

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



DIVISION ONE
FILED: 02/02/2010
PHILIP G. URRY, CLERK
BY: GH

IN RE THE MARRIAGE OF:) 1 CA-CV 09-0007
)
MICHAEL V. POPE,) DEPARTMENT E
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules
) of Civil Appellate
KRYSTAL D. LARMEY, f/n/a KRYSTAL D.) Procedure)
POPE,)
)
Respondent/Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause Nos. DR 2000-19822; DR 2000-019959

The Honorable Carey Snyder Hyatt, Judge

AFFIRMED IN PART; VACATED IN PART

Joel L. Brand
Attorney for Appellant

Phoenix

Janice M. Palmer
Attorney for Appellee

Chandler

H A L L, Judge

¶1 Krystal D. Larmy (Mother) appeals from the trial court's order that she sign certain tax forms to allow Michael V. Pope (Father) to claim tax exemptions for their children. For the

reasons that follow, we affirm the trial court's order in part and vacate it in part.

FACTS AND PROCEDURAL HISTORY

¶12 The facts relevant to the issue on appeal are as follows. Mother and Father married on May 3, 1992. During the course of their marriage, the parties had two children. On November 8, 2000, Father filed a petition for dissolution.

¶13 As part of the parties' dissolution decree, entered October 20, 2003, the trial court ordered Father to pay Mother \$167.00 per month in child support. The trial court also ordered:

that Father may claim the minor children . . . as tax exemption[s] every year until such time as [Mother] obtains fulltime employment. At that time, Father shall claim both children every even-numbered year and [the parties' son] every odd-numbered year. Father shall claim the tax exemption[s] so long as he remains current with his child support obligations at the end of each calendar year.

¶14 On October 12, 2004, Mother filed a petition to modify custody and parenting time. In a signed minute entry entered May 11, 2005, the trial court changed the parties' custody status from joint to sole custody in favor of Mother. On June 22, 2005, however, the trial court denied Mother's request to modify child support, finding "the evidence does not show a change in circumstances which are substantial and continuing." Soon thereafter, Mother filed a motion for reconsideration, which the trial court denied.

¶15 On March 17, 2006, Mother filed another request to modify child support. After a hearing, the trial court ordered that

Father pay Mother \$969.93 per month in child support, commencing April 1, 2006. As to the tax exemptions for the children, the trial court ordered that Father would have the tax exemption for the parties' son every year and the tax exemption for the parties' daughter every even year so long as he "has paid all child support and arrears ordered for the year by December 31 of that year."

¶16 On September 17, 2008, Father filed a motion requesting that the trial court compel Mother to sign the necessary tax forms to allow him to take the parties' children as exemptions on his taxes. As explained in the motion, Father claimed the children as tax exemptions in his 2005, 2006, and 2007 income tax returns pursuant to the terms of the court's order. Father also stated that he is current in his child support obligations. The Internal Revenue Service (IRS), however, disallowed the exemptions for those years because Mother also claimed the children as tax exemptions.

¶17 On October 16, 2008, Mother filed a response to Father's motion.¹ Mother argued that: (1) Father's motion failed to comply with procedural rules; (2) Father's failure to timely request that Mother sign IRS Form 8332² constituted "a waiver of the exemption[s]"; (3) Father's request "should be denied by the

¹ For reasons that are unclear, Mother's filed response was not included in the record submitted on appeal. Mother has attached the response to her reply, however, and it was clearly filed with the trial court and considered by the court in its ruling. Therefore, to the extent Father argues that Mother waived any challenge to his motion by failing to respond, his argument is without merit.

² Form 8332 is the Release of Claim to Exemption for Child by Custodial Parent Form.

equitable defense of laches"; and (4) Father had been in arrears in the amount of \$167.00 since September 2006, permitting Mother to take the exemptions in 2006 and 2007 pursuant to the court order.

¶18 In its October 28, 2008 signed minute entry, the trial court initially found that oral argument on the matter was "unnecessary" because "the issues ha[d] been thoroughly briefed."

The court then stated:

[E]ven taking the facts set forth in [Mother's] Response as true, [Father] is entitled to relief. The fact that [Father] may have belatedly filed his tax returns or belatedly requested the appropriate forms be signed by [Mother] does not void his entitlement to the court-ordered tax exemptions. Moreover, [Mother's] claim that [Father] is in arrears of his child support obligation for the subject years is irrelevant (in view of the fact that [Mother's] claimed arrears amount is minute). Therefore,

IT IS ORDERED granting [Father's] motion and directing [Mother] to sign the appropriate tax forms to allow [Father] to claim the court-ordered tax exemptions for the years 2005, 2006, and 2007. . . .

IT IS FURTHER ORDERED that [Father] shall pay any balance on his monthly arrears payments due for the subject tax years, which pursuant to the Response to the instant motion is \$167.00 for the year 2006, on or before November 28, 2008.

¶19 Mother timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101(C) (2003).

DISCUSSION

¶10 On appeal, Mother first argues that the trial court erred by ruling on Father's motion without holding an evidentiary

hearing. As support for her claim, Mother relies on *Marco v. Superior Court*, 17 Ariz.App. 210, 496 P.2d 636 (1972).

¶11 In *Marco*, a court commissioner entered an order restraining each party from “annoying or molesting” the other, but permitting the parties to continue residing in the same home. *Id.* at 211, 496 P.2d at 637. Soon thereafter, each party filed a petition with the court claiming that the other had violated the restraining order. *Id.* Without holding a hearing, the trial court entered an order permitting the husband to remain in the residence and requiring the wife to vacate the premises within two days. *Id.* at 211-12, 496 P.2d at 637-38. The wife’s attorney objected, arguing that the trial court’s ruling was based solely on hearsay allegations contained in the petitions rather than proper evidence. *Id.* at 212, 496 P.2d at 638. On appeal, we held that the trial court denied the wife’s right to due process by entering an injunction without permitting her “to have a hearing on the matter, cross-examine the witnesses and present evidence to the court.” *Id.*

¶12 Mother contends that, as in *Marco*, she was denied her right to due process. We disagree.

¶13 Unlike *Marco*, Mother did not request the opportunity to present evidence. Instead, she argued that Father’s motion was “subject to summary dismissal based on [her] response.” More importantly, however, this is not a case in which the trial court essentially made a credibility determination based on conflicting pleadings. Rather, here, the trial court accepted all of Mother’s

statements as true, but determined Father was nonetheless entitled to relief. Because Mother never requested a hearing and the trial court accepted all of her statements as true, we cannot say that the trial court erred by ruling on Father's petition without holding a hearing and allowing her to present evidence.

¶14 Next, Mother argues that the trial court erred "by not allowing the defense of laches" to apply to her taking the 2005³ tax exemption. She further argues that this defense is such a "fact intensive" inquiry that it requires a hearing. Under the circumstances, we disagree.

¶15 As to the 2005 tax exemption, no material facts are in dispute. Pursuant to the trial court's October 6, 2003 order, Father was permitted to claim both the parties' children as tax exemptions every year until Mother "obtain[ed] fulltime employment" and then both children every even year and their son every odd-numbered year thereafter, "so long as he remains current with his child support obligations at the end of each calendar year." Mother has not alleged that Father is in arrears for any child support owed in 2005 and Father has stated that he has paid his child support obligations in full. Nonetheless, in contravention of the trial court's order, Mother claimed the parties' children as tax exemptions in 2005.

¶16 "It is a cardinal rule of equity that [one] who comes into a court of equity, seeking equitable relief, must come with

³ Mother only raises this claim as to the 2005 tax exemption and we therefore do not consider it as to any other year.

clean hands," *MacRae v. MacRae*, 57 Ariz. 157, 161, 112 P.2d 213, 215 (1941), although "[t]he application of the 'clean hands' doctrine rests in the sound discretion of the trial court." *Manning v. Reilly*, 2 Ariz.App. 310, 314, 408 P.2d 414, 418 (1965). In light of Mother's clear violation of the trial court's order allocating the tax exemptions between the parties, the court did not abuse its discretion in denying her laches defense.

¶17 Finally, Mother argues that the trial court erred by finding Father's failure to pay \$167.00 in child support in 2006 was "minute" and therefore did not negate Father's right to claim the tax exemptions according to the court's ordered schedule.

¶18 We review a child support order for an abuse of discretion. *Cummings v. Cummings*, 182 Ariz. 383, 385, 897 P.2d 685, 687 (App. 1994). A court abuses its discretion when "it commits an error of law in reaching a discretionary conclusion, it reaches a conclusion without considering the evidence, it commits some other substantial error of law, or 'the record fails to provide substantial evidence to support the trial court's finding.'" *Flying Diamond Airpark, LLC v. Meienberg*, 215 Ariz. 44, 50, ¶ 27, 156 P.3d 1149, 1155 (App. 2007) (quoting *Grant v. Ariz. Pub. Serv. Co.*, 133 Ariz. 434, 456, 652 P.2d 507, 529 (1982)). We review a trial court's interpretation of the Arizona Child Support Guidelines (Guidelines), A.R.S. § 25-320 app. (2007), de novo. *Clay v. Clay*, 208 Ariz. 200, 202, ¶ 5, 92 P.3d 426, 428 (App. 2004).

¶119 In her response to Father's motion, Mother claimed that he failed to pay \$167.00 in child support in 2006 but acknowledged that he was otherwise current. In his motion, Father asserted that he had paid his child support obligations in full.⁴

¶120 As reflected in the payment record attached to Mother's response, Father failed to pay \$167.00 in 2006. He consistently paid his monthly child support obligation of \$167.00 through June of that year, and then, after the trial court ordered that the child support award be modified to \$969.93 per month, retroactive to April, Father paid \$5,151.58, making his child support payments \$167.00 short through September 2006.

¶121 Pursuant to Section 27 of the Guidelines, "[t]he allocation of the exemptions shall be conditioned upon payment by December 31 of the total court-ordered monthly child support obligation for the current calendar year and any court-ordered arrearage payments due during that calendar year for which the exemption is to be claimed." When these conditions are met, "the custodial parent shall execute the necessary Internal Revenue Service forms to transfer the exemptions." *Id.* "If the noncustodial parent has paid the current child support, but has not paid the court-ordered arrearage payments, the noncustodial parent shall not be entitled to claim the exemption." *Id.*

¶122 The Guidelines do not provide a de minimis exception to the full payment requirement and, even if the Guidelines provided

⁴ Mother asserts that Father was alerted of the deficiency during his cross-examination at an August 4, 2006 hearing. A record of the hearing is not contained in the appellate record.

such an exception, the failure to pay one month of child support could not reasonably be considered minute. Thus, applying the Guidelines here, Father was not authorized to claim the parties' children as exemptions in 2006 because he failed to pay his child support obligation in full by the end of that year and the trial court abused its discretion in finding otherwise. Contrary to Mother's claim, however, Father was permitted to claim the parties' children as exemptions pursuant to the court's ordered schedule in 2007 because he had paid his child support in full that year and Mother failed to pursue a court order for the 2006 arrearage.

¶123 Therefore, Father was authorized to claim the parties' children as exemptions in 2005 and 2007 pursuant to the ordered schedule, but was not permitted to claim the children as exemptions in 2006. Father requests an award of his attorneys' fees on appeal pursuant to A.R.S. § 25-324 (Supp. 2009). In our discretion, we deny his request.

CONCLUSION

¶24 For the foregoing reasons, we affirm the trial court's order in part and vacate it in part.

/s/
PHILIP HALL, Judge

CONCURRING:

/s/
SHELDON H. WEISBERG, Presiding Judge

/s/
JOHN C. GEMMILL, Judge