

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



DIVISION ONE
FILED: 12/07/10
RUTH WILLINGHAM,
ACTING CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:) 1 CA-CV 10-0059
)
RUTH E. HERNANDEZ,) DEPARTMENT C
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
KEN GALAVIZ HERNANDEZ,)
)
Respondent/Appellant.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FN2006-051648

The Honorable Ruth H. Hilliard, Judge

AFFIRMED

James Scott Walker, P.C. Phoenix
by James Scott Walker
Attorneys for Respondent/Appellant

Ruth E. Hernandez (Odogui), Petitioner/Appellee Glendale
In Propria Persona

P O R T L E Y, Judge

¶1 Ken Galaviz Hernandez ("Husband") challenges the order modifying his spousal maintenance award. Finding no abuse of discretion, we affirm the modification order.

FACTS AND PROCEDURAL BACKGROUND

¶12 After more than twenty-five years of marriage, Husband and Ruth E. Hernandez ("Wife") were divorced in 2007. The Amended Decree awarded Husband \$2000 per month in spousal maintenance beginning July 1, 2007, until he remarried or died. The Amended Decree also required Husband, who was disabled, to obtain health insurance through Medicare Parts B and D. Wife was also required to pay the bulk of the community debt, including any federal tax debt for the 2004 and 2005 tax years.

¶13 Wife sought to modify her spousal maintenance obligation on May 14, 2009, pursuant to Arizona Revised Statutes ("A.R.S.") section 25-327 (2007) and Arizona Rule of Family Law Procedure 91. She alleged that she could not pay her living expenses, the parties' community debts, and the current level of spousal maintenance. Husband objected, and the matter proceeded to an evidentiary hearing.

¶14 After the hearing, the family court modified the spousal maintenance order for the following reasons:

Petitioner's obligation to pay \$22,000 in tax debts was an unknown amount when she was assigned all community debt; further, her expenses have increased while Respondent has failed to reduce his living expenses to a reasonable amount. The Court finds that Respondent has a reasonable option to be covered on AHCCCS instead of Medicare; while he may prefer the coverage available to him on Medicare there simply are not enough

resources available to meet each party's preferred needs.

Accordingly, the court reduced Wife's spousal maintenance obligation to \$1400 per month beginning November 1, 2009. The court also denied Husband's request for attorneys' fees.

¶15 Husband unsuccessfully argued that the family court should reconsider its decision because he was disqualified from receiving AHCCCS benefits. We have jurisdiction over Husband's appeal pursuant to A.R.S. § 12-2101(C) (2003).

DISCUSSION

¶16 A spousal maintenance order "may be modified or terminated only on a showing of changed circumstances that are substantial and continuing." A.R.S. § 25-327(A). The party seeking modification has the burden to prove the changed circumstances since the divorce. *Scott v. Scott*, 121 Ariz. 492, 494, 591 P.2d 980, 982 (1979). We review the family court's ruling that there has been a substantial and continuing change of circumstances for an abuse of discretion. See *Schroeder v. Schroeder*, 161 Ariz. 316, 323, 778 P.2d 1212, 1219 (1989); *Van Dyke v. Steinle*, 183 Ariz. 268, 273-74, 902 P.2d 1372, 1377-78 (App. 1995). In general, an abuse of discretion occurs when the record fails to substantially support the court's decision or the court commits an error of law in reaching its decision.

State v. Cowles, 207 Ariz. 8, 9, ¶ 3, 82 P.3d 369, 370 (App. 2004).

¶7 Moreover, because there was no request for findings of fact and conclusions of law pursuant to Rule 82(A), we presume that the family court “found every fact necessary to support the judgment, and such presumptive findings must be sustained if the evidence on any reasonable construction justified it.” *Neal v. Neal*, 116 Ariz. 590, 592, 570 P.2d 758, 760 (1977) (citation omitted; internal quotes omitted); *Berryhill v. Moore*, 180 Ariz. 77, 82, 881 P.2d 1182, 1187 (App. 1994). Thus, we review any factual findings for clear error. Ariz. R. Family L.P. 82(A); *Hrudka v. Hrudka*, 186 Ariz. 84, 91, 919 P.2d 179, 186 (App. 1995).

¶8 To determine whether the spousal maintenance order should be modified, the family court considers the same statutory factors it considered to make the initial award. *Scott*, 121 Ariz. at 495 n.5, 591 P.2d at 983 n.5. The statutory factors are:

1. The standard of living established during the marriage.
2. The duration of the marriage.
3. The age, employment history, earning ability and physical and emotional condition of the spouse seeking maintenance.

4. The ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance.
5. The comparative financial resources of the spouses, including their comparative earning abilities in the labor market.
6. The contribution of the spouse seeking maintenance to the earning ability of the other spouse.
7. The extent to which the spouse seeking maintenance has reduced that spouse's income or career opportunities for the benefit of the other spouse.
8. The ability of both parties after the dissolution to contribute to the future educational costs of their mutual children.
9. The financial resources of the party seeking maintenance, including marital property apportioned to that spouse, and that spouse's ability to meet that spouse's own needs independently.
10. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and whether such education or training is readily available.
11. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.
12. The cost for the spouse who is seeking maintenance to obtain health insurance and the reduction in the cost of health insurance for the spouse from whom maintenance is sought if the spouse

from whom maintenance is sought is able to convert family health insurance to employee health insurance after the marriage is dissolved.

13. All actual damages and judgments from conduct that results in criminal conviction of either spouse in which the other spouse or child was the victim.

A.R.S. § 25-319(B)(1-13) (2007).

¶9 Here, the family court found that a substantial and continuing change had occurred since 2007. The court correctly recognized that Wife had started paying \$22,224.09 in federal tax debt. The tax returns had not been filed and liability had not been quantified at the time of the Amended Decree. As a result, modification was appropriate because the court did not consider the impact of the tax liability when it determined the spousal maintenance order; accordingly, the change is substantial and continuing. See *Cooper v. Cooper*, 167 Ariz. 482, 490-91, 808 P.2d 1234, 1242-43 (App. 1990) (holding that a substantial change in circumstances warranted a reduction of the wife's spousal maintenance even though the husband's income had increased, because his expenses and payments had also increased while the wife's expenses had decreased).

¶10 Moreover, a comparison of both parties' 2009 Affidavits of Financial Information ("AFIs") with the findings in the Amended Decree further supports modification. In 2007,

the family court determined that Wife had earned about \$71,000 per year with a bonus. When Wife filed her modification petition, her salary exceeded \$73,000, and she received an \$8021.03 bonus in 2008. She testified, however, that any future bonus was not guaranteed and the amount of any bonus she might receive depended on company earnings.

¶11 Wife's living expenses and tax obligation exceeded any increase in income. During the divorce proceedings, she had modest living expenses because she was living with relatives. She, however, had to move in January 2009, and had monthly living expenses of \$2806.14 at the time she filed her modification petition, which included \$722.63 for rent and insurance for her one-bedroom apartment. She also testified she could barely meet her monthly obligations after paying the spousal maintenance award and Husband's \$5000 attorneys' fees award.

¶12 Husband's financial situation had also changed. His monthly disability income had increased from \$568 to \$635.40. He moved from a one-bedroom apartment that he paid \$800 per month, to a two-bedroom, two-bath apartment with a roommate, and was only responsible to pay \$225 in monthly rent. His health insurance costs decreased from the projected \$135 at divorce to \$96.40. His 2009 AFI reflected monthly food expenditures of \$1070 (compared to \$600 on Wife's 2009 AFI) and monthly clothing

expenses of \$280 (compared to \$220 on Wife's AFI). Although acknowledging Husband's dietary needs, the family court concluded that Husband had incurred unreasonable living expenses since the divorce. We find no abuse of discretion with the finding.

¶13 The modification order also includes the finding that AHCCCS coverage was a reasonable post-modification alternative to Husband's Medicare coverage. Husband told the family court that he would be unable to afford Medicare coverage if spousal maintenance decreased, and based upon his prior AHCCCS experiences, he would not be able to schedule appointments with his preferred doctors. He also noted that he relied on the sample medications he received from his doctors because Medicare does not cover all of them. The court nevertheless concluded that AHCCCS was a reasonable option and "there simply are not enough resources available to meet each party's preferred needs." We find no abuse of discretion with the finding.

¶14 Husband continues to argue that AHCCCS was not a reasonable option. He, however, provides no legal authority or supporting analysis for the assertion that he will not qualify for AHCCCS. Because he fails to adequately develop and support the argument on appeal, we decline to address it. See ARCAP 13(a)(6) (a brief shall contain arguments with citations to authorities, statutes, and parts of the record relied upon);

Polanco v. Indus. Comm'n, 214 Ariz. 489, 491-92 n.2, ¶ 6, 154 P.3d 391, 393-94 n.2 (App. 2007) (finding an issue waived on appeal because the party mentioned it in passing, cited no supporting legal authority, and failed to develop it further).¹

¶15 Finally, we deny Husband's request for attorneys' fees on appeal because he has failed to supply a statutory basis for our consideration. See ARCAP 21(c)(1); *Roubos v. Miller*, 214 Ariz. 416, 420, ¶ 21, 153 P.3d 1045, 1049 (2007).

CONCLUSION

¶16 We affirm the family court's modification order.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

MARGARET H. DOWNIE, Judge

/s/

PATRICIA A. OROZCO, Judge

¹ Insurance coverage is just one factor in any spousal maintenance analysis under A.R.S. § 25-319(B). The family court was entitled to balance the coverage issue against other factors, including Wife's increasing debt burden and decreasing ability to meet her own needs as well as Husband's, especially because Husband never demonstrated that he had ever asked his current doctors if they would accept AHCCCS coverage.