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OCT 19 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re the Marriage of:	
ANTHONY D. SIZER,	2 CA-CV 2009-0066 DEPARTMENT A
Petitioner/Appellant,	MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure
and	
ANNA L. SIZER,	
Respondent/Appellee.	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. D20070207

Honorable Deborah Ward, Judge Pro Tempore

AFFIRMED

Anthony Sizer
Vail
In Propria Persona

Clinton L. Liechty, P.C.
By Clinton L. Liechty
Tucson
Attorney for Respondent/Appellee

H O W A R D, Chief Judge.

¶1 Appellant Anthony Sizer appeals from the decree of dissolution of his marriage to his former wife, appellee Anna Sizer. Although appellant attempts to raise several issues, we are unable to review many of them because he has not provided this court with a transcript of the

trial in this matter nor has he cited the record as required by the rules. And, because appellant has not shown any other reversible error, we affirm.

Issues

¶2 Appellant claims the trial court erred by ordering that he pay appellee $11,025.13 and seventy-five percent of her attorney fees, and by denying his motion for new trial. But he acknowledges that he has not provided us with a copy of the trial transcript as required by Rule 11(b)(1), Ariz. R. Civ. App. P. "It is an appellant's responsibility to include in the record on appeal 'such parts of the proceedings as [appellant] deems necessary.'" *In re Property at 6757 S. Burcham Ave.*, 204 Ariz. 401, ¶ 11, 64 P.3d 843, 846-47 (App. 2003), *quoting* Ariz. R. Civ. App. P. 11(b)(1). "'We may only consider the matters in the record before us.'" *Id.* ¶ 11, 64 P.3d at 847, *quoting Ashton-Blair v. Merrill*, 187 Ariz. 315, 317, 928 P.2d 1244, 1246 (App. 1996). In the absence of the transcript, we must presume the record supports the trial court's ruling. *Kohler v. Kohler*, 211 Ariz. 106, n.1, 118 P.3d 621, 623 n.1 (App. 2005); *see also Guide for Self-Represented Appellants and Appellees*, § V, Step 6, *available at* http://www.appeals2.az.gov/ .

¶3 Presuming that the missing transcript supports the trial court's decision, we cannot say the trial court abused its discretion in ordering appellant to pay appellee $11,025.13 and seventy-five percent of her attorney fees. *See Hetherington v. Hetherington*, 220 Ariz. 16, ¶ 18, 202 P.3d 481, 486 (App. 2008) (we review order distributing property for abuse of discretion); *Medlin v. Medlin*, 194 Ariz. 306, ¶ 17, 981 P.2d 1087, 1090 (App. 1999) (award of attorney fees reviewed for abuse of discretion). Although appellant points to his motion for a new trial as containing other information, we must presume the trial court's ruling was correct based on the trial transcript. *See Kohler*, 211 Ariz. 106, n.1, 118 P.3d at 623 n.1.

¶4 Appellant also argues the trial court erred in finding his "motion to correct" and motion for new trial were untimely. He claims he received the decree on February 17, 2009, and filed his motion for new trial on February 23 and that the rules allowed him thirty days from the date of the decree to file the motion. But Rule 83(D)(1), Ariz. R. Fam. Law P., requires a motion for new trial to be filed within fifteen days of the date the judgment is entered, not the date it is received. The only "decree" appellant could have received on February 17 is the order entered on January 13, more than fifteen days before he filed his motions. Therefore, restricting our analysis to appellant's claims, the motions were not timely.

¶5 Moreover, appellant claims only that granting the new trial motion "would have allowed the correction of the LM401K marriage contribution," the same ground on which he claims the trial court erred in ordering him to pay appellee $11,025.13. Rule 59(a), Ariz. R. Civ. P., only allows the trial court to grant a new trial if the alleged error "materially affect[ed]" the moving party's rights. We cannot determine whether the motion for new trial had any merit in the absence of a transcript. *See In re Property at 6757 S. Burcham Ave.*, 204 Ariz. 401, ¶ 11, 64 P.3d at 846-47. And we affirm the trial court if it was correct for any reason. *See Forszt v. Rodriguez*, 212 Ariz. 263, ¶ 9, 130 P.3d 538, 540 (App. 2006) (if trial court correct for any reason, appellate court may affirm); *see also Medlin v. Medlin*, 194 Ariz. 306, ¶ 6, 981 P.2d 1087, 1089 (App. 1999) (issue raised after trial waived); Ariz. R. Civ. P. 61 (no ruling reversed unless substantial rights of parties affected).

¶6 To the extent appellant may have intended other statements in his opening brief to raise other issues, they are waived for lack of sufficient argument. *See Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, ¶ 50, 977 P.2d 807, 815 (App. 1998); *see also* Ariz. R. Civ. App. P. 13(a)(6). Appellant has filed two affidavits with this court, but they are not included in the

record on appeal, and we therefore cannot review them. *See In re Property at 6757 S. Burcham Ave.*, 204 Ariz. 401, ¶ 11, 64 P.3d at 846-47 (responsibility of appellant to include in record on appeal all necessary parts of proceedings); *see also* Ariz. R. Civ. App. P. 11(b). He has also filed a Motion to Review Conduct of Respondent and Respondent's Counsel. It includes matters outside the record that we cannot consider. *See In re Property at 6757 S. Burcham Ave.*, 204 Ariz. 401, ¶ 11, 64 P.3d at 847 (we may only consider matters in record before us). It is therefore denied, as is appellant's Objection to Answering Brief.

Conclusion

¶7 The decree of dissolution is affirmed. Appellee is granted her reasonable attorney fees incurred herein pursuant to A.R.S. § 25-324, after compliance with Rule 21, Ariz. R. Civ. App. P.

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

PHILIP G. ESPINOSA, Presiding Judge

PETER J. ECKERSTROM, Judge