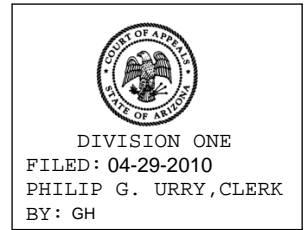


**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24**

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**



In re the Marriage of:) 1 CA-CV 08-0798
)
APRIL L. ROJAS,) Department D
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication
v.) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
RONALD JOEL ROJAS,)
)
Respondent/Appellant.)
_____)

Appeal from the Superior Court of Yuma County

Cause No. S1400DO200601054

The Honorable Denise D. Gaumont, Judge

AFFIRMED

S. Alan Cook, P.C. Phoenix
By S. Alan Cook
Attorneys for Respondent-Appellant

The Cavanagh Law Firm, P.A. Phoenix
By Helen R. Davis

And

Boyte & Minore PC Yuma
By Mary K. Boyte
Attorneys for Petitioner-Appellee

T H O M P S O N, Judge

¶1 Roland Joel Rojas (husband) appeals from the trial court's divorce decree raising several issues. We affirm.

¶2 Husband and April L. Rojas (wife) were married in 1995.

The parties have two children together. Wife filed for divorce in August 2006. The parties entered into a partial settlement agreement regarding the marital home which was assigned to husband. The trial court divided the balance of the community property and debts and made determinations related to child and spousal support. Husband was ordered to pay \$80,000 attorneys' fees due to the financial disparity of the parties and due to husband's unreasonable conduct throughout the litigation. Husband filed two motions for a new trial. The trial court denied the motions.

ISSUES ON APPEAL

¶3 On appeal, husband asserts the trial court erred in:

1. valuing wife's real estate business;
2. dividing RASS, LLC the parties' commercial building and the rents;
3. its calculation and award of child support and in failing to award either post-decree support or pendente lite support;
4. failing to award pendente lite spousal maintenance;
5. dividing the 2005 and 2006 Federal Income tax debt;
6. awarding wife attorneys' fees and costs; and
7. denying husband's motions for new trial.

DISCUSSION

Wife's Business

¶4 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).

¶5 Husband first complains that the trial court erred in valuing wife's real estate business at \$5,000. Wife is an independent contractor with Realty Executives who are the brokers and owners for all her listings. Wife cannot sell her listings. The trial court accepted testimony that the value of the hard assets in wife's business were worth \$5,000 and that there was no enterprise goodwill outside of her own labor. The trial court found husband's expert report valuing the business at \$240,000 "literally riddled with errors both great and small." The trial court found husband's expert unreliable.

¶6 The trial court had the evidence before it 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)). Because there was evidence that reasonably supports the trial court's valuation, we affirm.

RASS, LLC

¶7 Husband next asserts that the trial court erred in dividing the couples' commercial real estate and the rents. The parties agreed the RASS, LLC property was valued at \$510,000 with equity of \$320,253. Wife presented her own testimony and expert testimony on the issues of rental history and expenses; husband did not present expert testimony. The trial court found husband to not be credible or reliably consistent on issues related to the commercial property. The trial court found that husband would not be in a position to buy wife out, given that he was buying her out on the family home. After extensive evidence and testimony, the trial court awarded wife the property and ordered wife to pay

husband an equalization payment of one-half of the existing equity.

As to rents, the trial court found that show evidence of fair rental value other than that already included in the business value.

¶18 By statute, the trial court is obligated to divide the parties' community property "equitably, though not necessarily in kind . . ." Arizona Revised Statutes (A.R.S.) § 25-318(A) (2007). The trial court heard the evidence regarding the commercial property and the resulting income and expenses 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.*, 195 Ariz. at 28, ¶ 19, 985 P.2d at 513. We affirm the trial court's order awarding the RASS, LLC property to wife and ordering her to pay husband an equalization payment. We further find, given the evidence in the record, that the trial court did not err in not ordering a rental payment to husband.

Child Support

¶19 Husband next asserts that the trial court erred in failing to award him child support, both prior to the judgment and after. The crux of his argument is that wife's income was understated and his own was overstated. The trial court found:

Given the status of the Yuma real estate market, and its impact on Wife's income, along with the significant financial benefits Husband receives from his parents, Husband actually has significantly more income than Wife does. Nevertheless, for purposes of child support only, the Court finds that the parties have essentially equal incomes, share expenses essentially equally, and share

essentially equal parenting time. Under the circumstances, neither party should pay child support to the other. This is not a deviation, but is consistent with the Arizona Child Support Guidelines...

¶10 According to the parties joint tax returns, their community wage income from 2001-2005 was: \$52,547 (2001), \$42,698 (2002), \$65,296 (2003), \$75,517 (2004) and \$137,993 (2005)¹. The trial court found wife's monthly income in 2006 to be \$4,816.25. The court found husband earned \$52,183 in 2007. There was evidence that husband received approximately \$180,000 (approximately \$10,000 per month) from his father since August 2006 and has not repaid any of that amount. There was evidence from both husband and wife that such generosity was typical and consistent during the marriage; wife opined that husband would not now be obligated to make such repayments. Although husband produced promissory notes made out to his father, no payments have ever been made on them, not all of the notes were signed by husband and the first such notes were not issued until two to three months after significant funds were given to husband. No promissory notes were used to create repayment obligations during the marriage.

¹ The court further found, and there was evidence to support, that the income husband attributes to wife in 2005 of \$354,000 was in fact gross commissions, at an all-time high, and that her reduced income since that time reflects the diminished real estate market.

¶11 The court may properly consider voluntary and consistent monetary gifts to a party when determining income. *Cummings v. Cummings*, 182 Ariz. 383, 386, 897 P.2d 685, 688 (App. 1994). Even without the gifts to husband, there is factual support in the record for the trial court's child support determination regarding the parties' incomes and "essentially equal" parenting time and expenses. Such a result is expressly contemplated by the child support guidelines. The trial court did not err in determining under A.R.S. § 25-320. For these reasons, we affirm.

Spousal Maintenance

¶12 Husband next asserts he should have received spousal maintenance at least temporarily. He argues wife had more income, few expenses and the benefit of the commercial property income.² He says "[t]he disparity in the parties' resources pendente lite, is patent." We disagree.

¶13 We examine an award or denial of spousal maintenance under an abuse of discretion standard. See *Berger*, 140 Ariz. at 167, 680 P.2d at 1228. Generally, a divorce decree terminates a temporary support order and any arrearages that were not

² The trial court determined that, rather than making a profit each month, the rents did not even cover the upkeep expenses and costs associated with the property.

specifically addressed in the decree are lost. A.R.S. § 25-315(F)(4) (2007); see also Ariz. R. Fam. L. P. 47(m) ("Temporary orders become ineffective and unenforceable upon termination of an action either by dismissal or following entry of a final decree . . . unless that final decree . . . provides otherwise."); *Furgason v. Furgason*, 465 P.2d 187, 188-89 (Wash. Ct. App. 1970) (holding pendente lite child support order became ineffective upon the termination of the action). Thus, any claim husband had for pendente lite support is moot. To the extent husband is seeking ongoing spousal maintenance, there is evidence in the record to support a ruling that husband had both wage income of approximately \$52,000 annually and substantial regular monetary gifts coming to him.³ Husband is self sufficient under A.R.S. § 25-319(A). The trial court is affirmed.

2005 and 2006 Tax Debt

¶14 Husband next challenges the trial court's rulings as to the tax debts for 2005 and 2006. The trial court found the taxes for 2005 should be split equally as the parties were married for

³ The trial court found that considering his 2006 income and the gifts given to husband by his family, that husband actually has "much more income than Wife has."

the entire year and enjoyed the benefits of the income received during that year. As to 2006, the parties were together until the end of August and the trial court divided the tax debt proportionally one-third wife's separate debt and two-thirds community debt. We find no abuse of discretion in the trial court's division of the 2005 and 2006 tax debt. Furthermore, as to husband's claim of "waste" of money that should have been used for taxes, we affirm the trial court's determination that no waste existed and that the money was used for other community endeavors. See A.R.S. § 25-318(A).

Attorneys' Fees Below

¶15 Husband complains that the trial court erred in awarding wife fees and costs in the amount of \$80,000 and not awarding him fees. The trial court made such an award under A.R.S. § 25-324 (2007) based on the financial disparity between wife and husband and the unreasonableness of husband's conduct in this matter. The court also found A.R.S. § 12-349(A) applicable and listed ten examples of husband's harassing or groundless behavior including husband's objections to mediated agreements and the error-filled testimony of husband's expert on the issue of wife's business. We do not find the trial court abused its discretion in awarding wife

these fees and costs. See *Magee v. Magee*, 206 Ariz. 589, 590, ¶1, 81 P.3d 1048, 1049 (App. 2004).

Attorneys' Fees on Appeal

¶16 Both husband and wife request attorneys' fees and costs on appeal pursuant to A.R.S. § 25-324; wife additionally seeks attorneys' fees pursuant to A.R.S. § 12-349. We decline to award fees.

CONCLUSION

¶17 For the foregoing reasons, we affirm.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Presiding Judge

/s/

PATRICK IRVINE, Judge