DIVISION ONE
FILED: 06-15-2010
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:	)	1 CA-CV 09-0413
	)	
ERROLL PAYNE PALMER, III,	)	DEPARTMENT B
	)	
Petitioner/Appellee,	)	**MEMORANDUM DECISION**
	)	
v.	)	(Not for Publication –
	)	Rule 28, Arizona Rules of
CANDACE WEEKES PALMER,	)	Civil Appellate Procedure)
	)	
Respondent/Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. FN 2007-051120

The Honorable Alfred M. Fenzel, Judge

AFFIRMED IN PART; REVERSED AND REMANDED IN PART

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N O R R I S, Judge

¶1 Candace Weekes Palmer ("Wife") timely appeals from a decree dissolving her marriage to Erroll Payne Palmer III ("Husband"). As we explain below, with the exception of the $7,000 award for the Fiesta Americana asset, we affirm the decree.

FACTS AND PROCEDURAL BACKGROUND

¶2 The parties were married in 1987 in Arizona. When they separated in February 2007, the parties lived in Colorado and had been there for several years.

¶3 The parties stipulated to have the case heard by a special master. After a two-day trial, the special master issued a report, which the family court adopted in total.

DISCUSSION

I. Subject Matter Jurisdiction

¶4 Wife contends the family court lacked subject matter jurisdiction because Husband did not manifest his intent to "permanently remain" in Arizona at least 90 days before petitioning for dissolution on June 20, 2007, as evidenced by his outward acts. *See* Ariz. Rev. Stat. ("A.R.S.") § 25-312(1) (2007). We disagree.

¶5 Although subject matter jurisdiction is a question of law we review de novo, *In re Marriage of Crawford,* 180 Ariz. 324, 326, 884 P.2d 210, 212 (App. 1994), we review the family

court's determination of domicile for sufficiency of the evidence. *Jizmejian v. Jizmejian,* 16 Ariz. App. 270, 274, 492 P.2d 1208, 1212 (1972). Domicile requires "(1) physical presence and (2) an intent to abandon the former domicile and remain here for an indefinite period of time." *Lake v. Bonham,* 148 Ariz. 599, 601, 716 P.2d 56, 58 (App. 1986) (quoting *DeWitt v. McFarland*, 112 Ariz. 33, 34, 537 P.2d 20, 21 (1975)).[1] "[D]omicile is presumed to follow residence." *Id.* The party asserting a change of domicile has the burden to prove by a preponderance of the evidence he or she abandoned an earlier domicile in favor of a later one. *Jizmejian*, 16 Ariz. App. at 274, 492 P.2d at 1212. Each case is "to be decided on the basis of its own peculiar facts, using as indicia the habits of the person, his business and domestic relations, declarations, exercise of political rights, community activities, payment of taxes, ownership of property and other pertinent objective facts ordinarily arising out of the existence of the requisite intent." *Id.*

¶6 The record reflects, as Wife points out, Husband did not register his vehicle until May 2007; did not obtain an

[1]In *Lake*, we held a husband's abandonment of his California domicile, moving to Arizona indefinitely, but not permanently, raised the presumption of domicile in Arizona. 148 Ariz. at 601, 716 P.2d at 58.

Arizona driver's license until June 20, 2007; did not register to vote until June 22, 2007; and did not change his address with several other institutions until near the time, and in some cases after, he petitioned for dissolution.

¶7 The record, however, also reflects Husband packed all of his possessions, emptied a storage locker, returned the keys to the marital home, and left Colorado in late February 2007. After a two-week vacation/business trip, Husband came to Arizona, where he and Wife had previously lived; he stayed first with his brother and then with his son, both who lived here. In Husband's sworn affidavit, he stated he intended to permanently reside in Arizona as of March 5, 2007. Given these facts, sufficient evidence supported the family court's determination Husband abandoned Colorado with the intent to remain indefinitely in Arizona at least 90 days before he petitioned for dissolution.[2]

[2]Neither party requested an evidentiary hearing on the issues of subject matter and personal jurisdiction. *See* Ariz. R. Fam. L.P. 32(D). The family court had before it the parties' motions and attached exhibits and affidavits, and decided these issues after oral argument. Neither party included the transcript of this argument in the record on appeal.

II. Personal Jurisdiction

¶8 Wife next argues the family court lacked personal jurisdiction over her because she is a resident of Colorado and did not have sufficient contacts with Arizona. We disagree.

¶9 We review the family court's exercise of personal jurisdiction de novo. *See Ariz. Tile L.L.C. v. Berger*, 223 Ariz. 491, ___, ¶ 8, 224 P.3d 988, 990 (App. 2010). Arizona may exercise personal jurisdiction over nonresidents "to the maximum extent permitted by the constitution of this state and the Constitution of the United States." Ariz. R. Fam. L.P. 42(A). When, as here, a nonresident's activities are not so pervasive as to subject that person to general jurisdiction,

> the court may still find specific jurisdiction if: (1) the [nonresident] purposefully avails himself of the privilege of conducting business in the forum; (2) the claim arises out of or relates to the [nonresident's] contact with the forum; and (3) the exercise of jurisdiction is reasonable.

Williams v. Lakeview Co., 199 Ariz. 1, 3, ¶ 7, 13 P.3d 280, 282 (2000). A court must have personal jurisdiction over a nonresident spouse to determine the parties' monetary

obligations.[3] *See Taylor v. Jarrett,* 191 Ariz. 550, 552, ¶ 7, 959 P.2d 807, 809 (App. 1998).

¶10 Wife has been a resident of Colorado since at least 1998. In 1989, while Husband and Wife lived in Arizona, they formed the Candace Palmer Limited Partnership ("CPLP"), an Arizona limited partnership, because Wife wanted "to protect my assets that I brought into this marriage, because, [Husband] is, you know, out there with all these personal guarantees, and now I am." Although at the time Husband petitioned for dissolution CPLP held no property in Arizona, had no place of business in Arizona, and its major asset was the parties' home in Colorado, it maintained an Arizona statutory agent for service of process. *See* A.R.S. § 29-304(A)(2) (Supp. 2009).[4] Through CPLP, Wife "purposefully avail[ed]" herself of the laws and forum of Arizona to protect significant assets and could reasonably

[3]Wife relies on *Nickerson v. Nickerson*, 25 Ariz. App. 251, 253, 542 P.2d 1131, 1133 (1975), for the proposition Arizona must be the last state of matrimonial domicile in order to exercise personal jurisdiction over a nonresident spouse. Although we agree the record demonstrates Arizona was not the last state of matrimonial domicile, the analysis under *Nickerson* is not the only way an Arizona court may exercise personal jurisdiction. *See generally Williams*, 199 Ariz. 1, 13 P.3d 280.

[4]Although certain statutes cited in this decision were amended after Husband petitioned for dissolution, the revisions are immaterial. Thus, we cite to the current version of these statutes.

expect to be sued in this state.[5] *Cf. Williams,* 199 Ariz. at 3, ¶ 7, 13 P.3d at 282 (one element of specific jurisdiction is whether "the defendant purposefully avails himself of the privilege of conducting business in the forum"). Further, CPLP held an asset with substantial value, and Husband's equitable share in this asset was a contested issue in this dissolution proceeding. Wife was also listed as an "authorized user" on a golf membership in Arizona, an asset the special master determined to be community property worth approximately $140,000. The parties' competing claims regarding Husband's equitable interest in CPLP and the golf membership were such that Wife could also reasonably expect to be haled into court in Arizona, specific to this dissolution case.

III. Special Master's Report

¶11 Wife broadly argues the family court improperly adopted the special master's report in its entirety. At its heart, however, Wife's argument challenges specific rulings, made by the special master and adopted by the family court. Thus, we address each ruling contested by Wife.

[5]Indeed, Wife testified she faced a significant judgment and had consulted attorneys in three states, including Arizona, regarding this judgment.

A. Application of Arizona Law

¶12 Wife argues the special master incorrectly applied Arizona law instead of Colorado law to characterize marital assets as community or separate. Thus, Wife argues the special master should have applied Colorado law to her commissions, Destination Resort Properties/Skymar, retirement accounts, and life insurance policies.

¶13 As Husband correctly notes, A.R.S. § 25-318(A) (Supp. 2009) governs these assets. This statute provides that in a dissolution action, "property acquired by either spouse outside this state shall be deemed to be community property if the property would have been community property if acquired in this state." *See Martin v. Martin,* 156 Ariz. 440, 445-46, 752 P.2d 1026, 1031-32 (App. 1986), *partially vacated on other grounds*, 156 Ariz. 452, 453, 458, 752 P.2d 1038, 1039, 1044 (1988) (A.R.S. § 25-318(A) applies even when only one spouse is domiciled in Arizona); *see also Woodward v. Woodward,* 117 Ariz. 148, 150, 571 P.2d 294, 296 (App. 1977) (section 25-318(A) supersedes the usual conflict of laws rule that the court looks to the domicile of the parties at the time the property was acquired to determine its character). The special master, therefore, correctly applied Arizona law to characterize property acquired by the parties during their marriage.

B. Husband's Equitable Share in CPLP

¶14 Wife argues the special master improperly awarded Husband an equitable interest of $50,000 in CPLP.[6] We disagree the award was improper, but agree in part, as discussed *infra* Part III.E, the special master's $7,000 award for the Fiesta Americana asset resulted in a double recovery to Husband.

¶15 In Arizona, "when the value of separate property is increased the burden is upon the spouse who contends that the increase is also separate property to prove that the increase is the result of the inherent value of the property itself and is not the product of the work effort of the community." *Cockrill v. Cockrill*, 124 Ariz. 50, 52, 601 P.2d 1334, 1336 (1979). The court must first determine the value of the separate property at the time of marriage and when the community ended; these numbers

[6]Wife argues a prior draft of the special master's report determined Husband's equitable share was 16.7% of the increased value of CPLP. The earlier draft report apparently found the increase in value was over $600,000. The special master's final report significantly decreased the amount of the increased value to $127,824. Wife does not challenge this change in value; rather Wife claims the special master should have applied the same percentage to the lower figure, but instead picked the $50,000 figure "out of thin air." In support of this claim, Wife's opening brief refers to correspondence between the parties and the special master that was not part of the record on appeal. This court denied Wife's request to supplement the record on appeal with this correspondence. Therefore, we do not consider the correspondence or the arguments which refer to it. For these same reasons, we grant Husband's motion to strike the appendix to Wife's reply brief that contains material from this correspondence.

enable the court to calculate the increase of the asset's value. An increase which results "from a combination of separate property and community labor, must be apportioned accordingly." *Id.* at 54, 601 P.2d at 1338. In apportioning the increase between separate and community property, the family court "is not bound by any one method, but may select whichever will achieve substantial justice between the parties." *Id.*; *Kelsey v. Kelsey*, 186 Ariz. 49, 51, 918 P.2d 1067, 1069 (App. 1996).

¶16 Because the valuation of assets is determined "based on the facts and circumstances of each case," *Kelsey*, 186 Ariz. at 51, 918 P.2d at 1069, we will not set aside a court's valuation unless clearly erroneous. *See Castro v. Ballesteros-Suarez*, 222 Ariz. 48, 51-52, ¶ 11, 213 P.3d 197, 200-01 (App. 2009).

¶17 The parties formed CPLP in 1989 for asset protection and estate planning purposes. The parties placed valuable assets into CPLP, including their Beaver Creek home, as well as some of Wife's separate property and other community assets. The special master found Husband had no legal interest in CPLP, but did have an equitable interest in CPLP worth $50,000 based on his paying Wife approximately $5,000 per month throughout the marriage and a one-time $50,000 payment. Husband's payments to Wife were then transferred into the CPLP account and used, along

with Wife's earnings, to pay CPLP debts. Relying on *Cockrill*, the special master concluded Husband was entitled to an equitable share of the increase in value of CPLP that resulted from the community efforts, which he determined to be $127,824, and awarded Husband $50,000 of that amount.

¶18 Wife failed to maintain accurate partnership records, and as the special master described, "[a]t best, her accounting methods are a disaster." This hampered the special master's efforts to arrive at a precise calculation of Husband's contributions to CPLP. Husband offered evidence he contributed community funds to pay the mortgage payment, homeowners' association dues, and property taxes on or for the Beaver Creek property since 1989, as well as the $50,000 contribution.[7] Moreover, Wife admitted "community funds" were used to pay the mortgage, upkeep, and homeowners' association expenses. Under these circumstances, the special master's award to Husband of a $50,000 equitable interest in CPLP was not clearly erroneous.

[7]The special master discounted these payments to some extent because Husband would otherwise have had similar living expenses.

C. The "Alleged Agreement"

¶19 Wife next argues the special master improperly characterized certain assets and debts as community property and obligations because the parties had agreed, during the marriage, to maintain separate finances. The special master rejected Wife's argument the parties' maintenance of separate finances constituted an agreement those assets and debts would be separate and not community.

¶20 Property acquired during marriage is presumptively community property. *See* A.R.S. § 25-211 (Supp. 2009). This presumption may be overcome by clear and convincing evidence. *Bender v. Bender,* 123 Ariz. 90, 93, 597 P.2d 993, 996 (App. 1979); *see Carroll v. Lee,* 148 Ariz. 10, 16, 712 P.2d 923, 929 (1986) ("The spouse claiming particular property as separate must prove the separate nature by 'clear and convincing' or nearly conclusive evidence.") (citation omitted). Similarly, all debts incurred during marriage are presumed to be community obligations unless there is clear and convincing evidence to the contrary. *Schlaefer v. Fin. Mgmt. Serv., Inc.*, 196 Ariz. 336, 339, ¶ 10, 996 P.2d 745, 748 (App. 2000). We view the evidence in a light most favorable to sustaining the family court's determination unless there is clear and convincing evidence it abused its discretion in determining the nature of property or

debt as community or separate. *Bender*, 123 Ariz. at 92, 597 P.2d at 995; *see also Johnson v. Johnson*, 131 Ariz. 38, 43-44, 638 P.2d 705, 710-11 (1981) (appellate court will sustain family court's classification of obligations as community debts if there is any reasonable evidence to support it).

¶21 Although Husband and Wife both testified they maintained separate accounts since 1993, they also testified Husband gave money to Wife to pay household expenses. Husband specifically denied the parties had any agreement as to how to hold their assets. Wife did not establish any date upon which this alleged agreement took effect. It is also unclear exactly which accounts were held separately or if the parties previously had joint accounts but closed them and opened separate accounts. Given the state of the evidence, Wife failed to prove by clear and convincing evidence the existence of an agreement whereby the parties would forego their community property rights. Thus, the special master did not abuse his discretion in awarding Husband one-half of the value of the assets and debts as discussed below.[8]

[8]Relying on *Cardon v. Cotton Lane Holdings, Inc.*, 173 Ariz. 203, 841 P.2d 198 (1992), Wife argues the alleged agreement is a contract and thus, under the conflict of law analysis of Restatement (Second) Conflict of Laws § 188 (1971), Colorado law should apply. Because the record contains

1. Destination Resort Properties and Skymar

¶22 Wife worked as a real estate broker and placed her commissions into a limited liability corporation called Destination Resort Properties ("DRP"). Wife formed DRP before being served with the petition for dissolution. Shortly thereafter, Wife formed another entity called Skymar. DRP transferred about $200,000 into Skymar.[9]

¶23 Wife contends DRP and Skymar, acquired with commissions she earned during the marriage, are her separate property pursuant to the alleged agreement. The special master noted, "the presumption is that DRP is community property while SKYMAR is [Wife's separate property]." He found the $200,000 transferred from DRP to Skymar was community property and Husband was entitled to his share, or $100,000. Because we reject the existence of the alleged agreement, *see supra* Part III.C, the special master did not abuse his discretion in making this division of property.

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insufficient evidence of the alleged agreement, we need not reach this argument.

[9]In return, Wife, via DRP, received a 99% interest in Skymar.

2. Retirement Accounts, Life Insurance Policies, and Credit Card Debt

¶24 Wife next argues, pursuant to the alleged agreement, the special master incorrectly found certain retirement accounts were entirely, or in part, community property because they were opened and funded during the marriage with the parties' earnings. Wife repeats this argument regarding the special master's finding two life insurance policies[10] were community property and $42,000 of debt on credit cards in Husband's name was community debt. Again, because we reject Wife's alleged agreement argument, the family court did not abuse its discretion when it characterized these assets and debts as belonging to the community.[11] *See supra* Part III.C, III.C.1.

¶25 Alternatively, Wife contends it would be inequitable to hold her responsible for the credit card debt in Husband's name because she paid off the credit cards in her name throughout the marriage. Although the parties do not dispute Wife paid off her credit cards while Husband maintained debt

[10]The family court awarded Husband an $8,000 equalization payment because the policy awarded to Wife had a greater value.

[11]For the reasons stated in this section, we also reject Wife's claim the Fiesta Americana asset was her separate property pursuant to the alleged agreement. We discuss a "double recovery" argument Wife raises concerning the Fiesta Americana asset *infra* Part III.E.

balances on his, Husband testified these debts included purchases and travel during the marriage that also benefitted Wife. Wife presented no evidence to dispute Husband's testimony. This supports the special master's finding he had "no choice but to conclude that the debts are community obligations to be shared equally by the parties," and thus, we see no abuse of discretion.

D. Account Balance Equalization Award

¶26 Wife also argues the family court should have awarded Husband an account balance equalization payment of $8,000 and not the $66,500 because she only failed to account for $15,995 in community property funds, not the $133,000 found by the special master.[12] Wife submitted the evidence she relies on, however, after the evidentiary hearing and, although considered by the special master, is not part of the record on appeal.

¶27 First, because Wife's evidence is not part of the record on appeal, it is impossible for us to determine if the special master abused his discretion in awarding Husband the $66,500 equalization award. Second, because the special master considered Wife's evidence, in its absence from the record we must presume all of the evidence in the aggregate supports his

[12]The special master awarded Husband $66,500 to equalize the community funds in several unspecified accounts.

conclusion. *Cf. Maricopa County Juv. Action No. J-86509*, 124 Ariz. 377, 377, 604 P.2d 641, 641 (1979) (when incomplete record presented to appellate court, it must assume any testimony or evidence not included in record on appeal supported action of superior court); *John C. Lincoln Hosp. & Health Corp. v. Maricopa County*, 208 Ariz. 532, 540, ¶ 23, 96 P.3d 530, 538 (App. 2004) (appellate court defers to superior court with respect to factual findings and assumes it found every fact necessary to sustain the judgment). Thus, we affirm the account balance equalization award.[13]

E. Fiesta Americana Award

¶28 Wife argues the special master's $7,000 award to Husband for a one-half interest in Fiesta Americana resulted in a double recovery because the special master awarded him a $50,000 equitable interest in CPLP. We agree.

¶29 In 2001, Wife purchased an interest in a vacation club/timeshare called Fiesta Americana, for $13,600. She bought

[13]Wife also argues the special master failed to scrutinize Husband's accounts to the same degree he scrutinized her accounts when he concluded Wife failed to properly account for $133,000 in community funds. On appeal, however, Wife failed to identify the accounts the special master failed to scrutinize. Further, Wife did not argue in the family court Husband failed to account for any community funds. We will not consider this argument because it is raised for the first time on appeal. *See Dillig v. Fisher,* 142 Ariz. 47, 51, 688 P.2d 693, 697 (App. 1984).

it in the name of CPLP, but paid for it with her personal funds. From 2002 to 2006, CPLP claimed this as an investment in its tax returns.

¶30 The special master awarded Husband $7,000 as his interest in this asset based on a finding Wife purchased it with community funds. In valuing CPLP, however, the special master specifically included this asset. Thus, the special master already compensated Husband for this asset with the award of a $50,000 equitable share of CPLP. Accordingly, we reverse and remand this portion of the decree with instructions to vacate this $7,000 award to Husband.

F. Spousal Maintenance

¶31 Wife contends the special master improperly awarded indefinite spousal maintenance of $500 per month to Husband because he disregarded the "parties' individual earning capabilities and [] capacities to provide for their own reasonable needs." Because Wife did not cite a specific statutory subsection concerning spousal maintenance in her briefing on appeal, her argument could be construed as an attack on Husband's entitlement to spousal maintenance under A.R.S. § 25-319(A) (2007) or on the amount and duration of the award under § 25-319(B). In either case, we disagree with Wife's argument.

¶32 We review the family court's award of spousal maintenance for abuse of discretion. *Gutierrez v. Gutierrez,* 193 Ariz. 343, 348, ¶ 14, 972 P.2d 676, 681 (App. 1998). We view the evidence in the light most favorable to Husband and will affirm the judgment if there is any reasonable evidence to support it. *See id.*

1. Husband's Entitlement to Maintenance

¶33 Spousal maintenance may be awarded when any one of the four factors under A.R.S. § 25-319(A) is present. *Gutierrez*, 193 Ariz. at 348, ¶ 17, 972 P.2d at 681. The special master found Husband qualified for spousal maintenance under all four factors listed in this subsection, including Husband's contribution to the educational opportunities of Wife. *See* A.R.S. § 25-319(A)(3). Further, as we discuss in the next section, *see infra* Part III.F.2, evidence also supports the special master's findings Husband lacked both sufficient property to meet his reasonable needs and the earning ability to be self-sufficient. *See* A.R.S. § 25-319(A)(1), (2). Thus, Husband was entitled to an award of spousal maintenance.

2. Amount and Duration of Maintenance

¶34 The special master was required to consider the "relevant" factors listed in A.R.S. § 25-319(B) in determining the appropriate amount and duration of the award. In making

this determination, the special master found, *inter alia*, Wife "appears" to be able to meet her reasonable needs, he "guessed [Wife] will continue to be very successful," and he "fe[lt]" the question of who had the greater earning ability "is tilted in favor of [] Wife." *See* A.R.S. § 25-319(B)(3), (4), (5), (9). These statements, perhaps inartful, lie at the heart of Wife's argument.

¶35 The evidence supports the special master's overall conclusion, implicit in his award of spousal maintenance, that Husband's net income did not completely meet his reasonable needs. Husband, 69 years old, earned approximately $77,500 per year and claimed $6,000 in monthly expenses.[14] Husband had been "managing the [monthly] shortfall" by withdrawing from his IRA. Husband had recently obtained his realtor's license in Arizona and had been looking for business to supplement his income. *See* A.R.S. § 25-319(B)(3) (factors include age, employment history, earning ability of spouse seeking maintenance); A.R.S. § 25-319(B)(9) (financial resources of party seeking maintenance and

[14]The special master also found Husband had overstated his expenses. From this we infer Husband's reasonable expenses were less than $6,000 per month. It is unclear, however, the extent to which Husband had overstated his expenses. Husband's Affidavit of Financial Information listed expenses totaling $6,075 plus $2,000 in monthly credit card payments.

that spouse's ability to meet his or her own needs independently).

¶36 Although the special master noted it was "impossible" to determine Wife's income and he took "judicial notice of a declining real estate market," he also found Wife had been a successful realtor, supported by her declaration of gross income of $159,000 in 2005, $354,000 in 2006, and $157,000 in 2007. Wife stated she had already earned $180,000 in commissions for the year at the time of her testimony on September 19, 2008. Wife retained 49% ownership of CPLP, which held substantial assets, including the Beaver Creek home the special master found to be worth $1 million.[15] *See* A.R.S. 25-319(B)(4) (factors include ability of spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance); A.R.S. § 25-319(B)(5) (comparative financial resources of spouses, including comparative earning ability).

¶37 Moreover, the special master found Wife had "been less than candid and forthcoming with disclosure. The Wife has made the tracing of funds and determination of the full extent of the

[15]Wife's adult daughter owned the other 51% of CPLP.

marital community more difficult than need be."[16] Testimony of Husband and his expert support this, as do discovery dispute letters stipulated into evidence. Although the special master did not have precise information to calculate spousal maintenance, ample evidence support his findings of the parties' respective individual earning capabilities and capacities to provide for their own reasonable needs, as well as other "relevant" factors delineated in A.R.S. § 25-319(B). Thus, we see no abuse of discretion.

G. Attorneys' Fees -- Family Court

¶38 Wife argues the special master improperly awarded Husband $25,000 in attorneys' fees under A.R.S. § 25-324(A) (Supp. 2009). We disagree.

¶39 The family court "may" award attorneys' fees, "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings." A.R.S. § 25-324(A). "The trial court has discretion to award attorneys' fees, and we will not disturb that finding absent an abuse of discretion." *Gutierrez,* 193 Ariz. at 351, ¶ 32, 972 P.2d at 684. Courts are to consider

[16]The special master also noted he did not find there had "been excessive or abnormal expenditures, nor ha[d] there been a destruction or fraudulent disposition of assets." *See* A.R.S. § 25-319(B)(11).

both the parties' pre-decree ability to pay attorneys' fees and post-decree financial resources. *See id.* at 351, ¶ 33, 972 P.2d at 684 (one of the purposes of A.R.S. § 25-324 is to award fees to the party least able to pay) (citation omitted).

¶40 Relying on his analysis of the parties' income and resources when he calculated spousal maintenance, the special master determined "with the award of spousal maintenance, [he] believe[d] [the income and liquidity of the parties] is relatively on par." Although imprecise, this wording suggests the post-decree resources of the parties are close, but not equal. As discussed above, *see supra* Part III.F, the record supports the special master's conclusion Wife has greater earning ability and resources than Husband.

¶41 Moreover, we may affirm the fee award if there is evidence supporting the conclusion Wife took unreasonable positions during the proceedings. *See* A.R.S. § 25-324(A). The special master concluded both parties were unreasonable on various claims, but found Wife was "less than candid and forthcoming with disclosure and discovery," and the formation of DRP and Skymar was "dubious." As previously discussed, *see supra* ¶ 37 and Part III.C.1, evidence supported these findings and thus, the special master did not abuse his discretion in

awarding Husband $25,000 of the approximately $100,000 in fees he requested at trial.

IV. Attorneys' Fees and Costs on Appeal

¶42 Both parties request an award of attorneys' fees and costs on appeal pursuant to A.R.S. § 25-324 and ARCAP 21. Husband also bases his request on A.R.S. §§ 12-349 and -350 (2003). Although, with one exception, we have rejected Wife's arguments, we cannot say her appeal was frivolous. *See* A.R.S. § 12-349(A) (authorizing an award of fees when a party brings a claim without substantial justification, primarily for delay or harassment, or unreasonably expands or delays the proceeding). Therefore, we deny Husband's request for an award of fees and costs on this basis. Under A.R.S. § 25-324, we cannot say the parties took unreasonable positions or obtained dramatically different relief on appeal, and we therefore decline to award either party their fees or costs on appeal.

CONCLUSION

¶43 For the foregoing reasons, with the exception of the award for the Fiesta Americana asset, we affirm the family court's dissolution decree; we reverse and remand with instructions to vacate the $7,000 award to Husband for the Fiesta Americana asset. We deny both parties' requests for an award of attorneys' fees and costs on appeal.

/s/
_____
PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

/s/
_____
DANIEL A. BARKER, Judge

/s/
_____
PETER B. SWANN, Judge