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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

IAN A. HAUFF, *Petitioner/Appellant*,

v.

SUZANNE C. HAUFF, *Respondent/Appellee*.

No. 1 CA-CV 15-0605 FC
FILED 1-31-2017

Appeal from the Superior Court in Maricopa County
No. FC2009-053087
The Honorable Jennifer Ryan-Touhill, Judge

AFFIRMED

COUNSEL

Berkshire Law Office, PLLC, Phoenix
By Keith Berkshire and Megan Lankford
Counsel for Petitioner/Appellant

Cavanagh Law Firm, Phoenix
Helen R. Davis
Counsel for Respondent/Appellee

HAUFF v. HAUFF
Decision of the Court

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Paul J. McMurdie joined.

T H O M P S O N, Judge:

¶1 Ian A. Hauff (husband) appeals from the family court's ruling increasing his spousal maintenance obligation to Suzanne C. Hauff (wife).¹ Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 The parties were married in 1984. Husband filed a petition for dissolution of marriage in 2009. In that petition, husband asserted wife "was entitled to and in need of" a spousal maintenance award. Wife was a homemaker during their long marriage and had not held a job in 18 or 19 years. Wife was awarded \$2,300 per month in their June 2010 consent decree.

¶3 In February 2012, husband filed a motion to eliminate spousal support on the basis that he was unemployed. In response, wife filed a motion asking for the maintenance award to be affirmed and requesting that husband be held in contempt for failure to timely pay family support and spousal maintenance. After a hearing, spousal maintenance was reduced from \$2,300 to \$1,300; husband was found to be in contempt of court and was remanded to the sheriff's custody with a spousal maintenance purge amount of \$5,000, which husband paid. When husband later failed to bring current his family support payments, the family court issued an arrest warrant with a cash purge amount of \$50,000, which husband then paid.

¹ Wife did not file an answering brief, according to a filing in this court, due to "financial challenges."

HAUFF v. HAUFF
Decision of the Court

¶4 Husband filed a second motion to modify spousal support in April 2014.² In his verified motion he asserted he was too disabled to work and again requested that wife's spousal maintenance be terminated. Wife filed her response and a motion for a contempt finding against husband for non-payment of family support arrearages and unreimbursed expenses. Shortly thereafter wife filed another motion for contempt asserting husband's failure to abide by the court's discovery orders. And, in November 2014, before the hearing on husband's request to modify support, wife filed a request to return to the original spousal maintenance amount of \$2,300; she also requested an increase in child support.³

¶5 In March 2015, after filings and arguments, the family court found husband in contempt of court for failure to comply with an order to provide financial discovery to wife. In particular, the court cited husband's insufficient production of information related to his recent inheritance and his failure to produce records related to his compensation and expenses as to Lyon's Luxury Homes, husband's company. The court held husband failed to produce tax records or information regarding debts, or documents related to recent expenditures, including college tuition for his daughter, the lease of a BMW, and some plastic surgery. It further found husband produced incomplete bank records, failed to produce documents related to either his recent lawsuit settlement or his TD Ameritrade account. The court found husband not credible and found he "is working and is capable of work based on his deliberate failure to provide minimal records from Lyon's Luxury Homes [sic]." The order stated husband was "prohibited from asserting any health issues as a basis for any modification in his spousal maintenance order." The court ordered husband to pay wife \$15,000 in legal fees.

¶6 An evidentiary hearing was held, shortly thereafter, on the competing requests for modification of spousal maintenance in April 2015. The family court made specific mention of the prior month's contempt

² Husband's mother died in April 2014. According to husband, prior to her death, he received a substantial "loan" or an initial draft on his inheritance in the amount of \$1,295,000 (Canadian).

³ The parties have two children in common, including one minor son. Child support and other expenses were ordered against husband. The family court here did not address any modification of child support, rather it referred that issue to a IV-D court. The children have since reached majority.

HAUFF v. HAUFF
Decision of the Court

findings for the failure to produce financial records. The family court took note of the exhibits, case notes, as well as the credibility of the witnesses. Following the hearing, the family court reinstated wife's original monthly spousal maintenance award of \$2,300 and denied husband's request for elimination of the support. The court, in its minute entry, referenced husband's statement that he needed a "break" from the spousal maintenance in order to "get back on his feet." The family court ordered spousal maintenance to be increased to \$2,300.

¶7 The family court additionally ordered husband to pay back support and unreimbursed expenses in excess of \$25,000 within approximately six weeks. It ordered each party to bear their own attorneys' fees.⁴ Husband filed a motion for reconsideration and a motion for a new trial, both of which were denied. This appeal followed.

DISCUSSION

¶8 On appeal, we review the family court's grant or denial of a request for modification of spousal maintenance for an abuse of discretion. *See Nace v. Nace*, 107 Ariz. 411, 413, 489 P.2d 48, 50 (1971). We view the evidence in the family court in the light most favorable to sustaining the ruling, and we will affirm if there is any reasonable evidence to support it. *See Thomas v. Thomas*, 142 Ariz. 386, 390, 690 P.2d 105, 109 (App. 1984). The family court is the best judge of the credibility of the witnesses and the weight of the evidence. *Goats v. A.J. Bayless Mkts., Inc.*, 14 Ariz. App. 166, 169, 481 P.2d 536, 539 (1971).

¶9 On appeal, husband asserts:

- (1) the family court erred in failing to make specific findings on the record regarding the mathematical justification for the spousal support modification; and
- (2) the family court erred in finding wife met her burden of proof for an increase in the spousal maintenance award because she failed to prove husband's income had actually increased or should have been attributed as increased.

¶10 Husband first asserts the court failed to make specific financial findings to support the return of the spousal maintenance award from \$1,300 to the \$2,300 set out in the consent decree. He asserts, citing

⁴ The family court denied wife's motion for reconsideration of an attorneys' fees award.

HAUFF v. HAUFF
Decision of the Court

Elliott v. Elliott, 165 Ariz. 128, 796 P.2d 930 (App. 1990) and *Reed v. Reed*, 154 Ariz. 101, 740 P.2d 963 (App. 1987) that a failure to show the mathematical calculations supporting the modification is an abuse of discretion and requires reversal. We disagree.

¶11 The family court was aware that husband was held in contempt, the prior month, for failing to make a full and fair financial disclosure. That failure included, among other things, not providing tax returns, complete bank records, or inheritance information. In that proceeding husband was determined to be not credible as to his income or his ability to work. He made no additional disclosures to wife before the spousal maintenance hearing.

¶12 At the spousal maintenance hearing, the family court heard evidence from husband that he inherited nearly \$1.3 million dollars in 2014, an additional \$45,000 after that, and that he was due to receive additional inheritance of approximately \$60,000.⁵ He admitted he was living on savings from the inheritance. Husband claimed most of the inheritance was in an inaccessible trust, however stated at one point he was unsure if he could take the money back out of the trust he had formed. Husband admitted having two real properties in development, which were purchased by the trust.

¶13 During cross-examination, on the limited bank records wife had, husband admitted several deposits to his checking account from the trust between August and September 2014. He asserted that the deposits, each ranging from \$1,084 to \$1,350, were reimbursements from the trust for property development expenses. Husband admitted he had a TD Ameritrade account which had increased in value from \$750,603 in 2014 to \$963,000 at the time of the hearing in 2015. He further admitted he had not disclosed to wife a recent lawsuit settlement of \$43,887 or that he had just sold a house in Texas for \$163,000.

¶14 The amount and duration of spousal maintenance is determined pursuant to Arizona Revised Statutes (A.R.S.) § 25-319(B) (Supp. 2016). The family court must consider thirteen factors, including the

⁵ Wife asserted below that husband's inheritance was substantially larger than what he admitted at the hearing. For example, there was evidence of over two million dollars deposited into husband's accounts in or around May 2014. Husband attributed that two million dollars to taking one million dollars out, after depositing it, and then re-depositing it, in order to get a better interest rate.

HAUFF v. HAUFF
Decision of the Court

standard of living during the marriage, the duration of the marriage, each spouse's age, employment history and ability to work, the financial abilities and resources of each spouse. *See id.* The spousal maintenance statute does not require specific financial findings. Nor does it require that the payor spouse have an actual income; rather, the statute requires that the payor have sufficient financial resources. A.R.S. § 25-319(B)(4)-(5). Any modification of maintenance is controlled by statute. A.R.S. § 25-327 (Supp. 2016). Spousal maintenance may be modified or terminated only on a showing of changed circumstances that are substantial and continuing. A.R.S. § 25-317(A) (Supp. 2016).

¶15 Here the family court went through the A.R.S. § 25-319(B) factors on the record. It determined that the original reasons for the monthly \$2,300 obligation remained and that the "only reason" the amount had been decreased in 2012 was due to husband's unemployment. The March 2015 contempt ruling held husband was actually working, despite his claim otherwise. The family court in determining spousal maintenance then found, given his inheritance, no financial obstacle existed to the payment of maintenance as husband had "sufficient resources from which he may pay a maintenance obligation; additionally, [husband] utilizes his large financial resources to reinvest in other growth opportunities, including real estate."

¶16 Husband's petition for dissolution said wife deserved and needed spousal maintenance. There was no reason for the initial reduction in support, other than husband's unemployment. Then, as husband admitted, he inherited at least \$1,300,000. He admitted that he lived off the inheritance and was able to draw checks off of the trust.

¶17 For these reasons, it was reasonable for the family court to conclude husband's financial situation substantially changed on an ongoing basis when he inherited a large sum of money. That conclusion is supportable on the evidence in the record. Neither *Elliott* nor *Reed* are determinative here. In each of those cases the appellate court found the family court had not shown sufficient numerical bases, as to income and expense changes, to support an increase in child support or spousal maintenance. Not only were those more typical cases involving changes in earnings and expenses, but sufficient numerical evidence does exist in this

HAUFF v. HAUFF
Decision of the Court

record to support the conclusion that husband has sufficient resources to support a return to the original spousal maintenance award.⁶

¶18 Further, husband cannot withhold financial information from the court and then complain that financial findings needed to be made. We are not persuaded by husband's assertion that he had planned to ask for specific findings related to income in relation to the child support hearing he anticipated having at the same time. It was clear, before testimony started, that the child support determination would not be held that day. And husband did not request specific findings pursuant to Rule 82, Arizona Rule of Family Law Procedure.

¶19 Finally, sufficient information exists in the record on appeal to support the family court's determination that wife met her burden of proof to return the spousal maintenance obligation to \$2,300. Wife testified that she was unemployed and financially "upside down" each month. She testified she owed members of her family approximately \$107,000, which she had borrowed to meet her expenses. To this end, she submitted a new financial affidavit. The court, in going through its A.R.S. § 25-319 analysis, determined that there were no other changed or disputed factors from the ones discussed in the original consent decree.

CONCLUSION

¶20 For these reasons, the family court is affirmed.



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

⁶ There were no issues raised as to expenses and cost of living.