

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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In re the Marriage of:

JAMES L. ANDERSON, *Petitioner/Appellant*,

*v.*

JUDITH J. HAMILTON, *Respondent/Appellee*.

No. 1 CA-CV 16-0237 FC  
FILED 3-23-2017

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Appeal from the Superior Court in Yavapai County  
No. P1300DO201500234  
The Honorable Joseph P. Goldstein, Judge *Pro Tempore*

**AFFIRMED**

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COUNSEL

Law Office of V.A. McNeice, Prescott  
By Valarie A. McNeice  
*Counsel for Petitioner/Appellant*

Law Office of Daniel J. DeRienzo, Prescott Valley  
By Daniel J. DeRienzo  
*Counsel for Respondent/Appellee*

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**MEMORANDUM DECISION**

Judge James P. Beene delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Margaret H. Downie joined.

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**B E E N E**, Judge:

¶1 Petitioner/Appellant James L. Anderson (“Husband”) appeals from the superior court’s dissolution decree, challenging the award of spousal maintenance to Respondent/Appellee Judith J. Hamilton (“Wife”). For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 Husband and Wife divorced in February 2016, after nineteen years of marriage. Wife was seventy-three years old at the time of trial and had not been able to find employment. She asked the superior court to award her spousal maintenance of \$1,200 per month for the remainder of her life, and offered evidence that her combined monthly pension and Social Security income was \$1,762, whereas her reasonable expenses were \$2,669. Husband disputed that Wife qualified for an award of spousal maintenance. The court awarded Wife spousal maintenance of \$1,100 per month until her death or remarriage.

¶3 Husband timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (“A.R.S.”) section 12-2101(A)(1) (2017).<sup>1</sup>

**ISSUES**

¶4 Husband challenges the superior court’s ruling that Wife is entitled to an award of spousal maintenance, as well as the amount and duration of the award.

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<sup>1</sup> We cite the current version of applicable statutes unless revisions material to this decision have occurred since the relevant events.

## DISCUSSION

### I. Spousal Maintenance

¶5 This Court reviews the superior court's award of spousal maintenance for an abuse of discretion. *Leathers v. Leathers*, 216 Ariz. 374, 376, ¶ 9 (App. 2007). We view the evidence in the light most favorable to sustaining the award and will affirm if there is any reasonable evidence to support it. *Id.*

¶6 Arizona law provides that a court may award spousal maintenance when any one of four statutory factors is present:

- (1) the spouse seeking maintenance lacks sufficient property, including property apportioned to the spouse in the dissolution, to provide for his or her reasonable needs;
- (2) the spouse seeking maintenance is unable to be self-sufficient through appropriate employment;
- (3) the spouse seeking maintenance contributed to the educational opportunities of the other spouse; or
- (4) the parties' marriage was of long duration and the spouse seeking maintenance is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.

A.R.S. § 25-319(A) (2017).

¶7 The superior court found that Wife qualified for an award of spousal maintenance because (1) she lacks sufficient property to provide for her reasonable needs and (2) the parties' marriage was of long duration and Wife is of an age that may preclude the possibility of gaining adequate employment. Husband disputes only that Wife lacks sufficient income to provide for her reasonable needs, admitting that the marriage was one of long duration and not challenging the court's ruling that Wife's age likely precludes her from obtaining adequate employment. The evidence supports the court's conclusion that Wife lacks sufficient property to provide for her reasonable needs, as Wife's expenses exceed her combined pension and Social Security income by \$907, and the marital property the court awarded her had little net value. Because the court only needs to find

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one of the statutory factors to grant spousal maintenance, *Elliott v. Elliott*, 165 Ariz. 128, 136 (App. 1990), and the evidence supports its findings on two of the factors, we find no error in the court's determination that Wife was eligible for spousal maintenance.

¶8 We turn, then, to Husband's argument that the superior court abused its discretion by awarding Wife spousal maintenance of \$1,100 per month until her death or remarriage. Once the court determines that a party is entitled to an award of spousal maintenance, it must analyze the factors set forth in A.R.S. § 25-319(B) to decide the amount and duration of the award. *Rainwater v. Rainwater*, 177 Ariz. 500, 502 (App. 1993). Among the factors the court must consider is the ability of the spouse from whom maintenance is sought to meet his or her needs while also meeting the needs of the spouse seeking maintenance. A.R.S. § 25-319(B)(4). Husband asserts the court abused its discretion by awarding an amount of spousal maintenance to Wife that allows her greater independence while diminishing his ability to be self-sufficient.

¶9 At the time of trial, Husband had been incarcerated for eight-and-a-half years and expected to remain in prison for another year. During his incarceration, he received monthly pension income of \$2,589 and had expenses of \$82-92 per month. He testified that for the year prior to trial, he had paid the mortgage for the marital home (which the court awarded to Wife as her separate property) and saved approximately \$1,000 per month. Under these circumstances, the court's award of \$1,100 per month in spousal maintenance did not diminish Husband's ability to be self-sufficient, and we find no abuse of discretion.

¶10 Nevertheless, Husband asserts that after the parties' pension income is divided as ordered by the superior court in the dissolution decree, his monthly income will exceed Wife's by only \$227, rendering the spousal maintenance award inequitable. After division of the parties' respective pension incomes by Qualified Domestic Relations Order, Wife will receive pension income of approximately \$842 per month in addition to her Social Security income for a total of approximately \$2,062. Husband will receive approximately \$2,289 per month from the parties' pensions. Although the difference between these amounts is small, at the time of trial, Husband was incarcerated and had expenses of only \$82-92 per month. Accordingly, he

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was entirely able to meet his needs while also meeting Wife's financial needs through spousal maintenance.<sup>2</sup>

**II. Attorneys' Fees**

¶11 Wife requests attorneys' fees on appeal pursuant to A.R.S. § 12-349(A)(1) (2017) on the basis that the appeal was "without substantial justification." "[W]ithout substantial justification' means that the claim or defense is groundless and is not made in good faith." A.R.S. § 12-349(F). The elements "must be proven by a preponderance of the evidence and 'the absence of even one element render[s] the statute inapplicable.'" *Cypress on Sunland Homeowners Ass'n v. Orlandini*, 227 Ariz. 288, 301, ¶ 49 (App. 2011) (citation omitted) (addressing materially identical former version of § 12-349). Although we affirm the superior court's award of spousal maintenance, we cannot say that the record and briefs on appeal support an award of attorneys' fees pursuant to A.R.S. § 12-349(A)(1) and therefore deny the request.

¶12 We also deny Wife's request for an award of attorneys' fees as a sanction for filing a frivolous appeal pursuant to Arizona Rule of Civil Appellate Procedure ("ARCAP") 25. *See Hoffman v. Greenberg*, 159 Ariz. 377, 380 (App. 1988) ("The line between an appeal which has no merit and one which is frivolous is very fine, and we exercise our power to punish sparingly.").

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<sup>2</sup> To the extent that Husband contends the award leaves him without sufficient monthly income because his reasonable expenses will increase after he is released from prison, that argument would be more appropriately addressed to the superior court in a petition for modification after his release. A.R.S. § 25-319(D) (stating the superior court maintains continuing jurisdiction over the issue of maintenance for the period of time maintenance is awarded); *Schroeder v. Schroeder*, 161 Ariz. 316, 323 (1989) (ruling spousal maintenance orders are presumed to be modifiable in amount and duration upon a showing of substantial and continuing change in circumstances affecting the purpose of the original decree). We note, however, that Husband testified he expects his income to increase once he is released from prison and begins collecting Social Security.

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**CONCLUSION**

¶13 For the foregoing reasons, we affirm. As the prevailing party on appeal, Wife is entitled to her costs on appeal upon compliance with ARCAP 21.



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