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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 01/26/2010
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BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:) 1 CA-CV 08-0747
)
SCOTT THOMAS KUNTZ,) DEPARTMENT B
)
Petitioner-Appellee,) **MEMORANDUM DECISION**
)
v.) (Not for Publication -
) Rule 28, Arizona Rules of
RYNEE MARIE KUNTZ,) Civil Appellate Procedure)
)
Respondent-Appellant.)
)
)

Appeal from the Superior Court in Mohave County

Cause No. DO 2006-7087

The Honorable Charles W. Gurtler, Judge

AFFIRMED IN PART; VACATED AND REMANDED IN PART

Scott Thomas Kuntz, Appellee
In Propria Persona

Lake Havasu City

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Bullhead City

W E I S B E R G, Judge

¶1 Rynee Marie Hay¹ ("Wife") appeals from the property allocation and income determinations contained in the decree dissolving her marriage to Scott Kuntz ("Husband"). For the following reasons, we vacate the finding of Husband's income and remand for recalculation of his income and the child support obligation. In all other aspects, we affirm the decree.

DISCUSSION

¶2 The parties were married in California in 1994 and have two minor children. After moving to Lake Havasu City, Arizona, they continued to own a home and a commercial building ("Oxnard property") in California. They also purchased houses in Arizona and Nevada as well as trucks, boats, and other recreational vehicles. Husband operated a community business, Hog Abrasives, which he contended was his sole and separate property.

¶3 Husband filed a petition for dissolution in 2006. As temporary orders, the court directed Hog Abrasives to make monthly payments of \$350 toward Wife's credit card debt and of \$732 for her truck and to pay the mortgage on the California home. Hog Abrasives also paid for Husband's truck and motorcycle and the mortgage on the Nevada house. Husband paid Wife temporary spousal maintenance of \$250 per month. The court

¹The court restored Wife's former name.

later ordered that the Nevada and California houses and some of the vehicles be sold and the proceeds deposited with the Clerk of the Court.

¶4 During the pendency of the litigation, Wife claimed that the mortgage on the Arizona home had not been paid and that the property was in foreclosure. She asked that some of the sales proceeds be used to bring the mortgage current. In February 2007, out of approximately \$284,000 on deposit with the Court Clerk, the court awarded each party \$100,000. Husband was to pay \$17,000 to American Express² and \$13,000 to Wife's former attorney, with an equal offset to him for the latter amount. The court ordered that Wife's truck payment and utilities be brought current, that the parties enter into a lease/purchase agreement for the Arizona house, and that Wife vacate the house by February 22, 2007.

¶5 In September 2007, by stipulation, Wife received \$35,000 from the sales proceeds as well as another \$15,000. The court ordered that \$20,000 remain on deposit and any remaining funds be equally divided.

¶6 Following a hearing on custody, parenting time, and the distribution of proceeds, the court found Husband's annual

²Husband later filed notice that he had paid American Express a total of \$25,700: \$18,200 to settle one account and \$7,500 to settle another account with an outstanding balance of \$18,000.

income was \$60,000 plus \$1,600 net rental income per month from the California house. The Court attributed to Wife earnings of \$8 per hour plus income in the form of the truck payment for a total of \$1,970 per month. She also received \$250 per month in spousal maintenance, which resulted in a child support order of \$786 per month.

¶17 In December 2007, Wife moved to compel Husband to disclose an accounting of the sales proceeds from a Rhino recreational vehicle; proof that he had paid \$350 per month toward her credit card debt and an accounting of the American Express bills paid; an accounting of the rental income and security deposit from the California house; and an accounting of the proceeds from sale of the Oxnard property. The court ordered Husband to provide the requested documentation.

¶18 Wife also filed a contempt petition alleging that Husband was again behind in making her truck payment. When Husband responded that he was unable to make the payment, the court released \$10,000 of the proceeds on deposit and ordered the funds be used to pay the court-ordered obligations.

¶19 After a three-day trial in May 2008, the court signed a decree. It found Wife was not entitled to half of the security deposit on the California house because Husband had deposited it into a joint account and used the funds for community expenses. The court also rejected Wife's claim that

Husband had incurred unnecessary escrow fees and interest on the sale of the California house.

¶10 At trial, Wife claimed that Husband should pay \$28,000 in credit card debt to American Express. The court found that Husband had paid off two American Express community credit card accounts in the amount of \$25,700 and was unaware of a third account. Because Husband had paid more than he had been ordered to pay on credit card debt, the court denied Wife's request.

¶11 Wife additionally sought an offset for her interest in Hog Abrasives. The court concluded, however, that the business had no value to divide and that Wife voluntarily had given up her interest. In addition, the court rejected Wife's claim that Husband was hiding the proceeds from the sale of the Oxnard commercial property and found that the parties had spent the proceeds on vehicles, boats, houses, and other purchases. It similarly found no evidence that Husband's sale of the Rhino vehicle was commercially unreasonable.

¶12 In determining spousal maintenance, the court found that Husband's monthly income was \$7,074 including his business income, his truck and boat payments paid for by the business, and his receipt of rental income from the business. The court agreed that Wife was entitled to some support and ordered Husband to make her truck payments until the debt was paid off.

The court denied both parties' requests for attorneys' fees, citing unreasonable conduct by both.

¶13 Wife timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(B) (2003).

DISCUSSION

¶14 Wife argues that the court inequitably allocated community assets and debts, improperly modified temporary orders, and erred in determining Husband's income and in rejecting her claims of waste.³

Allocation of Debts and Assets

¶15 In a dissolution action, the superior court must divide community property equitably. A.R.S. § 25-318(A) (Supp. 2008). We review the allocation of assets and debts for an abuse of discretion. *Hrudka v. Hrudka*, 186 Ariz. 84, 93, 919 P.2d 179, 188 (App. 1995).

¶16 We first consider Wife's contention that the court erred in finding that she was not entitled to a share of Hog Abrasives. The evidence showed that Wife's shares in the business had been cancelled in November 2004, but Wife contends that she did not thereby waive her community interest. The

³Wife also claimed that the court erred in failing to award parenting time for the parties' son but has not cited the record or any authority for support. We deem the argument abandoned. See ARCAP Rule 13(a).

court found from the only evidence of the business' value that it had a negative worth and thus had no value to divide. Wife's expert challenged Husband's expert's valuation but did not offer a contrary opinion. Thus, even if the business had paid many of Husband's and Wife's personal expenses, if it had no saleable value, there was nothing to allocate between the parties. We find no abuse of discretion in the failure to award Wife a share of Hog Abrasives.

¶17 Wife argues that Husband never accounted for \$320,000 in proceeds from the sale of the Oxnard property and that the court either overlooked or confused this issue with her claimed interest in Hog Abrasives. Husband testified, however, that the Oxnard property was sold for \$400,000 in late 2004 or early 2005 and that he had deposited the funds in a community checking account. He said that he had used \$20,000 to repay a loan from his parents; that about \$235,000 had been used in 2005 for the down payment and remodeling of the Arizona home; that about \$15,000 had been spent to move the family and \$25,000 to move his business to Arizona. Wife admitted receiving \$185,000 in cash during the litigation. The court found that, even without a precise accounting, the parties' history of spending their ready cash and incurring debt for additional spending could account for depletion of these and other proceeds. The court also noted that Wife had access to the community account

statements and could have deposed Husband, but she offered no evidence to controvert Husband's explanation. Accordingly, the evidence supports the court's ruling.

¶18 Wife next asserts that the allocation of debts was unfair because Husband paid off his own credit cards but not hers. Specifically, she contends that the court improperly allowed Husband to withdraw community funds on deposit with the court to pay his temporary obligations but that he instead used the funds to pay Hog Abrasives' separate debts. She does not specify or cite any evidence of these business debts. Husband testified that he had used \$10,000 in community funds to pay for Wife's truck as well as medical and auto insurance. He also testified that by March 2007, he had used \$18,200 to settle a \$30,000 debt to American Express and had paid \$7,500 to settle a second American Express debt in the amount of \$18,000. Thus, he had paid off the two accounts of which he was aware, and the court evidently found that Husband was unaware of a third possible American Express card or that the third account had been written off. There was no abuse of discretion.

¶19 Wife insists, however, that the court failed to allocate approximately \$60,000 of credit card debt. The decree ordered Husband to pay sixty percent and Wife to pay forty percent of any remaining pre-filing credit card debts. On this appeal, we cannot tell how much, if any, of the \$60,000 debt was

charged off, and Wife has not indicated when this debt was incurred. However, the debt, if any, would be subject to the allocation in the decree, although we note that the decree states: "there is no obligation . . . to pay the 60% or 40% respectively as to a charged off account unless the creditor initiates collection activity." We therefore reject Wife's assertion.

Temporary Orders

¶120 Wife next argues that Husband repeatedly violated the temporary orders without sanction by court and that the court improperly modified the temporary orders in violation of A.R.S. § 25-315(F)(2) (2007). For example, the court had ordered Hog Abrasives to pay Wife's truck payment and \$350 for her credit card but when Wife notified the court that Husband was behind in the truck payments, and Husband responded that he could not make the payments, and the court released \$10,000 from the funds on deposit for use on these obligations.

¶121 By statute, the court may impose orders for temporary maintenance or support "in amount and on terms just and proper in the circumstances." A.R.S. § 25-315((E) (Supp. 2008). The court also may modify or revoke temporary orders "on a showing by affidavit of the facts necessary to revocation or modification of a final decree under A.R.S. § 25-327." § 25-

315(F)(2). Section 25-327 (2007) requires a showing "of changed circumstances that are substantial and continuing."

¶122 Although Wife asserted that Husband failed to pay \$350 for her credit card for 23 months, the evidence also supports the conclusion that he had paid \$25,700 to settle two American Express community debts and was unaware of any other account. The court concluded that Husband had paid more than he had been ordered to pay for credit card debt and Wife was not entitled to reimbursement. Because the evidence established a substantial and continuing change in the circumstances, i.e., that the community debt had been paid in full, there was no abuse of discretion in the court's handling of the credit card debt. And although Wife asserts that a third card was not paid off, we defer to the trial court's resolution of conflicting evidence. *Gutierrez v. Gutierrez*, 193 Ariz. 343, 347-48, ¶ 13, 972 P.2d 676, 680-81 (App. 1998). Husband's testimony supports the court's ruling, and we decline to overturn it.

¶123 Wife next claims the court effectively and improperly terminated the temporary order that Husband make her truck payments. She admitted at trial that the payments were current, however, and cannot show prejudice. Husband remains obligated on the truck until it is paid in full.

Husband's Income

¶24 Wife also argues that the court erred in determining Husband's income for purposes of calculating the parties' child support obligations. She contends that the court should have included a number of expenses that Hog Abrasives pays on Husband's behalf: \$2,800 in rent; a \$900 boat payment; a \$550 Harley payment; a \$500 toy hauler payment; and both truck payments.⁴ Wife claims that Husband's monthly income is \$10,500.

¶25 Husband testified that he personally paid his mortgage of \$2700 per month and a \$375 Harley payment and that Hog Abrasives paid \$303 for the toy hauler, \$769 for his truck, and \$750 for Wife's. Hog Abrasives also made the boat payment of \$850 per month, and because the court found that the boat is used half-time for business, half the payment was income to him.

¶26 The decree states that the court considered the business' payment of the boat and Husband's truck, but we are unable to determine the mathematical basis for the finding that Husband's income was \$7074 per month. The court found Husband's earnings from Hog Abrasives were \$45,258 per year or \$3771.50 per month⁵ and attributed an additional \$28,000 to him for receipt of rent from Hog Abrasives for the building it occupied,

⁴Also in her opening brief, Wife stated that the business was paying only \$400 for the Harley and \$350 for the toy hauler but failed to cite any record support for her statement.

⁵Wife did not challenge this finding on appeal.

or \$2333 per month, which totals \$6104.50. Hog Abrasives also paid \$1072 per month for the truck and half of the boat payment, and if these had not previously been added to Husband's income, would result in \$7,298.50 per month. Because we cannot tell how the court arrived at \$7074, we vacate this finding and remand for recalculation of Husband's income and the child support award.

Other Claims

¶127 Wife challenges the finding that Husband did not commit waste by causing the community to incur unnecessary charges and interest on the sale of the California house. She argues that he had been ordered to pay the mortgage and that his failure to do so caused the community to incur unnecessary expenses. Husband testified, however, that he could no longer afford the \$5200 mortgage payment once the tenants left and stopped paying \$3995 in rent. Although Wife claimed Husband had stopped paying the mortgage before the tenants left, the court found that his inability to pay was a valid explanation for the extra expenses and declined to allocate them solely to Husband. We defer to the trial court's credibility determinations, *Gutierrez*, 193 Ariz. 343, 347-48, ¶ 13, 972 P.2d 676, 680-81, and find no abuse of discretion.

¶128 Wife additionally asserted that Husband had collected rent from the tenants but failed to pay the mortgage or to

account for the rent and security deposit. The court found that Husband's more credible evidence established that the funds had been placed in a joint checking account and spent on the community. Wife offered no contrary evidence, and we find no abuse of discretion. *Id.*

¶129 Wife now claims she had to spend \$1800 to move out of the Arizona house and that she should be reimbursed for these expenses and the rent she had to pay upon moving. At trial, however, she sought only moving expenses.⁶ Therefore, we address only that contention. We also note that Wife could not remain in the house after the divorce because she had insufficient income to afford the mortgage and would have had to move. In any event, the trial court acted within its discretion by denying wife the reimbursement of her moving expenses.

¶130 Finally, Wife argues that she should be reimbursed for Husband's commercially unreasonable sale of her Rhino recreational vehicle. She claims the Rhino was a gift to her that cost more than \$10,000 and that Husband sold it February 2007 for \$5,800. Husband testified that the Rhino was a family gift in late 2005, that when sold was in poor mechanical and physical condition, and thus that the sales price was reasonable. He also said that he had deposited the proceeds

⁶At trial, Wife based her claim on Husband's refusal to loan her a truck to move her belongings.

with the court. The trial court has broad discretion in weighing conflicting testimony, and we defer to its resolution. See *In re Estate of Pouser*, 193 Ariz. 574, 579, ¶ 13, 975 P.2d 704, 709 (1999) (we do not reweigh conflicting evidence). We affirm the trial court's rulings.

CONCLUSION

¶31 For reasons explained above, we vacate only the finding of Husband's income and remand for recalculation of his income and the child support obligation. We affirm all other provisions of the decree.

 /S/
SHELDON H. WEISBERG, Judge

CONCURRING:

 /S/
PATRICIA K. NORRIS, Presiding Judge

 /S/
MARGARET H. DOWNIE, Judge