The summaries of the Colorado Court of Appeals published opinions constitute no part of the opinion of the division but have been prepared by the division for the convenience of the reader. The summaries may not be cited or relied upon as they are not the official language of the division. Any discrepancy between the language in the summary and in the opinion should be resolved in favor of the language in the opinion.

SUMMARY
November 19, 2026

2026 COA 84

No. 25CA0680, *In re Marriage of Thornton* — Family Law — Dissolution; Bankruptcy — Exceptions to Discharge; Civil Procedure — Masters — Opportunity for a Hearing

In this dissolution of marriage proceeding, a division of the court of appeals addresses two matters of first impression. First, the division assesses the nondischargeability of certain debts under 11 U.S.C. § 523(a)(15). The division concludes that the wife's bankruptcy discharge did not preclude the trial court from imposing sanctions for her litigation misconduct pursuant to its inherent authority to sanction such conduct. Second, the division interprets C.R.C.P. 53, which authorizes the trial court to appoint special masters. The division follows federal case law and the advisory committee's note to Fed. R. Civ. P. 53 and holds that C.R.C.P. 53(f)(1) does not entitle a party who contests the special master's findings to a hearing. The trial court satisfies the rule by

taking written submissions from the parties and may, but need not, hear live testimony.

COLORADO COURT OF APPEALS **2026 COA 84**

Court of Appeals No. 25CA0680
El Paso County District Court No. 17DR31134
Honorable David Prince, Judge

In re the Marriage of

Lindsay Shaw Thornton n/k/a Lindsay Shaw,

Appellant and Cross-Appellee,

and

Murray Alexander Thornton,

Appellee and Cross-Appellant.

ORDER AFFIRMED

Division II
Opinion by JUDGE FOX
Johnson and Yun, JJ., concur

Announced November 19, 2026

Paige Mackey Murray, LLC, Paige Mackey Murray, Boulder, Colorado, for Appellant and Cross-Appellee

Gelman Law LLC, Weston Cole, Greenwood Village, Colorado; Alchemy Law Firm, LLC, Douglas Norberg, Denver, Colorado, for Appellee and Cross-Appellant

¶ 1 In this dissolution of marriage proceeding, Lindsay Shaw Thornton, n/k/a Lindsay Shaw (wife), appeals the trial court's order awarding Murray Alexander Thornton (husband) $328,867.04 in attorney fees and costs as sanctions for her litigation misconduct. Husband cross-appeals, contending that the trial court erroneously determined he was not entitled to a greater amount.

¶ 2 Of the many issues we address in this appeal, two are matters of first impression. First, we look at the nondischargeability of certain debts under 11 U.S.C. § 523(a)(15) and conclude that wife's bankruptcy discharge did not preclude the trial court from imposing sanctions for her litigation misconduct pursuant to its inherent authority to sanction such conduct. Second, we follow federal case law and the advisory committee's note to Fed. R. Civ. P. 53[1] and hold that, contrary to wife's contention, C.R.C.P. 53(f)(1) does not entitle a party who contests a special master's findings to a hearing. The trial court satisfies C.R.C.P. 53 by taking written submissions from the parties and may, but need not, hear live testimony. We also reject the remainder of wife's contentions, as

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[1] Federal legal authorities are not binding on state courts, though they are persuasive.

well as husband's cross-appeal. Finally, we decline to award appellate attorney fees to either party.

I. Background

¶ 3 The parties were married in 2012 and filed for dissolution in 2017. Throughout the dissolution proceedings, wife made allegations of domestic violence, claimed husband engaged in inappropriate sexual contact with their two-year-old daughter, accused husband of illegally possessing a firearm and silencer, and portrayed him as a mentally unstable drug user. Though an early parental responsibilities evaluation revealed that husband consumed marijuana and had a skewed perception of his marriage, evidence presented in the following years undermined most of wife's allegations.

¶ 4 This appeal primarily focuses on two events: wife's "hacking" of husband's email account and wife's bankruptcy discharge.

¶ 5 In 2018, wife began impermissibly accessing husband's email account. A forensic expert concluded that wife "targeted emails specifically related to information that would provide an advantage to her within future legal proceedings." Indeed, wife read and downloaded correspondence between husband and his attorney

outlining their litigation strategy. Wife provided the correspondence to her attorney and, despite her attorney's advice not to read further privileged communications, continued to access husband's email account. She maintained that she had authority to access the account based on its previous use for the parties' jointly owned business, but the trial court — accepting the special master's recommendation — rejected this argument.

¶ 6 During the dissolution proceedings, wife filed two bankruptcy cases, the first of which is relevant to this appeal. When wife filed the first case, the trial court had decided only parenting-related disputes. As a result of wife's first bankruptcy case, the trial court stayed any resolution of the marital estate and any issues pertaining to wife's "hacking" of husband's email account.

¶ 7 In 2018, the bankruptcy court granted wife an order of discharge under 11 U.S.C. § 727. Wife later argued in the trial court that her bankruptcy discharge precluded the court from holding her liable for the "hacking" incident, but the trial court disagreed and, in 2022, awarded husband $170,072 in attorney fees and costs as sanctions against wife.

¶ 8 The trial court sanctioned wife on several other occasions, ultimately awarding husband a total of $328,867.04 in attorney fees and costs.

¶ 9 On appeal, wife argues that (1) the bankruptcy court discharged of her all debts related to the "hacking" incident; (2) the trial court abused its discretion by failing to hold a hearing on the "hacking" incident; (3) the trial court erroneously adopted the special master's conclusion regarding the alleged "hacking" and, as a result, improperly awarded husband fees and costs for litigating this issue; (4) the trial court erred by awarding husband "global" fees and costs for other misconduct; and (5) the trial court should have reduced husband's final award under section 14-10-119, C.R.S. 2026.

¶ 10 In his cross-appeal, husband argues that the trial court erred by determining it (1) lacked the authority to use a "gestalt" approach in awarding fees and costs and (2) could not award him additional fees for wife's conduct outside of the dissolution proceedings. Finally, both parties request appellate attorney fees under section 14-10-119 and C.A.R. 39.1, and husband also seeks attorney fees under section 13-17-102, C.R.S. 2026. We address

and reject each argument in turn, then discuss the parties' requests for appellate fees.

II. Wife's Appeal

A. Effect of Bankruptcy Proceedings

1. Additional Background

¶ 11 In November 2018, shortly after wife filed for bankruptcy, husband filed an adversary proceeding in the bankruptcy case seeking a determination of "the nature and extent of the indebtedness and damages owed from [wife] to [husband]" and a determination that the debts owed from the "hacking" incident were nondischargeable. Husband had incurred *some* fees from litigating the "hacking" incident, but the trial court had yet to impose sanctions. Husband sought relief under § 523(a)(4), (a)(6), and (a)(15). As relevant here, § 532(a)(15) provides that property settlement debts incurred during divorce proceedings are nondischargeable.

¶ 12 After the bankruptcy court granted wife a discharge, it held a hearing in July 2019 on husband's complaint and ruled in favor of wife on all claims. But the court noted that the parties "never entered into a separation or property settlement agreement and the

[trial] court ha[d] not issued a decision on property settlement." As a result, the application of § 523(a)(15) remained an open question. At a later hearing, the bankruptcy court clarified,

> [W]ith respect to computer hacking[,] [husband] was alleging only violations of certain federal statutes as a basis for damages . . . . There was no reference to an attempt to determine the nondischargeability of sanctions that had been [issued], or would be issued, could be issued, in the context of the state divorce proceedings.

¶ 13 Husband later petitioned the trial court for sanctions related to the "hacking" incident. Wife responded that her bankruptcy discharge barred the trial court from addressing husband's request. The court disagreed and determined that any attorney fees and costs related to the "hacking" incident would be an obligation "incurred in the course of a divorce" and exempted from discharge under § 523(a)(15). The court found that wife had failed to identify "grounds for excepting any aspect of this case from the general guidance in the [bankruptcy] statute." Consequently, pursuant to its inherent authority to sanction conduct that impedes the judicial process, the court ordered wife to pay $170,072 in fees and costs to husband. The court also awarded husband additional fees on fees

for wife's "affirmative litigation misconduct in the 'hacking' incident and the litigation that followed."

¶ 14 Wife argues on appeal that bankruptcy law, issue preclusion, and claim preclusion void the trial court's fees and costs award. But we need not address wife's issue and claim preclusion contentions. Regardless of the bankruptcy court's opinion on the "hacking" issue, we conclude that the trial court retained jurisdiction to order sanctions, and the bankruptcy court's order did not divest the trial court of its inherent authority to do so.

2. Standard of Review

¶ 15 "Statutory interpretation presents a question of law that we review de novo." *In re Marriage of Vittetoe*, 2016 COA 71, ¶ 4. We adopt an interpretation that best reflects the legislative purpose, giving words and phrases "their plain and ordinary meanings." *Id.* When the statutory language is unambiguous, we apply it as written. *Id.*

3. Applicable Law and Analysis

¶ 16 Generally, a bankruptcy discharge "enjoins creditors from attempting to collect dischargeable debts as personal liabilities of the debtor." *Elrick v. Merrill*, 10 P.3d 689, 697 (Colo. App. 2000);

see § 727. But not all debts are dischargeable. *See* § 523(a). Under § 523(a)(15), a bankruptcy discharge does not relieve a debtor from debts "incurred . . . in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record." Bankruptcy courts and state trial courts share concurrent jurisdiction to determine whether certain debts are excepted from discharge under § 523(a). *See In re Marriage of Yates*, 148 P.3d 304, 315 (Colo. App. 2006). And a discharge under § 727(b) applies only to debts that arise *before* the debtor petitions for bankruptcy. *In re Hayward*, 655 B.R. 458, 462 (Bankr. W.D. Tex. 2023). Conversely, debts that arise *after* the petition has been filed are not dischargeable. *Id.*

¶ 17 Here, the court sanctioned wife for her misconduct during the divorce proceedings and resulting parallel litigation. The language in § 523(a)(15) makes clear that this debt is excepted from discharge. *See In re Bohrer*, 628 B.R. 676, 684-86 (Bankr. S.D. Cal. 2021) (concluding that attorney fees awarded in a parallel litigation, which concerned false statements the wife made about the husband's fitness as a parent, were incurred in connection with a divorce under § 523(a)(15) and were therefore nondischargeable).

Wife relies on *Garcino v. Noel*, 100 So. 3d 470, 477 (Miss. Ct. App. 2012), in arguing that a bankruptcy court's determination in an adversary proceeding binds the state court, precluding it from exercising concurrent jurisdiction. In *Garcino*, the bankruptcy court issued a final adjudication on the merits of a party's § 523(a)(15) adversary claim. *Id.* Here, the bankruptcy court never directly addressed husband's § 523(a)(15) claim but instead found it inapplicable because the divorce was not yet final. Thus, *Garcino* is distinguishable, and wife's argument is unpersuasive.

¶ 18 In any event, the trial court ordered sanctions *after* wife petitioned for bankruptcy, further exempting these fees from discharge. *See* § 727(b). And the trial court retained its inherent authority to do so irrespective of the bankruptcy court's ruling. *See Lauren Corp. v. Century Geophysical Corp.*, 953 P.2d 200, 204 (Colo. App. 1998) (discussing courts' inherent authority to award attorney fees, including when a party's misconduct has caused the wronged party to become engaged in other litigation); *see also People v. Huntzinger*, 967 P.2d 160, 162 (Colo. 1998) (concluding that criminal defendants must pay sanctions in the form of attorney fees

"whether or not that award was discharged in the bankruptcy case" because doing so "vindicate[s] the dignity of that court").

¶ 19 Because § 523(a)(15) does not exempt a state trial court's inherent authority to order sanctions incurred during divorce, we conclude that the trial court acted properly.

B. "Hacking" Incident

1. Additional Background

¶ 20 After discovering that wife accessed a confidential attorney-client email, husband requested the appointment of a forensic examiner and a special master. In May 2018, the trial court appointed Robert Kelso to conduct a forensic investigation of wife's computer. Kelso found that wife had reviewed "far more" of husband's privileged emails than she had admitted and had "performed strategic and targeted searches of [husband]'s emails to locate emails of interest." Kelso's report further disclosed that wife made copies of the communications and forwarded them to her attorney.

¶ 21 In June 2018, the trial court appointed a special master under C.R.C.P. 53 to "address all matters . . . reasonably related to [wife]'s apparent interception and use of electronic and similar data"

obtained from husband's email account. The initial special master later withdrew, and a replacement was appointed in June 2021.

¶ 22 The second special master reviewed Kelso's report and the parties' briefs before issuing his recommendation in July 2022. He found that wife had "logged in [to husband's email account] over the course of a month to specifically search for information that would provide her an unfair litigation advantage," resulting "in prolonged and expensive parallel litigation." The special master recommended that wife be ordered to "reimburse [husband's] reasonable and necessary attorney fees and costs related to this parallel investigation as a remedial sanction for her litigation misconduct."

¶ 23 Wife objected to the special master's findings, requested that the trial court consider additional evidence, and sought a hearing. The court denied wife's request for a hearing and, in September 2022, issued an order adopting "the analysis, findings, and conclusions of the special master as its own." The court then awarded husband $170,072 in attorney fees and costs.

¶ 24 Wife argues on appeal that C.R.C.P. 53(f)(1) entitled her to a hearing and that the trial court deprived her of due process by denying her request. We disagree.

2. Standard of Review

¶ 25 "We review interpretations of the Colorado Rules of Civil Procedure de novo." *In re Marriage of Conners*, 2024 CO 44, ¶ 10. We "'interpret the rules according to their commonly understood and accepted meanings,' looking to the language of the rule before relying on extrinsic aids of construction." *Id.* (citation omitted).

3. Applicable Law and Analysis

¶ 26 C.R.C.P. 53(a) authorizes trial courts to appoint special masters. C.R.C.P. 53(f)(1) provides that, "[i]n acting on a master's order, report, or recommendations, the court must give the parties notice and an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions." The trial court may, but need not, hear live testimony; rather, it satisfies C.R.C.P. 53(f)(1) by accepting written submissions from the parties. *Cf.* Fed. R. Civ. P. 53(g) advisory committee's note to 2003 amendments ("The requirement that the court must afford an opportunity to be heard can be satisfied by taking written submissions when the court acts on the report without taking live testimony."); *Medcorp, Inc. v. Pinpoint Techs., Inc.*, No. 08-cv-00867, 2010 WL 2500301, at *2 n.1

(D. Colo. June 15, 2010) (unpublished order) ("Although Rule 53(f)(1) provides an opportunity for hearing, '[t]he requirement that the court must afford an opportunity to be heard can be satisfied by taking written submissions.'" (citation omitted)); *First Tenn. Bank Nat'l Ass'n v. Serv. Foods, Inc.*, No. 15-cv-2940, 2018 WL 774522, at *1 (N.D. Ga. Feb. 7, 2018) (unpublished order) ("[T]he court may rule on [the special master's recommendations] on the pleadings and without conducting a hearing."), *vacated on other grounds*, No. 15-cv-2940, 2018 WL 3698986 (N.D. Ga. Mar. 29, 2018) (unpublished order); *Barnes v. State Farm Mut. Auto. Ins. Co.*, 2021 COA 89, ¶ 11 ("Because the Colorado Rules of Civil Procedure are patterned on the Federal Rules of Civil Procedure, 'we may also look to the federal rules and decisions for guidance.'" (citation omitted)).

¶ 27 Here, the trial court notified the parties of the special master's findings and afforded them an opportunity to respond. Wife objected in writing and attached additional evidence to her motion. The court then considered this evidence in its order adopting the special master's findings. Although the trial court declined to hold a hearing, federal case law and the advisory committee's comments to Fed. R. Civ. P. 53 persuade us that trial courts may properly

receive evidence through written submissions from the parties; there is no procedural right to a hearing. We adopt this reasoning and agree that the trial court did not deprive wife of due process.

C. Trial Court's Reliance on the Special Master's Findings

1. Additional Background

¶ 28 Based on the parties' briefing and the forensic examiner's report on the "hacking" incident, the special master found that, although the parties shared husband's business email account before filing for dissolution of marriage, wife did not have continuing authority to access it. He further rejected wife's argument that husband's failure to take privacy precautions waived attorney-client privilege. Accordingly, the special master concluded that "it was reasonable for [husband] to request and pursue this investigation in order to learn the depth and significance of [wife]'s misdeed." The trial court agreed with these determinations, noting that the dispositive question with respect to attorney fees and costs was "whether [husband]'s pursuit of the inquiry . . . was proper."

¶ 29 The trial court, "[h]aving heard the parties' arguments and examined the special master's findings and conclusions," determined that husband's response to the "hacking" proceedings

was "reasonable" and "necessary." The court directed the special master to calculate husband's attorney fees and costs incurred from litigating the "hacking" incident and later awarded husband $170,072.

¶ 30 Wife argues that by adopting the special master's findings, the trial court "misconstrued the law regarding access to marital accounts" and, therefore, erred by awarding husband his attorney fees and costs. Again, we disagree.

2. Standard of Review

¶ 31 When a special master is appointed, the trial court must accept the master's findings unless they are clearly erroneous. *P.F.P. Fam. Holdings, L.P. v. Stan Lee Media, Inc.*, 252 P.3d 1, 3 (Colo. App. 2010). On appeal, we apply the same standard and will not disturb the trial court's findings unless they are wholly unsupported by record evidence. *Id.*

¶ 32 We review a court's decision to award attorney fees and costs for an abuse of discretion. *In re Marriage of Collins*, 2023 COA 116M, ¶ 51. A court abuses its discretion if its decision is manifestly arbitrary, unreasonable, or unfair, or if it misapplies the law. *In re Marriage of Medeiros*, 2023 COA 42M, ¶ 28. "[W]hether

attorney fees are recoverable at all is a question of law, which we review de novo." *In re Estate of Fritzler*, 2017 COA 4, ¶ 24.

3. Applicable Law and Analysis

¶ 33 The trial court "shall" award attorney fees if it finds that a party brought or defended an action without "substantial justification," that the action "was interposed for delay or harassment," or that a party "unnecessarily expanded the proceeding by other improper conduct." § 13-17-102(4). "A claim or defense lacks substantial justification when it is substantially frivolous, groundless, or vexatious." *In re Marriage of Roddy*, 2014 COA 96, ¶ 34. Fee awards serve as "an important sanction . . . to punish an attorney or a party" who engages in conduct that prolongs proceedings or instigates parallel litigation. *In re Marriage of Aldrich*, 945 P.2d 1370, 1378 (Colo. 1997).

¶ 34 Here, the record supports the trial court's determination that wife "hacked" husband's email account. After filing for dissolution, husband and wife had separate business email accounts. Wife nevertheless took affirmative steps to log into husband's email account, sought and copied husband's communications with his attorney, and continued accessing the account even after her

attorney advised her to stop. To the extent wife asks us to reweigh the evidence and substitute our judgment for that of the special master or trial court, we decline to do so. *See In re Parental Responsibilities Concerning D.T.*, 2012 COA 142, ¶ 17; *In re Marriage of Nelson*, 2012 COA 205, ¶ 35.

¶ 35 Given these facts, the trial court acted well within its discretion in sanctioning wife by ordering her to pay husband's fees and costs. Wife's "hacking" of husband's email account during the dissolution proceedings — and her obtaining and distributing of privileged communications — resulted in considerable costs to husband, as it prompted the investigation of the extent of her misconduct. And we agree with the trial court that his pursuit was "reasonable" and "necessary" to uncover the scope of her access to his confidential information. The record demonstrates that wife's actions "unnecessarily expanded . . . the proceeding" under section 13-17-102(4) and that the trial court properly awarded husband his attorney fees and costs under section 13-17-102(4). *See Lyons v. Teamsters Loc. Union No. 961*, 903 P.2d 1214, 1221 (Colo. App. 1995) ("If a trial court's award of attorney fees is supported by the evidence, it will not be disturbed on review.").

D. Husband's "Global" Attorney Fees and Costs

1. Additional Background

¶ 36 Beyond accessing husband's email account, wife (1) prompted the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to investigate husband for firearm possession based on information she improperly obtained from a privileged litigation outline; (2) quoted this outline in a complaint against husband's attorney to the Office of Attorney Regulation Counsel (OARC); (3) made unfounded allegations of domestic violence and sexual impropriety against husband; and (4) filed several untimely motions for reconsideration to contest findings related to these incidents.

¶ 37 Husband requested $860,329.68 in "global" attorney fees and costs for the entire litigation. The trial court agreed that many of wife's claims lacked "substantial justification" but, after parsing husband's request and determining the amount he would not have incurred but for the four above incidents, awarded husband only $16,147 under section 13-17-102(4). The trial court, however, awarded additional amounts for other unrelated misconduct.

¶ 38 On appeal, wife asks that we vacate the award because (1) the trial court relied on unsupported factual findings; and (2) husband

failed to categorize his attorney fees, allegedly depriving her of an opportunity to adequately respond. We are not persuaded.

2. Standard of Review

¶ 39 We review the trial court's decision to award fees and costs for an abuse of discretion, applying the standard noted in Part II.C.2.

3. Applicable Law and Analysis

¶ 40 We rely on section 13-17-102(4)'s framework, which grants the trial court discretion to award attorney fees and costs if it finds that a party brought or defended an action lacking "substantial justification" or if a party unnecessarily expanded the litigation.

¶ 41 Wife asks us to reexamine the facts underlying the trial court's "global fees" order, but doing so would require us to substitute our judgment for that of the trial court — something appellate courts are not permitted to do. *See Saturn Sys., Inc. v. Militare*, 252 P.3d 516, 521 (Colo. App. 2011) ("It is not our role as a reviewing court to decide the facts . . . ."). Our analysis is therefore based solely on the record before us, which amply supports the trial court's determination that wife "interposed substantial portions of this litigation . . . for delay and harassment" and "unnecessarily expanded the proceedings by improper conduct."

¶ 42 First, it is undisputed that wife learned of husband's firearm possession by reading a wrongfully obtained and privileged litigation outline. The trial court expressly instructed her not to use the contents of the outline outside the special master proceedings, yet she cited the outline in her communications with the ATF and OARC. Moreover, she repeatedly leveraged the firearm issue against husband in parenting, child support, and spousal support proceedings. These actions show that wife used the improperly obtained information to harass husband, thereby unnecessarily expanding the proceedings. *See* § 13-17-102(4).

¶ 43 Additionally, wife presented *no* evidence supporting her allegations of domestic violence and sexual impropriety. This alone indicates that her claims were frivolous under section 13-17-102(4). *See City of Aurora v. Colo. State Eng'r*, 105 P.3d 595, 620 (Colo. 2005) (A claim is "substantially frivolous if the proponent can present no rational argument based on the evidence or law in support of that claim."). Husband also incurred significant expenses in responding to wife's untimely — and, in one instance, "groundless" — motions for reconsideration. Thus, the trial court

acted well within its discretion by awarding husband his "global" attorney fees and costs under section 13-17-102(4).

¶ 44 Turning to husband's failure to categorize his request, the trial court itself carefully parsed husband's fees and awarded him significantly less than the amount he requested. Wife has not demonstrated any resulting prejudice; we therefore decline to disturb the court's decision on this basis. *See Poudre Valley Rural Elec. Ass'n v. City of Loveland*, 807 P.2d 547, 557 (Colo. 1991) (noting that it is incumbent on the complaining party to show that any error was prejudicial).

E. Wife's Financial Resources

¶ 45 Husband invoked section 14-10-119 as an alternate basis for fees and costs. This statute provides that the trial court, "after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any [marriage dissolution] proceeding . . . and for attorneys fees." § 14-10-119. However, the trial court found that it lacked sufficient information "to conclude that a significant imbalance exists between the accessible financial

resources of the two sides" and therefore declined to award fees and costs under section 14-10-119.

¶ 46 Wife challenges this conclusion on appeal. But she merely directs us to the trial court's order and provides no record citations to support her position that the court's "refusal to offset any award [against her] . . . under 14-10-119 was arbitrary, unreasonable, and unfair." Instead, she cites a transcript in which husband testified that his family was covering his living and legal expenses because he was temporarily unable to work. This, in our view, actually undermines wife's argument that the court should have offset any award against her. *See Aldrich*, 945 P.2d at 1377 (noting that the purpose of section 14-10-119 is to ensure that "neither party suffers undue economic hardship as a result of the proceedings").

¶ 47 Regardless, C.A.R. 28(e) requires parties to "clear[ly] and readily," *id.*, identify record citations that support their position, and "[t]he appellate rules are not mere technicalities," *Cikraji v. Snowberger*, 2015 COA 66, ¶ 10. Because "we will not comb the record for facts" to which wife did not refer us in her brief, we decline to disturb the trial court's decision. *Id.*

III. Husband's Cross-Appeal

A. "Gestalt" Approach to Fees and Costs

1. Additional Background

¶ 48 As noted above, husband sought $860,329.68 in "global" attorney fees and costs. He advocated for a "gestalt" approach, urging the trial court to examine the case as a whole, determine what percentage of the case fell within the relevant fees and costs framework, and apportion liability on this holistic basis.

¶ 49 The court determined that it lacked authority to undertake such an analysis under section 13-17-102 because, notwithstanding wife's misconduct, she "also brought legitimate issues to the court for resolution and asserted legitimate positions through legitimate filings/arguments." Noting that Colorado law "contemplate[s] a fairly granular approach" to section 13-17-102 when the "entire action" does not fall within its definition, the court determined that an "isolated analysis of individual tactics" was necessary.

¶ 50 The trial court awarded husband $16,147 for the four incidents discussed in Part II.D; $103,266.48 for fees on fees related to the "hacking" incident; and $5,740 in compensatory

costs. These awards — totaling $125,153.48 — reflect the attorney fees and costs husband would not have occurred but for wife's misconduct.

¶ 51 Husband cross-appeals, asserting that the trial court erred by concluding that it lacked authority to employ a "gestalt" approach. We discern no error.

2. Standard of Review

¶ 52 We review a trial court's ruling under section 13-17-102 for an abuse of discretion, applying the standard noted in Part II.C.2. "[A]ppellate courts must give substantial deference to these determinations" because the trial court has a superior understanding of the litigation. *Payan v. Nash Finch Co.*, 2012 COA 135M, ¶ 35 (quoting *Fox v. Vice*, 563 U.S. 826, 838 (2011)).

3. Applicable Law and Analysis

¶ 53 Section 13-17-102(4) again applies. Courts additionally possess the inherent authority to "fashion an appropriate sanction for conduct which abuses the judicial process." *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 107 (2017) (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45 (1991)). One permissible sanction is the assessment of fees and costs, but the complaining

party may recover "'only the portion of his fees that he would not have paid but for' the misconduct." *Id.* at 109 (quoting *Fox*, 563 U.S. at 836). The "but for" standard allows a trial court to shift *all* fees only when "all legal expenses in the suit" are caused solely by one party's "fraudulent and brazenly unethical efforts." *Id.* at 110 (quoting *Chambers*, 501 U.S. at 58).

¶ 54 While a trial court may "take into account [its] overall sense of a suit" when awarding fees and costs, *Payan*, ¶ 35 (quoting *Fox*, 563 U.S. at 838), husband cites no case law — and we are aware of none — requiring a court to use a "gestalt" approach. Instead, the trial court retains discretion to award fees and costs under section 13-17-102 as it deems appropriate. *See In re Marriage of Tognoni*, 313 P.3d 655, 660-61 (Colo. App. 2011). And *Goodyear* clarifies that if a trial court opts to order additional sanctions under its inherent power — as husband urges in his brief — it must establish a causal link "between the litigant's misbehavior and legal fees paid by the opposing party." 581 U.S. at 108. Because wife raised legitimate issues during the divorce proceedings, husband is not entitled to recover every expense incurred. *See id.* Accordingly, we

conclude that the trial did not abuse its discretion by employing a "but for" analysis.

B. Wife's Misconduct Outside the Dissolution Proceedings

1. Additional Background

¶ 55 Next, husband argues that the trial court should have imposed additional sanctions for wife's misconduct occurring "outside" the dissolution proceedings. He points to wife's bankruptcy and OARC filings, ATF complaint, and civil protection matters. To the extent that discrete issues within these actions affected the dissolution proceeding, the trial court indeed awarded husband his fees and costs. In doing so, the court found that it could only "assess fees/costs incurred *in this lawsuit* directly attributable to the vexatious assertions made *in this lawsuit*."

¶ 56 On appeal, husband relies on the trial court's "inherent power" to remedy abusive litigation practices to argue that he is entitled to additional fees and costs for wife's "outside" conduct. We conclude that the trial court acted within its discretion by limiting the award.

2. Standard of Review

¶ 57 We review the trial court's decision for an abuse of discretion, applying the standard discussed in Part II.C.2.

3. Applicable Law and Analysis

¶ 58 Husband is correct that, under section 13-17-102, the court may award attorney fees incurred in a separate civil action commenced in Colorado. *Compare Roberts v. Bruce*, 2018 CO 58, ¶¶ 17-20 ("[A]n award of attorney's fees pursuant to section 13-17-102 is limited to conduct occurring in Colorado courts."), *with In re Marriage of Mockelmann*, 121 P.3d 335, 336-37 (Colo. App. 2005) ("[I]nterspousal legal claims should not be joined into the otherwise equitable dissolution proceedings . . . ."). The trial court did precisely that when it assessed husband's fees for wife's bankruptcy and OARC filings, ATF complaint, and civil protection matters — insomuch as these events lacked substantial justification and affected the divorce proceedings. Husband's argument, then, is simply that he is entitled to *more* than what the trial court awarded him. But he fails to show that wife engaged in additional misconduct beyond that identified by the trial court, thus precluding a larger award under section 13-17-102.

IV. Appellate Attorney Fees

¶ 59 Finally, both parties request appellate fees under section 14-10-119 and C.A.R. 39.1. Husband also requests appellate fees

under section 13-17-102 for wife's "stubbornly litigious, groundless, frivolous, and vexatious conduct."

¶ 60 For overviews of section 13-17-102 and section 14-10-119, *see* Part II.C.3 and Part II.E.3, respectively. C.A.R. 39.1 provides an additional avenue for appellate fees and says that, within our discretion, we "may determine entitlement to and the amount of an award of attorney fees for the appeal." However, "the principal brief of the party claiming attorney fees . . . must explain the legal and factual basis" for this award. *Id.*

¶ 61 We first deny both parties' requests under C.A.R. 39.1 because neither articulates a legal or factual basis for an award under the rule.

¶ 62 With respect to the parties' requests under section 14-10-119, which considers the parties' financial resources, as we have already noted, *see* Part II.E, that wife failed to support her claim. Similarly, husband has not shown that declining to offset his appellate fees would cause him undue financial hardship. The purpose of section 14-10-119 is to equalize the parties' financial positions, *Aldrich*, 945 P.2d at 1377, and the record shows that both parties have adequate

resources through employment and family support. We therefore deny both requests.

¶ 63 Finally, we decline to award husband appellate fees under section 13-17-102. True, "[w]hen a party, pursuant to a statute, has been appropriately awarded attorney fees for a stage of the proceeding prior to the appeal, that party will be entitled to reasonable attorney fees for defending the appeal." *In re Marriage of Turilli*, 2021 COA 151, ¶ 45 (citation omitted). But under section 13-17-102, the *appeal itself* must be substantially frivolous, groundless, or vexatious. *In re Estate of Shimizu*, 2016 COA 163, ¶ 43. Wife's appeal does not fall within this purview; she raised legitimate issues — some of which were matters of first impression for this court. Thus, husband is not entitled to his appellate fees under section 13-17-102.

V. Disposition

¶ 64 The order is affirmed.

JUDGE JOHNSON and JUDGE YUN concur.