

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

KEITH R. LALLISS, *Appellant*,

v.

JUSTIN HAGERTY; CARRIE P. CRAVATTA, *Appellees*.

No. 1 CA-CV 15-0545 FC
FILED 11-1-2016

Appeal from the Superior Court in Maricopa County
No. FC2009-093491
The Honorable Justin Beresky, Commissioner

AFFIRMED

COUNSEL

Keith R. Lalliss, Attorney at Law, Mesa
Appellant

MEMORANDUM DECISION

Presiding Judge Patricia K. Norris delivered the decision of the Court, in
which Judge Samuel A. Thumma and Judge Margaret H. Downie joined.

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NORRIS, Judge:

¶1 Appellant Keith R. Lalliss appeals from a ruling disqualifying him as counsel for Danielle Hagerty and ordering him to pay Justin Hagerty's counsel \$2,362.25 in attorneys' fees. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY¹

¶2 In 2010, the family court entered a decree dissolving Danielle's marriage to her then husband, Justin Hagerty. Thereafter, Danielle and Justin filed numerous post-decree petitions and motions. In 2012, Danielle retained Lalliss to represent her in the post-decree proceedings.

¶3 Before the post-decree proceedings, Lalliss had represented Justin in three different matters. In 2008, he jointly defended Justin and Danielle in a civil lawsuit, which was later dismissed. In 2009, while jointly representing Justin and Danielle, he successfully filed an application on their behalf to collect excess proceeds following a trustee's sale. Beginning in 2011, Lalliss individually defended Justin in a negligence action. The superior court dismissed the negligence case in January 2012, approximately two months before Lalliss filed a notice of appearance on Danielle's behalf in the post-decree proceedings.

¶4 At an evidentiary hearing in September 2014, Justin's counsel moved to disqualify Lalliss as counsel for Danielle, arguing Lalliss's prior representation of Justin constituted a conflict of interest in the post-decree proceedings. The family court granted the motion and removed Lalliss as Danielle's counsel effective immediately. The court directed Justin's counsel to submit an application for attorneys' fees and costs he had incurred in preparing for the hearing and stated that Lalliss would be responsible for those fees and costs, subject to further objection. Thereafter, Lalliss moved to set aside the disqualification ruling and the award of attorneys' fees and costs, which the court denied.

¹Appellees Justin Hagerty and Carrie P. Cravatta have not filed an answering brief. Although we may treat the failure to file an answering brief as a confession of reversible error, in our discretion we elected to reach the merits of this case. See *Nydam v. Crawford*, 181 Ariz. 101, 101, 887 P.2d 631, 631 (App. 1994).

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¶5 Subsequently, the family court entered a final order directing Lalliss to pay \$2,362.25 in attorneys' fees and costs to Justin's counsel. In so ruling, the family court explained:

The purpose of the . . . award of attorney's fees was to compensate Father's attorney for time spent preparing for the September 8, 2014 hearing when Mr. Lalliss should have recognized the conflict in representing Mother when he had represented Father in a prior (non-family court) matter. In other words, the Court saw fit to compensate Father's attorney for time spent preparing for a hearing that would not go forward because of Mr. Lalliss' conflict

DISCUSSION

¶6 On appeal, Lalliss argues his prior representation of Justin did not create a conflict of interest and, thus, he was not ethically precluded from representing Danielle in the post-decree proceedings. Specifically, Lalliss argues the family court should not have disqualified him because his prior representation of Justin in the three matters did not pertain to "the same or a substantially related matter" pursuant to Ariz. R. Sup. Ct. 42, ER 1.9(a).² He also argues there was no possibility that he could have obtained information in his prior representation of Justin that would have had any relevancy to the post-decree proceedings. Reviewing the family court's ruling for an abuse of discretion, we reject this argument. *See Amparano v. ASARCO, Inc.*, 208 Ariz. 370, 376, ¶ 19, 93 P.3d 1086, 1092 (App. 2004) (appellate court reviews a trial court's ruling on a motion to disqualify counsel for an abuse of discretion).

²In full, Ariz. R. Sup. Ct. 42, ER 1.9(a) provides that:

A lawyer who has formally represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

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¶7 A court has authority to disqualify an attorney who represents conflicting interests. *See Matter of Estate of Shano*, 177 Ariz. 550, 557, 869 P.2d 1203, 1210 (App. 1993); *see also Smart Indus. Corp., Mfg. v. Superior Court In & For Cty. of Yuma*, 179 Ariz. 141, 145, 876 P.2d 1176, 1180 (App. 1994) (“A trial court’s authority to apply an ethical rule to govern a disqualification motion in a litigation setting derives from the inherent power of the court to control judicial officers in any proceeding before it.”). Courts look to the ethical rules “for guidance on disqualification issues.” *Amparano*, 208 Ariz. at 376, ¶ 22, 93 P.3d at 1092 (citation omitted). The comments to ER 1.9 explain that matters are “substantially related” for purposes of the rule “if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client’s position in the subsequent matter.” Ariz. R. Sup. Ct. 42, ER 1.9, cmt. 3 (emphasis added).³ Confidential information, in turn, is broadly defined to include any “information relating to the representation of a client.” Ariz. R. Sup. Ct. 42, ER 1.6(a); *accord* State Bar of Arizona Ethics Opinion No. 00-11 (2000) (“Under ER 1.6, a lawyer is required to maintain the confidentiality of all information relating to representation, regardless of the fact that the information can be discovered elsewhere Indeed, the lawyer is required to maintain the confidentiality of information relating to representation even if the information is a matter of public record.”) (citations omitted).

¶8 This court has previously explained the policy incorporated in ER 1.9:

The principle which bars an attorney from representing an interest adverse to that of a former client is most often said to be grounded upon the confidential relationship which exists between attorney and client, the court taking the view that, by imposing this disability upon the attorney, confidential information conveyed by the former client is protected from possible disclosure and wrongful use.

³The comments to ER 1.9 provide the following example: “[A] lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person’s spouse in seeking a divorce.” ER 1.9, cmt. 3.

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Nichols v. Elkins, 2 Ariz. App. 272, 277, 408 P.2d 34, 39 (App. 1965) (citation omitted); *see also Assocs. Fin. Corp. v. Walters*, 12 Ariz. App. 369, 374, 470 P.2d 689, 694 (App. 1970) (attorney should generally be disqualified “if the attorney has obtained information from the prior representation which would be adverse to the former client’s interest or helpful to the present client”).

¶9 When the family court disqualified Lalliss, the parties were contesting parenting time, child support, medical reimbursement, and attorneys’ fees. Danielle had alleged (1) the children were suffering emotionally from their time with Justin and (2) Justin was behind on child support. Furthermore, in her petition for modification of the decree, Danielle noted that “[n]umerous judgments have been entered against [Justin] in civil matters.”

¶10 As discussed, Lalliss represented Justin in three prior matters. During his representation of Justin in these matters, Lalliss could have obtained confidential information relevant to the parties’ post-decree disputes, including information about Justin’s personal life, his financial affairs, how his financial affairs had been affected by the judgments Danielle asserted had been entered against him, and what steps, if any, he had taken to pay or shelter his assets from these judgments. “Where it can reasonably be said that in the course of former representation an attorney might have acquired information related to the subject matter of his subsequent representation, the attorney should be disqualified.” *Bicas v. Superior Court In & For Pima Cty.*, 116 Ariz. 69, 74, 567 P.2d 1198, 1203 (App. 1977) (citation omitted).

¶11 Moreover, Lalliss has not included in the record on appeal the transcript from the September 2014 hearing. *See* Arizona Rule of Civil Appellate Procedure (“ARCAP”) (c)(1)(b) (appellant contending that a judgment, finding, or conclusion, is unsupported by the evidence or is contrary to the evidence must include in the record transcripts relevant to that finding or conclusion). “In the absence of a transcript, an appellate court will presume that the record supports the trial court’s rulings.” *Kohler v. Kohler*, 211 Ariz. 106, 108 n.1, ¶ 8, 118 P.3d 621, 623 n.1 (App. 2005) (citation omitted); *see also Golleher v. Horton*, 148 Ariz. 537, 547, 715 P.2d 1225, 1235 (App. 1985) (whether an attorney has acquired confidential information from a former client “is generally a factual determination”).

¶12 Here, the family court did not make written factual findings regarding its decision to disqualify Lalliss. Nevertheless, we infer “the necessary findings and conclusions, supported by the record, to sustain the

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judgment.” *Shano*, 177 Ariz. at 557-58, 869 P.2d at 1210-11. The record reflects that Lalliss had an opportunity, through three prior representations, to obtain confidential information that could potentially be used against Justin in the post-decree proceedings. Given the record before us, the family court did not abuse its discretion in disqualifying Lalliss from representing Danielle in the post-decree proceedings. *See Golleher*, 148 Ariz. at 547-48, 715 P.2d at 1235-36 (affirming family court’s ruling disqualifying an attorney when there was “no record from which to review the evidence” supporting the family court’s decision because the appellant did not include relevant transcripts in the record on appeal). Thus, we affirm the family court’s disqualification ruling.⁴

CONCLUSION

¶13 For the foregoing reasons, we affirm the family court’s ruling disqualifying Lalliss from representing Danielle in the post-decree proceedings.



AMY M. WOOD • Clerk of the Court
FILED: AA

⁴Lalliss also argues that if the family court should not have disqualified him from representing Danielle, then we should vacate the family court’s attorney fees’ order. Having affirmed the family court’s disqualification ruling, we likewise affirm its award of attorneys’ fees against him.