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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re the Marriage of:	2 CA-CV 2010-0051
	DEPARTMENT B
DOUGLAS A. DISBROW,	
	MEMORANDUM DECISION
Petitioner/Appellant,	Not for Publication
	Rule 28, Rules of Civil
and	Appellate Procedure
FRONIA S. DISBROW,	
Respondent/Appellee.	

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. DO2003170

Honorable Peter J. Cahill, Judge

AFFIRMED

Douglas A. Disbrow — Payson
In Propria Persona

Law Office of Phil Hineman, P.C.
By Phil Hineman — Phoenix
Attorney for Respondent/Appellee

K E L L Y, Judge.

¶1 In April 2003, Douglas Disbrow petitioned for the dissolution of his marriage to Fronia Disbrow, whom he had married in 1991. After a bench trial, the court ordered the marriage dissolved, divided the couple's assets and debts, and awarded Fronia spousal maintenance. On appeal, Douglas maintains the trial court denied him a fair trial and erred in entering its judgment. Finding no error, we affirm.

Discussion

¶2 In asserting he was denied a fair trial, Douglas maintains that he was denied legal representation at trial and that the court should have granted his motion to postpone trial, which he made after his counsel withdrew. "A motion for continuance is directed to the discretion of the trial court and will not be reversed absent an abuse of discretion." *In re Estate of Kerr*, 137 Ariz. 25, 29, 667 P.2d 1351, 1355 (App. 1983).

¶3 Douglas's counsel moved to withdraw in November 2008, stating that "irreconcilable differences h[ad] arisen" between them and that Douglas "plan[ned] to replace" him. The trial court granted counsel's motion and continued the trial from December 10, 2008, to March 25, 2009. On March 16, 2009, Douglas moved to postpone the trial for thirty days, stating that the parties had been unable to reach a settlement and that an attorney with whom he had consulted "need[ed] more time to prepare." The court denied his motion, stating Douglas "had sufficient time to obtain a new attorney." Douglas ultimately represented himself at trial, a circumstance he now argues was "against [his] desire."

¶4 Rule 77(C)(1), Ariz. R. Fam. Law P., provides: "When an action has been set for trial, hearing or conference on a specified date by order of the court, no

continuance of the trial, hearing or conference shall be granted except upon written motion setting forth sufficient grounds and good cause, or as otherwise ordered by the court." Here, in his motion to postpone the trial, Douglas argued that, because the parties had failed to settle after his attorney withdrew, he had to retain new counsel and "the one attorney that is willing to take my case, out of three attorneys contacted, needs more time to prepare." We cannot say the trial court abused its discretion in finding this broad statement failed to provide sufficient grounds and good cause for a continuance, particularly in view of the nearly four months between Douglas's first counsel's withdrawal and the trial date.

¶5 To the extent Douglas also argues he was denied a fair trial because he ultimately represented himself, we note that, although parties to civil litigation are generally entitled to be represented by counsel, *Strube v. Strube*, 158 Ariz. 602, 606, 764 P.2d 731, 735 (1988), that 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). Douglas had nearly four months to retain new counsel after the trial court permitted his counsel to withdraw. He was therefore given the opportunity to retain new counsel and, when he failed to do so, was allowed to represent himself. That is all due process requires. *See id.* ¶ 10.

¶6 Douglas also states that he received additional exhibits from Fronia four days before trial and argues, without further development, that this disclosure, as well as the lack of a pretrial statement, "was in violation of" Rule 76(C), Ariz. R. Fam. Law P. But Douglas did not object on this basis below. Rather, citing Rules 49 and 65(c), Ariz.

R. Fam. Law P., Douglas objected to the late disclosure at the start of trial. He did not, however, specify on the record before us which exhibits were untimely disclosed, nor did he object on that basis to the admission of any exhibits as they were proffered during trial. *See* Ariz. R. Evid. 103(a)(1). Likewise, he failed to cite Rule 76, on which he now relies, or to object to the lack of a pretrial statement. The argument is therefore waived. *See Harris v. Cochise Health Sys.*, 215 Ariz. 344, n.3, 160 P.3d 223, 230 n.3 (App. 2007) (arguments not made in trial court waived on appeal).

¶7 Douglas next contends the trial court's judgment "d[oes] not reflect the facts of the case nor the conclusions set forth by the court during Trial." At the close of trial, the court instructed the parties to submit proposed findings of fact and conclusions of law. It stated its "observations" about the evidence to guide the parties in producing those documents. We have reviewed the court's comments and the judgment, and we cannot agree with Douglas's assertion that the judgment is inconsistent with the trial court's stated "observations."

¶8 Fronia requested sanctions against Douglas for, inter alia, his violations of the preliminary injunction and the dissipation of funds from a savings account. The court indicated it had in the past "imposed an additional [twenty-five] percent assessment for misconduct like [that] alleged here." The judgment includes that assessment. Likewise, the court invited the parties to make "suggestion[s]" about the amount of spousal maintenance that should be awarded. And, although it stated "[t]he likelihood . . . [wa]s not great" that it would award "$1,000 a month or more," it did not foreclose that

possibility and ultimately awarded $1,000 per month in support. In sum, the judgment is generally consistent with the court's statements on the record.

¶9 Douglas also argues, however, that the judgment "reflected bias inaccuracies" and contained many factual errors, thus suggesting the judgment was not supported by the evidence at trial. Douglas's arguments center mainly on the trial court's grant of spousal maintenance to Fronia, its division of certain assets, and its imposition of sanctions for Douglas's failure to comply with the preliminary injunction. We review a trial court's ruling on each of these issues for an abuse of discretion. *See Ramsay v. Wheeler-Ramsay*, 224 Ariz. 467, ¶ 16, 232 P.3d 1249, 1254 (App. 2010) (appellate court reviews division of community property and award of spousal maintenance for abuse of discretion); *Green v. Lisa Frank, Inc.*, 221 Ariz. 138, ¶ 40, 211 P.3d 16, 31 (App. 2009) (sanction imposed for violation of court order reviewed for abuse of discretion); *Woodworth v. Woodworth*, 202 Ariz. 179, ¶ 30, 42 P.3d 610, 615 (App. 2002) (within family court's discretion whether to impose sanctions for noncompliance with notice requirement for relocating child).

¶10 Douglas requests that this court reweigh the evidence and replace the trial court's judgment with our own. This we will not do. On review, we do not reweigh the conflicting testimony, but determine whether competent evidence exists to support the trial court's decision. *See Rowe v. Rowe*, 154 Ariz. 616, 620, 744 P.2d 717, 721 (App. 1987). The record before us contains sufficient evidence to support the court's findings and conclusions and we therefore cannot say the court abused its discretion in this matter. *See Little v. Little*, 193 Ariz. 518, ¶ 5, 975 P.2d 108, 110 (1999) ("An abuse of discretion

exists when the record, viewed in the light most favorable to upholding the trial court's decision, is 'devoid of competent evidence to support' the decision."), *quoting Fought v. Fought*, 94 Ariz. 187, 188, 382 P.2d 667, 668 (1963). In any event, Douglas expressly declines to seek a new trial, the only possible relief this court could grant had we found such an abuse. *Cf. Henderson v. Las Cruces Prod. Credit Ass'n*, 6 Ariz. App. 549, 553, 435 P.2d 56, 60 (1967) ("When a record is presented to an appellate court which leaves no question of fact to be determined and only a question of law to be determined, this Court may direct the entry of the judgment which should have been entered in the trial court.").

¶11 Douglas argues Fronia was not entitled to an award of attorney fees and that her fees "are inflated." Fronia requested her fees below, and the trial court awarded her fees and costs totaling $15,183.68. "The trial court has discretion to award attorney[] fees, and we will not disturb that finding absent an abuse of discretion." *Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶ 32, 972 P.2d 676, 684 (App. 1998).

¶12 Pursuant to A.R.S. § 25-324, the trial court may order one party in a dissolution to pay "a reasonable amount to the other party" for fees and costs. In reaching such a determination, the court is to "consider[] the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings." *Id.* Here, the trial court considered both parties' earning capacities and their respective positions in deciding to award fees. It noted at the close of trial that it was "less than convinced that [Douglas] is earning his maximum earning capacity." And, the court found that sanctions were appropriate based on Douglas's behavior during the

course of the dissolution proceedings. On the record before us, which includes Douglas's violations of the preliminary injunction, his filing for bankruptcy without notifying Fronia, and his failure to notify Fronia that she could make use of prepaid legal services, we cannot say the trial court abused its discretion in granting an award of fees.

¶13 Finally, Douglas also challenges the amount of attorney fees awarded, arguing the submitted fees "are inflated." "It is well settled that the amount of attorney[] fees is left to the sound discretion of the trial court." *Mori v. Mori*, 124 Ariz. 193, 199, 603 P.2d 85, 91 (1979). Given that this dissolution has now gone on for more than seven years, we cannot say the trial court abused its discretion in determining the amount of fees to award.

Disposition

¶14 The judgment of the trial court is affirmed. Citing § 25-324, Fronia requests her attorney fees and costs on appeal. In our discretion, we grant the request upon her compliance with Rule 21, Ariz. R. Civ. App. P.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge