

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



DIVISION ONE
FILED: 04-01-2010
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BY: GH

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

In re the Marriage of:) 1 CA-CV 09-0064
)
GEORGE MARCURE,) DEPARTMENT C
)
Petitioner/Appellant,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules
) of Civil Appellate
DEBORAH MARCURE,) Procedure)
)
Respondent/Appellee.)
)

Appeal from the Superior Court in Maricopa County

Cause No. FC 2004-002079

The Honorable John Rea, Judge

AFFIRMED

George Marcure
Petitioner/Appellant Pro Per

Springfield, IL

Maynard Cronin Erickson Curran & Sparks P.L.C.
by Daniel D. Maynard
Attorneys for Respondent/Appellee

Phoenix

I R V I N E, Presiding Judge

¶1 George Marcure ("Husband") appeals from a spousal maintenance and child support order modifying his payments to Deborah Marcure ("Wife") and from an order awarding Wife a

portion of his military retirement pay. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Husband and Wife were married in February 1992. On February 24, 2004, Husband filed a petition for dissolution of marriage. After continuing the matter on an inactive calendar, the court entered a default decree of dissolution of marriage on July 1, 2005.

¶3 Wife promptly moved to set aside the default decree and, in its November 7, 2005 minute entry, the court affirmed the part of the previous decree that "establishe[d] the basis for divorce, i.e., jurisdictional requirements, and that part that state[d] that the parties are divorced." The court, however, vacated the part of the decree that "divide[d] the property and debt and specifie[d] custody and parenting time arrangements."

¶4 The court approved the final decree of dissolution on May 25, 2006. The decree provided that Wife would have exclusive possession and control of the marital residence and, although Husband would remain on the mortgage loan, she was responsible for paying "100% of the mortgage payments on the residence."¹ The

¹ Similarly, the court ordered that "[i]n the event Wife fails to make the monthly mortgage payments and the lender issues a notice of forfeiture on the residence, then the spousal

decree also provided that Husband was to pay spousal maintenance to Wife in the amount of \$1000 per month and child support in the amount of \$424.82. Further, the decree awarded Wife "[o]ne-half of the community interest in Husband's military pension" and specified that "[t]his amount shall not be diminished as a result of any disability claim brought by Husband."

¶15 After receiving notice from the lender that the mortgage had not been paid for three months and that the house was in pre-foreclosure, Husband filed a petition to enforce the divorce decree and order the sale of the house. The court held an evidentiary hearing regarding Husband's petition during which Husband's spousal maintenance and child support arrearages also were discussed. The court denied Husband's petition to enforce the decree and order the sale of the house.

¶16 On October 2, 2008, the trial court held an evidentiary hearing concerning "[Husband's] military pension and [Husband's] Petition to Modify Child Support and Spousal Maintenance." The court approved Wife's "Clarifying Order Apportioning Military Retired Pay and Denying Survivor Benefit Plan." As a result, the court awarded Wife 30.12% of Husband's military retired pay. Additionally, the court took the issues concerning "[Husband's] Petition to Modify Child Support and

maintenance provision . . . shall become modifiable and the residence shall immediately be placed on the market for sale."

Spousal Maintenance" under advisement. On December 1, 2008, the court found that there had been a substantial and continuing change of circumstances justifying a modification of spousal maintenance and therefore reduced Husband's payments to \$500 per month. Concerning child support, the court modified Husband's child support payments to \$594.72 after finding that Husband's earning capacity was \$3000 per month and that Wife's gross monthly income was \$2841.67.

¶7 On December 24, 2008, Husband filed his notice of appeal, stating that he appeals "from the judgment of the Court filed with the clerk of the court pertaining to the October 2, 2008 hearing, minute entries of October 2, 2008 and December 1, 2008."

DISCUSSION

¶8 Husband raises multiple issues, to the extent we understand them, concerning the trial court's modification of spousal maintenance and child support. Husband contends that the court erred by: failing to rule/consider the evidence; "fail[ing] to modify spousal maintenance to zero" due to Wife's failure to make mortgage payments; improperly calculating child support; and awarding Wife funds in excess of his income.

¶9 Husband has failed to provide the transcripts of any of the hearings held by the trial court. "Since no reporter's transcript is before us, we will assume that evidence presented

at any of the hearings sustained the orders rendered thereon by the court." *Clark v. Clark*, 124 Ariz. 235, 235, 603 P.2d 506, 506 (1979). Moreover, Husband failed to provide citations to the record in his statement of facts as required by Arizona Rule of Civil Appellate Procedure ("ARCAP") 13(a)(4). We therefore disregard his statement of facts and only examine the facts in Wife's response that contain citations to the record. See *Ashton-Blair v. Merrill*, 187 Ariz. 315, 316, 928 P.2d 1244, 1245 (App. 1996) (striking statement of facts for failing to cite record). Based on Wife's statement of facts, the limited record on appeal, and our deference to the trial court, we uphold the trial court's modification of spousal maintenance and child support.

¶10 Husband also argues that the court's retirement calculations were incorrect and performed by the incorrect person. A notice of appeal must be filed "not later than 30 days after the entry of the judgment from which the appeal is taken." ARCAP 9(a). "In civil cases, a timely filing of a notice of appeal is jurisdictional prerequisite for review in this court." *Korens v. Ariz. Dep't of Econ. Sec.*, 129 Ariz. 426, 427, 631 P.2d 581, 582 (App. 1981).

¶11 Here, the divorce decree stated that "[t]he parties agree to retain Richard Underwood to prepare the Domestic Relations Order and that Mr. Underwood's fees and costs shall be

split equally between the parties." According to the court's minute entry, Mike McCarthy ("McCarthy") testified at the hearing and Wife's form of order, as adopted by the court, was based on McCarthy's division of Husband's military pension. On October 2, 2008, the court formally adopted Wife's form of order that clarified the apportionment of Husband's military retirement pay. Because Husband filed his notice of appeal more than thirty days after the relevant dates, his appeal as it relates to the October 2, 2008 order, is untimely. As a result, we lack jurisdiction to review this issue.

¶12 Finally, Husband contends that the court erred in failing to "refer to any [Arizona] statutes or rules regarding his decisions." Husband cites no authority, and we are aware of none, requiring a trial court to cite specific statutes or rules. Therefore, we find no error.

CONCLUSION

¶13 For the foregoing reasons, we affirm. Wife requests costs and attorneys' fees pursuant to ARCAP 25 because of the frivolous nature of Husband's appeal. As she points out, Husband's appeal has raised issues over which we have no jurisdiction and his brief failed to cite the record and did not include any legal authority for his arguments. We agree and therefore grant Wife's request for costs and attorneys' fees in

an amount to be determined upon her compliance with the requirements of ARCAP 21.

/s/

PATRICK IRVINE, Presiding Judge

CONCURRING:

/s/

MICHAEL J. BROWN, Judge

/s/

DONN KESSLER, Judge