

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:)	
)	
KANDACE WATSON,)	1 CA-CV 08-0249
)	1 CA-CV 09-0016
Petitioner/Appellant,)	(Consolidated)
)	
v.)	Department D
)	
ANDRE RICHARDSON,)	MEMORANDUM DECISION
)	(Not for Publication
Respondent/Appellee.)	Rule 28, Arizona Rules of
_____)	Civil Appellate Procedure)

Appeal from the Superior Court of Maricopa County

Cause No. FN 2006-002437

The Honorable Daniel G. Martin, Judge

AFFIRMED

Rose and Huey, P.L.L.C.	Phoenix
By David L. Rose	
Attorneys for Petitioner-Appellant	
Gary L. Lane	Phoenix
Attorney for Respondent-Appellee	

T H O M P S O N, Judge

¶1 Kandace Watson (wife) appeals¹ from the trial court's divorce decree raising several issues related to property division. Andre Richardson (husband) and wife were married in March 1994.

1. At various times, wife filed three separate appeals in this action. Matters 1 CA-CV 08-0249 and 1 CA-CV 09-0016 are consolidated herein. Matter 1 CA-CV 08-0755 was dismissed for lack of jurisdiction.

Wife and husband lived separately since approximately November 2003. Wife filed for divorce in June 2006 and received a default decree. In post-decree rulings, pursuant to Arizona Revised Statutes (A.R.S.) § 25-318 (2000), the court divided their property and debts, including homes acquired during the pendency of the marriage, their vehicles, their financial holdings and their pension and retirement plans. After a division of the property, the trial court found husband was additionally due \$17,361.85 as an equalization payment and wife was entitled to \$7,470 in the form of a QDRO for husband's BAE Systems 401(k). Each party was ordered to bear their own attorneys' fees. Wife filed a motion for a new trial and several post-trial motions. The trial court denied the motions; husband was awarded fees related to the post-trial motions. Finding no error, we affirm.

ISSUES ON APPEAL

¶2 On appeal, wife asserts the trial court erred in:

1. failing to award her a community interest in the value of the Carlsbad real estate;
2. failing to award her a community interest in husband's pension;
3. awarding husband one-half of her gross annual pre-tax bonus;
4. awarding husband credit for community repairs to wife's sole and separate automobile.

DISCUSSION

A. Carlsbad House

¶3 On review, we view the evidence in the light most favorable to sustaining the trial court's division of community property and determine whether there was evidence that reasonably supports the court's findings. *Berger v. Berger*, 140 Ariz. 156, 161-62, 680 P.2d 1217, 1223-24 (App. 1983). We review questions of law under a *de novo* standard. *Brink Elec. Constr. Co. v. Ariz. Dep't of Revenue*, 184 Ariz. 354, 358, 909 P.2d 421, 425 (App. 1995) (citation omitted). We note the record on appeal was incomplete, containing no transcripts. In the absence of a transcript, we presume that the factual evidence deduced at trial supports the trial court's decision. See *Fletcher v. Fletcher*, 137 Ariz. 497, 498, 671 P.2d 938, 939 (App. 1983) (citation omitted).

¶4 At least three houses were purchased or contracted on during the pendency of the marriage. The first house, in San Diego, was sold in June 2003 and funds deposited into a joint Smith Barney account. Two houses were purchased during the time when the couple no longer lived together between November 2003 and the dissolution of the marriage. The Phoenix house was purchased in December 2004, the Carlsbad house in November 2005.² The trial court awarded husband the Carlsbad house and wife the Phoenix and

2. Wife also purchased a house in San Diego in September 2006, after the date of separation and closed on it two days after the dissolution order. Husband alleged that community funds were used in the purchase but he did not appeal this issue although the trial court ruled it was wife's sole and separate property.

San Diego houses as their sole and separate property.

¶15 On appeal, wife disputes the trial court's award to husband of the Carlsbad house as his sole and separate property. On reconsideration, she sought reimbursement for the earnest money deposit and down payment on the Carlsbad house awarded to husband.³ The record supports that the couple maintained at least two joint financial accounts into June 2006, and it appears that community funds were used to purchase or maintain each of the three residential properties and that each home was initially community property. See A.R.S. § 25-211 (2000). However, wife and husband entered into legal arrangements so that each would own a home as their sole and separate property. In December 2004, husband signed a disclaimer deed on wife's Phoenix house; wife executed an Interspousal Transfer Deed that stated that she granted to husband the Carlsbad house as his "sole and separate property" which was recorded in November 2005.

¶16 Wife continues to assert that the Interspousal Transfer Deed was not a disclaimer of her interests in the Carlsbad house or meant to negate her financial or beneficial interest in the house; rather, she claims it was done for convenience because she was working in Arizona at the time. Further, she asserts that the Interspousal Transfer Deed was defective and could not have changed the legal title to the property. The trial court found the

3. No appeal was taken by husband as to the award to wife of the Phoenix home as her sole and separate property or any other community property assigned to wife.

Carlsbad house to be husband's sole and separate property. The trial court did not explain its reasoning, however we find the law and the record both support the conclusion that the Interspousal Transfer Deed was a full transfer by wife to husband of the property and any beneficial interest in it. See *Bell-Kilbourn v. Bell-Kilbourn*, 216 Ariz. 521, 169 P.3d 111 (App. 2007); *Bender v. Bender*, 123 Ariz. 90, 93-94, 597 P.2d 993, 996-97 (App. 1979). Neither the asserted errors in the Interspousal Transfer Deed nor the note in it that the transfer was "for convenience" alter that conclusion.

¶7 The trial court further found wife was not entitled to reimbursement for either the earnest money or the down payment. The trial court did not enumerate its reasoning. The trial court may have found that wife gifted her share of the community property funds when she transferred the title or offset them from the two houses wife purchased as part of the equitable division of property pursuant to A.R.S. § 25-318. The trial court had evidence of the community property issues and was in the best position to determine credibility; we will not disturb its findings of fact unless they are clearly erroneous. See *Farmers Ins. Co. of Ariz. v. Young*, 195 Ariz. 22, 28, ¶ 19, 985 P.2d 507, 513 (App. 1998) (citing *Lee Dev. Co. v. Papp*, 166 Ariz. 471, 475-76, 803 P.2d 464, 468-69 (App. 1990)). The trial court did not err in ruling that the Carlsbad house is husband's sole and separate property and that wife is not entitled to reimbursement related to it.

B. Pension⁴

¶18 Wife next asserts that the trial court erred in dividing the community property share of husband's vested pension from BAE where he works as an electrical engineer. The retirement plan, according to wife, had three components: the 401(k), the pension, and stock appreciation rights. Wife does not appeal the award of the 401(k) to husband with an offset to her of \$7,470 or of the stock appreciation rights. She appeals the award to her of \$2,421 as her community share of the community contributions in the pension plan and asserts that such a division neglects to account for the value of her future interest and that a QDRO should have been used.

¶19 By statute, the trial court is obligated to determine the parties' separate property and to divide their community property "equitably, though not necessarily in kind." A.R.S. § 25-318(A). The evidence in the record included that the community had contributed \$4,841.64 into husband's pension. The record did not include a present valuation of husband's future interest in the pension; there was evidence that at retirement in 2034 he would receive \$976.47 per month. Wife is correct that she is entitled to an interest in the vested pension, whether by current cash value or under the reserved jurisdiction method. *See Johnson v. Johnson*,

4. Also divided were the retirement accounts held by petitioner at Merrill Lynch and her Snell & Wilmer retirement account. Husband did not appeal from that division.

131 Ariz. 38, 41, 638 P.2d 705, 708 (1981). The trial court determined that wife presented insufficient evidence to make an award for future benefits. We agree. The only evidence in the record is of the community contribution; the document from BAE is speculative as it may be dependant on his future efforts and contributions, therefore we can find no abuse of discretion by the trial court.

C. Remaining Issues

¶10 Wife next challenges the trial court's rulings as to the award to husband of one-half of her pre-tax annual bonus and of the community share of repairs to her Corvette. The trial court awarded husband \$10,000 of wife's \$20,000 bonus. She asserts that the trial court failed to account for the taxation which left the take-home at \$13,160. Husband asserts that the couple paid taxes married filing jointly for 2005 and the taxes were accounted for. The trial court did not address the tax withholding issue for 2005 but did award husband half of their community tax refund for 2006. The taxes for 2005 were not a contested issue in the divorce. We find no error. Wife also objects to the trial court's award to husband of a \$3,500 offset for historical repairs to her 1973 Corvette. Husband provided testimonial evidence to support the repair payments and wife kept the Corvette as her separate property, therefore we find no error.

Attorneys' Fees on Appeal

¶11 Husband requests attorneys' fees and costs on appeal pursuant to A.R.S. § 25-324 (2007). Section 25-324 requires us to examine both the financial resources and the reasonableness of the positions of each party. Wife earns more than twice what husband does. After doing so, we award husband his attorneys' fees and costs on appeal in an amount to be determined after compliance with ARCAP 21(c).

CONCLUSION

¶12 For the foregoing reasons, we affirm.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Presiding Judge

/s/

PATRICK IRVINE, Judge