus no basis on which we can conclude the court's valuation was erroneous.

B. Real estate commissions and expenses

¶23 Catherine argues the trial court erred in designating certain real estate commissions as community property and real estate expenses as community expenses. At the March 2008 settlement conference, Catherine and Oscar agreed that community commissions and expenses would be determined according to the following terms:

> The commissions on all closings on community listings from November 1, 2006 through February 28, 2007, minus the expenses for community listings for that same period, will be divided equally. Community listings are those properties that were listed on or before October 31, 2006.
>
> Purchase offers made by those clients identified as community clients by the parties accepted within ninety (90) days of November 1, 2006 that resulted in a commission paid are community and will be equally divided.

Catherine contends the trial court incorrectly applied the parties' agreement, based on comments made by Oscar's attorney during the post-trial hearings, and thus miscalculated the community commissions and expenses.

¶24 Catherine has not identified which commissions the trial court erroneously included as community property and which, if any, it erroneously excluded. Nor has she

directed this court to any evidence in the record, beyond her mere assertion on appeal, that the trial court erroneously interpreted the parties' agreement.[5] In essence, she has "failed to state with any particularity why or how the trial court erred in making these rulings and simply concludes that error was committed"; and we therefore find her argument abandoned. *Modular Sys., Inc. v. Naisbitt*, 114 Ariz. 582, 587, 562 P.2d 1080, 1085 (App. 1977); *see State ex rel. Ordway v. Buchanan*, 154 Ariz. 159, 165, 741 P.2d 292, 298 (1987) (argument abandoned where state argued damages testimony supported by improper basis should be stricken without identifying improper basis); Ariz. R. Civ. App. P. 13(a)(6) (argument in brief "shall contain the contentions of the appellant . . . and the reasons therefor").

¶25 As to the trial court's allocation of expenses for community listings, Catherine again quotes and relies extensively on exchanges that apparently occurred during the hearing on this issue. Before the hearing, she prepared a list of advertising and other expenses she maintained were community expenses based on the parties' agreement. Oscar then reviewed the list and made notations of those expenses he believed were community expenses under the agreement and those that were not. In its minute entry, the trial court stated, "It is [Catherine]'s burden to prove that the expenses she listed are allowable. As to the disputed

[5]Catherine relies on what appear to be quotes from the hearing transcript concerning what she contends are misstatements by Oscar and his attorney about the agreements to divide the commissions. However, these statements would not, standing alone, establish that the trial court erroneously interpreted the agreement in accordance with those statements, and, in any event, that transcript is not part of the appellate record.

items, [she] has not met her burden of proof." It thus accepted only those expenses Oscar had agreed were community in nature.

¶26 Catherine contends the trial court erred by not accepting more of her expenses as community expenses. Under the parties' agreement, in order for the court to find an expense to be community in nature, Catherine had to demonstrate the expense was related to a property that was listed on or before October 31, 2006, and incurred no later than February 28, 2007. However, the list she provided to the court contained duplicate expenses, failed to specify to which property or properties some expenses related, did not indicate whether and out of which funds the expenses had been paid, and many of the alleged expenses were not supported by appropriate documentation. We therefore cannot say the court erred in finding that, as to the disputed expenses, Catherine had failed to sustain her burden of proving they were community expenses.

B. Divot Property expenses

¶27 Catherine argues the trial court's final order failed to account for Oscar's share of payments for expenses on the property the parties and the court referred to as the Divot Property, which the parties had stipulated was community property. Before trial, the court ordered the parties to share the expenses on the property for as long as Catherine continued to reside there. At trial, Catherine apparently "testified she was seeking reimbursement" for one-half of expenses she incurred, but the court's final decree does not include these expenses. However, Catherine has not directed this court to any evidence in the record

supporting these expenditures, and to the extent she testified about them during the trial, we must assume her testimony was insufficient to satisfy her burden of proof on this issue. *Kohler*, 211 Ariz. 106, n.1, 118 P.3d at 623 n.1; *see also Graham v. Vegetable Oil Prods. Co.*, 1 Ariz. App. 237, 241, 401 P.2d 242, 246 (1965) (trial court free to reject uncontroverted testimony of interested witness). Thus, on the record before us, we cannot say the trial court abused its discretion in failing to order Oscar to reimburse Catherine one-half of the Divot Property expenses.

C. Equalization payment

¶28 Catherine also contends the trial court's equalization payment was incorrect, and she was owed $489,605.00 rather than owing Oscar $64,592.72. She argues this "profound discrepancy . . . cannot be explained by the Court's reasonable exercise of discretion, and cannot be fully reviewed without a full and fair opportunity for Catherine to offer evidence." She requests that we remand the "financial case" for a new trial before a different judge. However, Catherine does not adequately explain or support her calculation of the $489,605.00; nor does she argue, with citation to authority, why this court should remand the case to a different judge than the one who presided over it previously. We therefore find these arguments abandoned. *See State ex rel. Ordway*, 154 Ariz. at 165, 741 P.2d at 298; *Modular*, 114 Ariz. at 587, 562 P.2d at 1085.

IV. Sky Dancer Property

¶29 Catherine asserts the trial court erred in "refusing to protect" the favorable tax status of the property referred to as the Sky Dancer Property in a real property transaction pursuant to 26 U.S.C. § 1031.[6] She contends the court's refusal was intended as punishment for her failure to timely supply Oscar's attorney with documentation during the proceedings. She acknowledges the transaction involving the sale of this property has been completed and cannot be undone, but she asks for a "reallocation of the financial harm . . . on remand" to compensate for the additional taxes she incurred as a result of the court's order. However, Catherine cites no authority for her apparent argument that the court was required to allow her to sell the property in a manner to achieve the favorable tax benefit she sought. This argument is therefore abandoned.[7] *Cullum v. Cullum*, 215 Ariz. 352, n.5, 160 P.3d 231, 234 n.5 (App. 2007) (appellate courts do not consider arguments unsupported by authority).

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[6]This statute provides for the nonrecognition of gain or loss from in-kind property exchanges.

[7]We question whether the court evinced a punitive intent when it stated that if Catherine

> had supplied information that [Oscar] needed to get these issues resolved, then it would have been resolved already and there would be no need to hold funds in escrow to assure a source of payment for an equalizing payment . . . [, and, therefore,] why should she be allowed to benefit from her own failure to comply with the court's orders?

Rather, the court appears to be indicating that had Catherine complied with Oscar's earlier disclosure requests, there would be no need for the court to dispose of the Sky Dancer Property in this fashion.

¶30 In any event, the parties stipulated this property would be treated as community property, which resulted in an equal division of the net proceeds. Therefore, both parties equally bore any increased tax burden, and without a record of the trial, we cannot conclude the court's purported failure to protect a more favorable tax benefit was an abuse of discretion. *See Franklin v. Franklin*, 75 Ariz. 151, 154, 253 P.2d 337, 339 (1953) (trial court has discretion in distributing property and need only achieve "an equitable distribution . . . so as to do justice to both parties").

V. Attorney Fees

¶31 In her final argument, Catherine contends the trial court abused its discretion in awarding Oscar $20,680.00 in attorney fees pursuant to A.R.S. § 25-324(A). She claims the court failed to explain which of her positions, if any, were objectively unreasonable, did not address whether a disparity in income existed between the parties, and failed to state a basis for the award. We review the court's award of attorney fees for an abuse of discretion. *Magee v. Magee*, 206 Ariz. 589, ¶ 6, 81 P.3d 1048, 1049 (App. 2004). A trial court abuses its discretion when it commits an error of law or otherwise exercises its discretion on untenable grounds. *See Fuentes v. Fuentes*, 209 Ariz. 51, ¶ 23, 97 P.3d 876, 881 (App. 2004); *Torres ex rel. Torres v. N. Am. Van Lines, Inc.*, 135 Ariz. 35, 40, 658 P.2d 835, 840 (App. 1983).

¶32 First, Catherine argues the trial court abused its discretion by failing to make factual findings with respect to the award of attorney fees. However, § 25-324(A) requires

only that "*[o]n request of a party* or another court of competent jurisdiction, the court shall make specific findings concerning the portions of any award of fees and expenses that are based on consideration of financial resources and . . . on . . . reasonableness of positions." (Emphasis added.) Catherine does not assert she requested specific findings; nor do we find such a request in the record. Therefore the court did not err in failing to make findings below.

¶33 Catherine also seems to suggest that fees were not appropriate in the absence of "evidence to support either a claim [she] adopted unreasonable positions or that there was a financial disparity between the parties justifying such an award." "[A]fter considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings," the court may order one party to pay a reasonable amount of attorney fees and costs expended by the other party in litigating the matter. § 25-324(A); *see also In re Marriage of Pownall*, 197 Ariz. 577, ¶ 26, 5 P.3d 911, 917 (App. 2000). The trial court was presented with evidence of each party's financial status, and it was in the best position to observe and assess the conduct of the parties before it. *See Graville v. Dodge*, 195 Ariz. 119, ¶ 56, 985 P.2d 604, 616 (App. 1999). Again, in the absence of the trial and other hearing transcripts, we must assume those parts of the record further support the trial court's ruling. We therefore find no abuse of discretion in the court's award of attorney fees.

¶34 Last, Catherine argues the trial court failed to rule on her request for attorney fees. However, because the trial court awarded Oscar partial attorney fees but did not award

any to her, we infer the court denied her request. *See Pearson v. Pearson*, 190 Ariz. 231, 237, 946 P.2d 1291, 1297 (App. 1997) ("The failure to rule implies that the respective motions for fees were denied.").

Disposition

¶35 For the reasons stated above, we affirm the trial court's decree of dissolution and the court's award of attorney fees. Both parties have requested attorney fees on appeal pursuant to § 25-324. However, in our discretion, we deny both requests. *See Fuentes*, 209 Ariz. 51, ¶ 34, 97 P.3d at 883.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

_____
PETER J. ECKERSTROM, Presiding Judge

_____
J. WILLIAM BRAMMER, JR., Judge