

2017 WL 5171193

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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NOT FOR PUBLICATION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)(1);
Ariz. R. Civ. App. P. 28(a)(1), (f).
Court of Appeals of Arizona, Division 2.

IN RE the MARRIAGE OF Marlucia
SANTOS–POLKIEWICZ, Petitioner/Appellee,
and
Charles V. POLKIEWICZ, Respondent/Appellant.

No. 2 CA–CV 2017–0049–FC

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Filed November 8, 2017

Appeal from the Superior Court in Pima County; No.
D20043096; The Honorable Lori B. Jones, Judge Pro
Tempore. **VACATED AND REMANDED**

Attorneys and Law Firms

Marlucia Santos–Polkiewicz, Tucson, In Propria Persona

Charles V. Polkiewicz, Tucson, In Propria Persona

Judge [Eppich](#) authored the decision of the Court, in which
Presiding Judge [Vásquez](#) and Chief Judge [Eckerstrom](#)
concurred.

MEMORANDUM DECISION[EPPICH](#), Judge:

*1 ¶ 1 Charles Polkiewicz appeals from the trial court's January 18, 2017 order modifying child support. He argues the court failed to consider rental income to his former spouse, Marlucia Santos–Polkiewicz, in calculating child support.¹ For the reasons that follow, we vacate the court's child support order of January 18, 2017, and remand the case to the trial court.

Factual and Procedural Background

¶ 2 On October 27, 2016, Charles filed a motion to modify child support, arguing that the court had failed to take into account profits from two rental properties in calculating Marlucia's gross income in its March 25, 2016 child support order. On January 18, 2017, the trial court conducted a hearing on Charles's motion to modify child support. During the hearing, Charles alleged Marlucia had received undisclosed rental income and informed the court he intended to question her on the issue. The court responded by reciting several of the categories of income referred to in Arizona Child Support Guidelines 5(A). See [A.R.S. § 25–320](#) app. § 5(A). The court then stated that rental income is not considered income for child support purposes, effectively foreclosing Charles from presenting evidence on the issue. The court awarded him \$184.00 per month, based on the income Marlucia had disclosed.

Discussion

¶ 3 We review the trial court's child support award for an abuse of discretion. [Nash v. Nash](#), 232 Ariz. 473, ¶ 5, 307 P.3d 40, 43 (App. 2013). In doing so, we “accept the court's findings of fact unless they are clearly erroneous, but we draw our own legal conclusions from facts found or implied in the judgment.” *Id.* An abuse of discretion occurs when a court commits an error of law in the process of reaching a discretionary decision. [In re Marriage of Williams](#), 219 Ariz. 546, ¶ 8, 200 P.3d 1043, 1045 (App. 2008). Interpretation of the Child Support Guidelines is reviewed de novo. [Clay v. Clay](#), 208 Ariz. 200, ¶ 5, 92 P.3d 426, 428 (App. 2004).

¶ 4 In determining a child support award, a trial court considers the parents' gross income. [§ 25–320](#) app. § 5. The various forms of income set forth in Guideline 5(A) are not exclusive. Rather, gross income includes “income from any source.” [§ 25–320](#) app. § 5(A). “[B]y allowing the trial court to consider all aspects of a parent's income, the Guidelines ensure that the child support award is ‘just’ and based on the total financial resources of the parents.” [Cummings v. Cummings](#), 182 Ariz. 383, 386, 897 P.2d 685, 688 (App. 1994).

¶ 5 The Guidelines do permit the trial court a certain degree of discretion in determining child support. See, e.g., [§ 25–320](#) app. § 5(A) (allowing court to consider overtime income if historically earned from regular schedule and expected in

future); § 25–320 app. § 5(E) (permitting court to decline to attribute income to either parent); § 25–320 app. § 20 (setting forth criteria for deviating from guidelines);  *In re Marriage of Robinson & Thiel*, 201 Ariz. 328, ¶ 1, 35 P.3d 89, 91 (App. 2001) (method for valuing stock options for child support purposes within discretion of trial court). Nevertheless, we find that the trial court abused its discretion in deciding, as a matter of law, that rental income does not constitute income for child support purposes. As noted above, the categories of income in Guideline 5(A) cited by the trial court are non-exclusive. Moreover, Guideline 5(C) expressly provides that gross rental receipts, less ordinary and necessary

expenses, are to be included as gross income. § 25–320 app. § 5(C).

Disposition

*2 ¶ 6 For the foregoing reasons, we vacate the January 18, 2017 child support order and remand the matter to the trial court for further proceedings consistent with this decision.

All Citations

Not Reported in Pac. Rptr., 2017 WL 5171193

Footnotes

- 1 Charles raises a number of other issues in his opening brief. However, his arguments are not clearly developed, do not adequately cite the record and cite no legal authority. By failing to adequately brief the issues, Charles has waived them on appeal. See *Ariz. R. Civ. App. P. 13(a)(6)-(7)*;  *Davis v. Davis*, 230 Ariz. 333, ¶ 28, 284 P.3d 23, 28 (App. 2012).