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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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 Marriage of:

BILLY G. BICKLE, *Petitioner/Appellee*,

v.

TWILA M. BICKLE, *Respondent/Appellant*.

No. 1 CA-CV 15-0403 FC
FILED 5-26-2016

Appeal from the Superior Court in Maricopa County
No. FN2014-090971
The Honorable Timothy J. Ryan, Judge

AFFIRMED IN PART, VACATED IN PART, AND REMANDED

COUNSEL

Larson Law Offices, PLLC, Mesa
By Robert L. Larson
Counsel for Respondent/Appellant

MEMORANDUM DECISION

Presiding Judge Kent E. Cattani delivered the decision of the Court, in which Judge Samuel A. Thumma and Judge Randall M. Howe joined.

C A T T A N I, Judge:

¶1 Twila M. Bickle ("Wife") appeals from the decree ending her marriage to Billy G. Bickle ("Husband"). For reasons that follow, we affirm the superior court's decision regarding division of Husband's and Wife's assets and liabilities, except to the extent it provides an incorrect date for determining the conclusion of the marital community. We affirm the superior court's rulings denying Wife spousal maintenance and attorney's fees.

FACTS AND PROCEDURAL BACKGROUND

¶2 On March 7, 2014, Husband filed a petition for dissolution of marriage, and he served Wife with the petition on March 12. After conducting a hearing in 2015, the superior court entered a decree dissolving the marriage and allocating Husband and Wife's community property and debts.

¶3 Husband and Wife had already divided their personal property, and the court affirmed that division. The court ordered that both parties would be responsible for specific medical bills, but rejected Wife's claim that other debts should be divided equally. Finally, the court denied Wife's request for spousal maintenance and for attorney's fees.

¶4 Wife timely appealed, and we have jurisdiction under Arizona Revised Statutes ("A.R.S.") § 12-2101(A)(1).[1]

DISCUSSION

¶5 Wife challenges the court's allocation of property and debts and the denial of her requests for spousal maintenance and attorney's fees. Husband did not file an answering brief. Although we could treat his failure to file a brief as a confession of error, *see Savord v. Morton*, 235 Ariz.

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[1] Absent material revisions after the relevant date, we cite a statute's current version.

256, 259, ¶ 9 (App. 2014), in an exercise of our discretion, we address the merits of Wife's claims. *See Nydam v. Crawford*, 181 Ariz. 101, 101 (App. 1994).

I. Division of Property and Debts.

¶6 In a dissolution proceeding, the court must "assign each spouse's sole and separate property to such spouse" and divide the community property and debt equitably. A.R.S. § 25-318(A). We review the division of property for an abuse of discretion. *Valento v. Valento*, 225 Ariz. 477, 481, ¶ 11 (App. 2010). We will uphold an apportionment of property unless the record is "devoid of competent evidence to support the [superior court's] decision." *Platt v. Platt*, 17 Ariz. App. 458, 459 (App. 1972). We view the evidence in the light most favorable to upholding the court's findings. *See Gutierrez v. Gutierrez*, 193 Ariz. 343, 346, ¶ 5 (App. 1998).

A. Personal Property.

¶7 Wife argues that the court failed to divide the community property and debts equitably and failed to assign her sole and separate personal property to her. The record does not support that assertion.

¶8 Husband's brother owned the mobile home that the parties lived in during their marriage. After Husband's brother obtained an order of protection against Wife, she was not allowed to re-enter the home. While the order of protection was in place, Wife obtained two civil standby orders to retrieve her personal property. Husband testified that Wife came to the home twice with family and friends, each time for a "couple hours," and retrieved all of her personal property. Wife acknowledged that she went to the home twice with her sister, brother-in-law, and a trailer, but she testified that she was unable to retrieve all of her property.

¶9 We defer to the superior court's determination regarding the witnesses' credibility and to the weight given to conflicting evidence. *See Gutierrez*, 193 Ariz. at 347, ¶ 13; *see also* Ariz. R. Fam. Law P. 82(A). Here, the court considered the evidence and concluded that "Wife ha[d] been afforded sufficient opportunity to retrieve her personal property from the former marital residence" and "the personal property has been divided." The record supports the superior court's resolution of conflicting evidence, and Wife has not established that the court abused its discretion regarding the allocation of personal property.

B. Community Debt.

¶10 Wife argues that the court "fail[ed] to apportion community debts substantially equally." In her pretrial statement, Wife claimed the parties had "incurred significant community debts, primarily for Wife's medical expenses." She further contended that she was forced to pay for many community debts on her own, and that she should be reimbursed by Husband for half of such payments.

¶11 The evidence that Wife submitted at trial regarding debts was incomplete and confusing. Some evidence related to expenses incurred after service of the petition, even though such expenses were her sole responsibility. *See* A.R.S. §§ 25-211(A)(2), -213(B). Although Wife also submitted evidence of community debts paid before service of the petition, she did not establish that she paid those debts out of her sole and separate property. *See Cooper v. Cooper*, 130 Ariz. 257, 259–60 (1981) (holding that the burden is on the party claiming that the funds were separate property to prove that fact by "clear and satisfactory evidence"). Finally, as to evidence of an outstanding $16,273.86 medical bill for services performed before service of the petition, Wife testified that "about $15,000" of the debt was paid by a third party.

¶12 The court found that both parties were responsible for a portion of the claimed medical debt, but that Wife was responsible for the remainder of the debt:

> Wife claimed a number of debts and liabilities to be a community debt. The Court finds insufficient evidence that the alleged debts were community debts, or that the debts were actually incurred. Some of the claimed debts were incurred after the termination date of the community. Some of the debts were incurred due to [Wife's] choosing to use an alias when obtaining medical care, thereby creating a basis for denial of insurance coverage. The Court finds it appropriate that Wife bear those expenses as her own.

¶13 In reviewing the evidence—including conflicting evidence regarding bills "not covered by insurance as a result of Wife's use of an alias,"—we "resolve any inconsistencies in the light most favorable to supporting the trial court's decision." *Tester v. Tester*, 123 Ariz. 41, 43 (App. 1979). Based on the record before us, Wife has not established error in the court's division of the debt. *Cf. Sommerfield v. Sommerfield*, 121 Ariz. 575,

578 (1979) ("We can state with certainty only that the evidence . . . is incomplete, confusing, and contradictory.").

¶14 Although we affirm the superior court's determination regarding Husband's and Wife's relative responsibilities for community debt, the court's order specifies an incorrect cutoff date for expenses incurred by the marital community. The parties were married on September 28, 2005, and Husband served Wife with the petition for dissolution on March 12, 2014. The court nevertheless ordered that:

> Husband shall be responsible for, indemnify and hold Wife harmless from the following debts and financial obligations:
>
> . . .
>
> C. All medical bills incurred by either party, not covered by insurance incurred between March 10, 2008 and *March 10, 2014*. This does not include bills not covered by insurance as a result of Wife using an alias and causing an exclusion of coverage.

(Emphasis added.) The court entered the same order as to Wife's obligations.

¶15 The marital community existed between the date of the marriage and the date Wife was served with the petition for dissolution. *See* A.R.S. §§ 25-211(A)(2), -213(B). Thus, the correct cutoff date for ending the marital community was March 12, 2014, and the March 10, 2014 cutoff date in the decree is erroneous. Because Wife proffered a bill for services rendered on March 12, 2014, the error was not harmless. Accordingly, we vacate that portion of the decree addressing debts and remand for the superior court to enter an amended decree reflecting the complete duration of the marital community.

II. Spousal Maintenance.

¶16 Wife also challenges the failure of the court to award her spousal maintenance. The court has "substantial discretion" in making determinations regarding maintenance. *See Rainwater v. Rainwater*, 177 Ariz. 500, 502 (App. 1993). "An award of spousal maintenance will not be disturbed if there is any reasonable evidence to support the judgment of the trial court." *Thomas v. Thomas*, 142 Ariz. 386, 390 (App. 1984).

¶17 In addressing a request for spousal maintenance, the superior court must first determine if evidence satisfies one of the four factors set forth in A.R.S. § 25-319(A). Here, the court reasonably found that Wife lacked "sufficient property to provide for her reasonable needs," which satisfies the factor set forth in subsection (A)(1).

¶18 Second, the court must determine the duration and amount of maintenance by considering the factors set forth in § 25-319(B). *See Rainwater*, 177 Ariz. at 502. Here, the court made an express finding regarding the fourth factor under § 25-319(B), which is "[t]he ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance." The court found: "Husband is currently unemployed, elderly, and relies on material assistance from his family members for his basic means of support." Again, the record supports that finding.

¶19 Although the court's ruling only referenced the factors in § 25-319(A), the court's findings reflect that it also considered the factors set forth in § 25-319(B). And because neither party requested findings of fact and conclusions of law under Arizona Rule of Family Law Procedure 82(A), we presume that the court found every fact necessary to support its decision denying Wife's request for maintenance.[2] *See Neal v. Neal*, 116 Ariz. 590, 592 (1977) (holding that when neither party requests findings of fact, an appellate court is "constrained by the presumption" the superior court found every fact necessary to support the judgment). On this record, Wife has not established that the court abused its discretion by denying her request for spousal maintenance.

III. Attorney's Fees.

¶20 Finally, Wife argues the superior court abused its discretion by refusing to award her attorney's fees and costs. Pursuant to A.R.S. § 25-324, the superior court may award attorney's fees and costs after considering "the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings." This court will not disturb the superior court's decision regarding fees and costs

[2] Wife also argues that "[t]he court should have based Husband's income on his earning capacity and failed to do so." At trial, however, she admitted that over the past four years Husband did not have a "solid work history." Husband's testimony confirms this.

absent an abuse of discretion. *See MacMillan v. Schwartz*, 226 Ariz. 584, 592, ¶ 36 (App. 2011).

¶21 Here, the court found it appropriate to have each side bear its own attorney's fees and costs. The court reasoned that "neither party can afford their own Attorney Fees and Costs, let alone being shouldered with the opposing party's Attorney Fees and Costs." The record supports this finding.

¶22 Wife requests an award of attorney's fees on appeal pursuant to A.R.S. § 25-324. In an exercise of our discretion, we deny her request.

CONCLUSION

¶23 For the foregoing reasons, we affirm the superior court's decision except to the extent it uses an incorrect date for the conclusion of the marital community. On remand, the superior court should revise the decree to reflect that the marital community terminated on March 12, 2014.

Ruth A. Willingham · Clerk of the Court
FILED: ama