

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF:

RUBEN E. OLIVAS,
Petitioner/Appellee,

AND

CYNTHIA SUE BRYCE-OLIVAS,
Respondent/Appellant.

No. 2 CA-CV 2013-0054
Filed February 28, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c); Ariz. R. Civ. App. P. 28(c).

Appeal from the Superior Court in Pinal County
No. S1100DO201201493
The Honorable Theresa H. Ratliff, Judge Pro Tempore

AFFIRMED

COUNSEL

Merritt Law, PLLC, Coolidge
By Melanie Merritt
Counsel for Petitioner/Appellee

Cynthia Sue Bryce-Olivas, Mesa
In Propria Persona

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Miller and Judge Brammer concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Cynthia Bryce-Olivas appeals from the trial court’s decree dissolving her marriage to appellee Ruben Olivas. She argues the court erred by relying on Ruben’s testimony at trial after he failed to file a pretrial statement. She also argues the court inequitably divided their community property and erred by awarding her only three years of spousal maintenance. For the reasons that follow, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the decree. *See Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶ 5, 972 P.2d 676, 679 (App. 1998). The parties were married in September 2004. In August 2012, Ruben filed a petition for dissolution of marriage without children.

¶3 At the dissolution trial, the court warned Ruben, who had failed to file a pretrial statement, that if he “want[ed] to put on evidence . . . that ha[d not] been disclosed to the other party, [he would] not be allowed to put that evidence on.” Ruben did not produce any exhibits or witnesses, but he did testify about previously undisclosed property. The court entered a decree of dissolution in February 2013, dividing the parties’ community property and awarding Cynthia spousal maintenance. This appeal followed. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

Failure to File a Pretrial Statement

¶4 Cynthia’s first argument essentially raises two evidentiary issues. She argues that because Ruben did not file a

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pretrial statement or disclose evidence before trial, the trial court erred in awarding him any property that was not requested in his petition for dissolution. She also argues the court erred by giving any weight to Ruben's testimony concerning their retirement assets because he "provided no documented evidence to support [his] claim[s]."

¶5 "Generally, this court will not address an issue raised for the first time on appeal." *Yano v. Yano*, 144 Ariz. 382, 386, 697 P.2d 1132, 1136 (App. 1985). "[A] trial court and opposing [parties] should be afforded the opportunity to correct any asserted defects before error may be raised on appeal." *Trantor v. Fredrikson*, 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994); *In re Marriage of Johnson & Gravino*, 231 Ariz. 228, ¶ 25, 293 P.3d 504, 511 (App. 2012). Because Cynthia did not object to Ruben's testimony or otherwise raise these arguments before the trial court, she has waived the right to do so on appeal, and we could decline to address them further.¹ See *Yano*, 144 Ariz. at 386, 697 P.2d at 1136. Based on our review of the record, the arguments are without merit in any event.

¶6 We acknowledge that the trial court's ruling arguably could be interpreted as precluding Ruben from introducing evidence about any property not mentioned in his petition. But this interpretation conflicts with the fact that the court elicited a significant amount of the testimony from both Ruben and Cynthia during the trial. Such testimony concerned property and assets that Ruben did not refer to expressly in his petition. Nothing in the family law rules applicable to pretrial statements and discovery

¹ We acknowledge that Cynthia was not represented by counsel in the trial court, nor has she retained counsel on appeal. But "[p]arties who choose to represent themselves 'are entitled to no more consideration than if they had been represented by counsel' and are held to the same standards as attorneys with respect to 'familiarity with required procedures and . . . notice of statutes and local rules.'" *In re Marriage of Williams*, 219 Ariz. 546, ¶ 13, 200 P.3d 1043, 1046 (App. 2008), quoting *Smith v. Rabb*, 95 Ariz. 49, 53, 386 P.2d 649, 652 (1963) (alteration in *Williams*).

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sanctions suggests that the court was required to impose a particular sanction for a disclosure violation. Rule 76(D)(1), Ariz. R. Fam. Law P., authorizes the court “upon motion or on its own initiative,” to issue “an order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting that party from introducing designated matters in evidence.” But, Rule 76(C)(3) provides that if a party does not disclose exhibits or witnesses in a pretrial statement, that party cannot introduce them at trial, unless permitted by the trial court “in the interest of justice and for good cause shown.” Here, because the court not only permitted Ruben to testify about matters not stated in his petition, but also elicited it, we cannot agree with Cynthia’s interpretation of the court’s ruling.²

Community Property

¶7 Cynthia next argues the trial court erred by failing to equitably divide the parties’ community property.³ She contends

²Neither party filed a notice pursuant to Rule 2(B)(1), Ariz. R. Fam. Law P., invoking “strict compliance” with the evidentiary rules. Moreover, it was clear the trial court admitted considerable evidence on its own motion by questioning the parties during their opening statements and throughout the proceeding. Finally, we presume the court did not consider relevant evidence otherwise inadmissible under Rule 2(B)(2), which is also evident from the court’s comments and its sua sponte invocation of Rule 615, Ariz. R. Evid. Under Rule 615, a trial court may on its own motion, or must at the request of a party, exclude non-party witnesses from observing the entire proceeding to avoid the possibility that one witness’s testimony will affect the testimony of another witness.

³Cynthia has cited no authority in her opening brief to support her arguments. Normally, the failure to develop and support an argument waives the issue on appeal. 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.”); *Polanco v. Indus. Comm’n*, 214 Ariz. 489, n.2, 154

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Ruben received property and assets valued at \$75,800, while she received property valued at approximately \$27,000. She argues the “vast difference in the value . . . is primarily due to the vehicles and also to the family heirlooms and [her] clothing awarded to [Ruben].”

¶8 We review the trial court’s division of community property for an abuse of discretion. *Danielson v. Evans*, 201 Ariz. 401, ¶ 13, 36 P.3d 749, 754 (App. 2001). “[W]e consider the evidence in a light most favorable to upholding the trial court’s ruling and will sustain that ruling if the evidence reasonably supports it.” *Kohler v. Kohler*, 211 Ariz. 106, ¶ 2, 118 P.3d 621, 622 (App. 2005). We will not reweigh the evidence presented to the court. *See Gutierrez*, 193 Ariz. 343, ¶ 13, 972 P.2d at 680 (“We will defer to the trial court’s determination of witnesses’ credibility and the weight to give conflicting evidence.”).

¶9 In a dissolution action, the trial court must divide the parties’ community property “equitably, though not necessarily in kind.” A.R.S. § 25-318(A). The court has broad discretion in doing so, provided that the ultimate disposition “result[s] in a substantially equal distribution which neither rewards nor punishes either party.” *Lee v. Lee*, 133 Ariz. 118, 121, 649 P.2d 997, 1000 (App. 1982); *see Kelly v. Kelly*, 198 Ariz. 307, ¶ 7, 9 P.3d 1046, 1048 (2000). And, because “[a]ssets and obligations are reciprocally related[,] . . . there can be no complete and equitable disposition of property without a corresponding consideration and disposition of obligations.” *Cadwell v. Cadwell*, 126 Ariz. 460, 462, 616 P.2d 920, 922 (App. 1980); *see also* § 25-318(B).

¶10 Here, the trial court awarded each party a one-half interest in the marital residence, which Ruben valued at \$75,000. It also awarded each a one-half interest in the value of Ruben’s retirement and 401(k) accounts earned during the marriage and a

P.3d 391, 393 n.2 (App. 2007). Because we prefer to resolve cases on their merits, *Adams v. Valley Nat’l Bank of Ariz.*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984), we exercise our discretion in this case and address Cynthia’s arguments.

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2001 Chevrolet Blazer that was ordered to be sold.⁴ In addition, the court awarded Ruben a 2011 Chevrolet Silverado, which according to Cynthia was worth \$45,000, and awarded Cynthia a 2007 Monte Carlo, which she had valued at \$20,000, provided that she was able to refinance the debt on that vehicle. The court also divided a number of personal property items the parties each had requested. Of these items, based on her estimated values, Cynthia received property worth approximately \$3,450, whereas the value of the property Ruben received was approximately \$4,950.⁵ Last, the court distributed the parties' liabilities, ordering Ruben to pay \$4,925 in debt and Cynthia to pay debts totaling \$2,723.

⁴Some retirement assets had been liquidated and divided by the parties before the dissolution was filed or, in any event, before trial. The trial court found that one asset "was liquidated by [Ruben] while this dissolution action was pending in violation of the Preliminary Injunction. [But Cynthia] received all monies in the joint [bank] account, which exceeded the value of her interest in the [asset]." On appeal, Cynthia argues the court erred in finding Ruben had deposited money into the joint account because her bank statements from December 2011 to July 2012, which she claims were admitted as Exhibit Two, do not include a record of this transaction. However, we have reviewed the record, including all admitted exhibits, and cannot find the bank statements to which Cynthia refers. Exhibit Two is an insufficient funds notice. Thus, we have no basis to review this finding. *See GM Dev. Corp. v. Cmty. Am. Mortg. Corp.*, 165 Ariz. 1, 4, 795 P.2d 827, 830 (App. 1990) (appellate review limited to record before trial court).

⁵The total value of this property is not clear from the record. For example, the court awarded each party "[a]ll vehicles, household furniture, furnishings and appliances, and other personal property currently in [his or her] possession." Although Cynthia listed the value of many items that could conceivably fall under these categories, the record does not clearly indicate which party possessed what property at the time of the decree. Moreover, the court also awarded several items to which the parties never assigned any value in their filings or at trial.

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¶11 In apportioning the vehicles, the trial court explained that the parties would also assume any indebtedness on the particular vehicle assigned to them. In her pleadings, Cynthia suggested that the debt owed on the Monte Carlo equaled its value, whereas the debt on the Silverado actually exceeded its value. Therefore, although the court awarded Ruben the more expensive vehicle, he also assumed a significantly larger portion of the overall debt. *See Cadwell*, 126 Ariz. at 462, 616 P.2d at 922. Moreover, there is no evidence in the record regarding the value of the family heirlooms and clothing that Cynthia argues led to an inequitable division of property. Thus, we cannot say that the court abused its discretion in dividing the community property. *See Kohler*, 211 Ariz. 106, ¶ 2, 118 P.3d at 622.

Spousal Maintenance

¶12 Cynthia argues the trial court erred “by limiting the duration of spousal maintenance to three years.” This court will not disturb an award of spousal maintenance absent a clear abuse of discretion. *McCarthy v. McCarthy*, 146 Ariz. 207, 208, 704 P.2d 1352, 1353 (App. 1985). We view the evidence in the light most favorable to sustaining the award and will affirm if there is any reasonable evidence to support it. *Leathers v. Leathers*, 216 Ariz. 374, ¶ 9, 166 P.3d 929, 931 (App. 2007).

¶13 Pursuant to A.R.S. § 25-319(A), the trial court may award spousal maintenance if it finds that a spouse is unable to provide for his or her own needs because of a lack of property, employment opportunities, or earning capacity, or when a spouse has contributed to the other’s educational opportunities. If the spouse is entitled to an award, the court must then consider thirteen factors enumerated in § 25-319(B) to determine the amount and duration of the award.⁶ Some factors may not be relevant in a

⁶The § 25-319(B) factors include: (1) the standard of living during the marriage; (2) the marriage duration; (3) the “age, employment history, earning ability and physical and emotional condition of the spouse seeking maintenance”; (4) the “ability of the spouse from whom maintenance is sought to meet that spouse’s

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particular case, and the court need not apply them. *Rainwater v. Rainwater*, 177 Ariz. 500, 502, 869 P.2d 176, 178 (App. 1993). But the court may abuse its discretion by neglecting a factor that does apply. *Id.*

¶14 Here, Cynthia requested spousal maintenance of \$500 per month for six years. The trial court found that she was entitled to spousal maintenance because she lacked sufficient property, employment, and earning ability in the labor market to provide for her needs. The court awarded Cynthia \$500 per month, but limited the duration of the maintenance to three years.

¶15 Reasonable evidence supports the trial court's ruling.⁷ See *Leathers*, 216 Ariz. 374, ¶ 9, 166 P.3d at 931. At the time of trial,

needs while meeting those of the spouse seeking maintenance"; (5) the spouses' "comparative financial resources"; (6) the "contribution of the spouse seeking maintenance to the earning ability of the other spouse"; (7) the "extent to which the spouse seeking maintenance has reduced that spouse's income or career opportunities for the benefit of the other spouse"; (8) the spouses' abilities to "contribute to the future educational costs of their mutual children"; (9) the "financial resources of the party seeking maintenance"; (10) the "time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment"; (11) "[e]xcessive or abnormal expenditures, destruction, concealment or fraudulent disposition" of common property; (12) the cost of health insurance for both spouses; and (13) "[a]ll actual damages and judgments from conduct that results in criminal conviction of either spouse in which the other spouse or child was the victim."

⁷To bolster her argument on appeal, Cynthia alleges several facts that are not supported by the record. For example, she states that after the decree, she could not afford a residence or vehicle and now lives below the poverty line. "An appellate court's review is limited to the record before the trial court." *GM Dev. Corp. v. Cmty. Am. Mortg. Corp.*, 165 Ariz. 1, 4, 795 P.2d 827, 830 (App. 1990).

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Cynthia was fifty-eight years old, had a ninth-grade education, and worked part time. *See* § 25-319(B)(3). Cynthia introduced evidence of her monthly bills and stated she would need an additional \$500 each month to pay for rent, utilities, insurance, groceries, and “just living” after the dissolution. *See* § 25-319(B)(1); *Gutierrez*, 193 Ariz. 343, ¶ 21, 972 P.2d at 681-82 (budget indicative of spouse’s standard of living). And, evidence of Ruben’s income generally confirmed his ability to pay this amount in addition to meeting his own needs. *See* § 25-319(B)(4). As to the duration of the award, we cannot say it is substantially disproportionate to the number of years the parties had been married – eight years. *See* § 25-319(B)(2); *Schroeder v. Schroeder*, 161 Ariz. 316, 320 n.5, 778 P.2d 1212, 1216 n.5 (1989). Thus, the court did not abuse its discretion by limiting the duration of the award to three years. *See McCarthy*, 146 Ariz. at 208, 704 P.2d at 1353.

Disposition

¶16 For the foregoing reasons, we affirm the trial court’s decree of dissolution. Ruben has requested attorney fees and costs on appeal pursuant to A.R.S. § 12-349(A), but has failed to show by a preponderance of the evidence that Cynthia brought the appeal without substantial justification. *See Donlann v. Macgurn*, 203 Ariz. 380, ¶ 36, 55 P.3d 74, 80-81 (App. 2002). We therefore decline his request. However, upon compliance with Rule 21, Ariz. R. Civ. App. P., Ruben is entitled to recover his costs as the prevailing party on appeal.

Because these allegations concern events that occurred after the decree, we cannot consider them in our analysis on review.