

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

FILED BY CLERK

JUN 21 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re the Marriage of:)	
)	
MICHELLE SIDDLE nka CLASS,)	2 CA-CV 2009-0156
)	DEPARTMENT A
Petitioner/Appellee,)	
)	<u>MEMORANDUM DECISION</u>
and)	Not for Publication
)	Rule 28, Rules of Civil
WAYNE B. SIDDLE,)	Appellate Procedure
)	
Respondent/Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Pima County Cause No. D120600

Honorable K. C. Stanford, Judge Pro Tempore

AFFIRMED

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By Brian K. Kimminau

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HOWARD, Chief Judge.

¶1 Appellant Wayne Siddle appeals from the superior court’s order granting, in part, a petition to modify child support filed by his former wife, appellee Michelle Class.¹ For the reasons set forth below, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the trial court’s ruling. *See In re Marriage of Yuro*, 192 Ariz. 568, ¶ 3, 968 P.2d 1053, 1055 (App. 1988). Siddle and Class are divorced and have two minor children, S. and B. Class has custody of S., and Siddle has custody of B. Because Class, who is self-employed, had a higher income than Siddle, she initially was required to pay him child support.

¶3 In 2009, Class filed a petition to modify the amount of child support she was required to pay Siddle, claiming that her income had substantially decreased and that Siddle should therefore be required to pay child support to her. In response, Siddle moved the trial court to appoint an authorized tax practitioner to assist in determining Class’s income “for child support calculation purposes.” Siddle also filed a separate response opposing Class’s request for modification and requesting other relief. After a hearing, the trial court denied Siddle’s motion to appoint a tax practitioner and granted, in part, Class’s petition to modify child support, finding that neither party should be required to pay child support to the other. Siddle appeals from this order.

¹Appellee’s surname appears in different forms throughout the record. We use the name that appears in her petition to modify child support.

Ruling on A.R.S. § 25-320.02

¶4 Siddle argues the trial court erred by not making findings on the record explaining its decision to deny his request, made pursuant to A.R.S. § 25-320.02, for an authorized tax practitioner to review Class's income. He asserts that whether § 25-320.02 requires the court to make findings is an issue of statutory interpretation that we review de novo. In the alternative, he contends the court abused its discretion by not making the necessary findings. Siddle, however, did not object below to the court's failure to make findings. And the "failure of a party to object to the lack of findings . . . [below] precludes that party from raising the absence of findings as error on appeal." *Trantor v. Fredrikson*, 179 Ariz. 299, 301, 878 P.2d 657, 659 (1994). Therefore, regardless of which standard of review is applicable, Siddle has waived this argument.

¶5 Siddle further claims the trial court abused its discretion by denying his request to appoint an authorized tax practitioner. However, he has cited no authority that would demonstrate how the court's ruling was erroneous.² And, because Class had provided her 2008 federal income tax return and a 2009 year-to-date profit and loss statement, Siddle has failed to show that the court had insufficient information or that the

²Siddle cites little authority at all, primarily quoting a treatise about what constitutes an abuse of discretion. Counsel is reminded that treatises, while informative, are not controlling authority. And briefs are required to contain citations to authority supporting the arguments advanced. *See* Ariz. R. Civ. App. P. 13(a)(6) ("An argument . . . shall contain 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.").

assistance of a tax practitioner was necessary. Siddle, therefore, has not demonstrated that the court abused its discretion by denying his request for a tax practitioner.

Trial Court’s Questioning of Witness

¶6 Again citing a non-controlling treatise, Siddle next asserts that the trial court abused its discretion because the questions it posed of a witness were allegedly leading and improper. Siddle did not object to the questions at the hearing, however, and “[a]n issue raised for the first time after trial is deemed to have been waived.” *Medlin v. Medlin*, 194 Ariz. 306, ¶ 6, 981 P.2d 1087, 1089 (App. 1999). Siddle has therefore waived this argument for purposes of appeal, and we need not address it. *See City of Tempe v. Fleming*, 168 Ariz. 454, 456, 815 P.2d 1, 3 (App. 1991) (“arguments not made at the trial court cannot be asserted on appeal”).

On the Record Findings as to Class’s Income

¶7 Siddle further claims the trial court deviated from the child support guidelines and was therefore required to make an explicit written finding as to the reasons for this deviation, pursuant to A.R.S. § 25-320(D), because it used a figure other than one proposed by the parties in its determination of Class’s gross income for child support purposes.³ But the record on appeal does not demonstrate that Siddle objected to the

³Siddle also appears to argue that the court’s adoption of “findings contained on a child support summary” was erroneous because the findings were “unsupported by any evidence received at trial.” He additionally “urges” this court to require lower courts to make explicit findings in support of their determinations of a parent’s gross income for child support purposes, regardless of whether that determination deviates from the child support guidelines, “whenever a parent is self-employed.” But Siddle has failed to adequately develop these arguments, and they are therefore waived. *See Ariz. R. Civ. App. P. 13(a)(6)* (“An argument . . . shall contain the contentions of the appellant with

court's failure to make findings below. And, as we explained above, a party's failure to object to a lack of findings "precludes that party from raising the absence of findings as error on appeal." *Trantor*, 179 Ariz. at 301, 878 P.2d at 659. We therefore need not address this argument.

¶8 Moreover, even if Siddle had objected to this argument and thus preserved it for appeal, it would nevertheless be meritless. Pursuant to the child support guidelines, the gross income of a self-employed parent for child support purposes is defined as "gross receipts minus ordinary and necessary expenses required to produce income." A.R.S. § 25-320 app. § 5(C). Class stated her monthly income as \$3,062.50, which aligned her gross income with that reported on her 2008 income tax return. Siddle claimed Class's monthly gross income was closer to \$6,700. And the trial court, apparently relying on Class's 2008 tax return, her 2009 profit and loss statement, and her testimony, determined her current gross monthly income to be \$4,312.00.

¶9 Siddle claims the trial court's calculation of Class's gross income deviated from the formula in the guidelines, and therefore required explicit findings, because it differed from the amounts suggested by the parties and was not "identical" to the income listed on Class's 2008 tax return. But the child support guidelines do not require the court to adopt the parties' statements of their income or to limit itself to the amount of income reported in a particular year's tax return. *See* A.R.S. § 25-320 app. § 5.

respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on."); *Polanco v. Indus. Comm'n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393-94 n.2 (App. 2007) (failure to develop and support argument waives issue on appeal).

Furthermore, Siddle has not provided any evidence that the amount he contends is accurate was properly calculated in keeping with the guidelines. Ultimately, Siddle has not demonstrated that the trial court's calculations, though differing from those of the parties, deviated from the guidelines. Accordingly, even had he preserved this argument for appellate purposes, it is meritless.

Due Process

¶10 Siddle finally contends that the “trial court’s refusal to enforce [his] discovery requests was [a] denial of [his right to] due process.” But Siddle did not properly raise this issue below. After filing a request for production on May 18, 2009, he did not move to compel discovery. Class provided the requested documents the day before the hearing, but when discussing discovery at the hearing, Siddle did not allege that proceeding in light of the last-minute production would result in a due process violation. In fact, in reference to the last-minute disclosure, his counsel said he “d[id]n’t really care at this point [about] timeliness.” Therefore, Siddle has waived this argument for purposes of appeal, and we need not address it. *See City of Tempe*, 168 Ariz. at 456, 815 P.2d at 3 (“arguments not made at the trial court cannot be asserted on appeal”).

¶11 Even if Siddle had not waived his due process argument, it lacks citations to the record and to legal authority supporting his claim. We will not consider factual assertions that are unaccompanied by citations to the record. *State v. 1810 E. Second Ave.*, 193 Ariz. 1, n.2, 969 P.2d 166, 167 n.2 (App. 1997). Nor will we consider legal arguments that are not fully developed or lack citations of authority. *Ness v. W. Sec. Life Ins. Co.*, 174 Ariz. 497, 503, 851 P.2d 122, 128 (App. 1992).

Disposition

¶12 In light of the foregoing, we affirm the trial court's order modifying child support.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Presiding Judge

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