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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 05/29/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:) 1 CA-CV 11-0099
)
LEE CRAWFORD,) DEPARTMENT D
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules
) of Civil Appellate
MICHAEL JAY CRAWFORD,) Procedure)
)
Respondent/Appellant.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. FC2009-001946

The Honorable David J. Palmer, Judge

AFFIRMED

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Mesa

G O U L D, Judge

¶1 Michael Crawford ("Husband") appeals from the trial court's decree of dissolution of marriage. He challenges the court's valuation of the community business and the awards of spousal maintenance, attorney fees and costs to Lee Crawford ("Wife"). For the following reasons, we affirm.

Background

¶2 Husband and Wife were married in June 2000. The parties have one child common to the marriage. During the marriage, Husband started MC Mechanics, Inc. ("MCM") an HVAC business of which he was 100% owner, and Wife worked as a nurse.

¶3 Wife filed a petition for dissolution of marriage in April 2009. In the petition, Wife sought joint legal custody of the parties' minor child, designation as the primary residential parent, an award of child support, an award of spousal maintenance, and equitable division of the parties' community property and debts. Wife also requested the court order Husband to pay her attorney fees and costs. Prior to the evidentiary hearing, the parties divided their property - with the exception of MCM - by settlement agreement. The valuation and division of MCM, and the amount of child support and spousal maintenance, if any, remained contested issues to be resolved by the court.

¶4 The court held an evidentiary hearing and considered the evidence, witness testimony, exhibits, and the parties'

arguments. A large portion of the evidence presented at the hearing concerned the value of MCM. Husband testified that MCM, though profitable in its first few years of operation, had essentially become defunct due to the economic downturn. As a result, Husband claimed that he currently made only \$1,300/month. Husband's expert, his CPA, testified that MCM "had no value as of December 31, 2009."

¶15 In contrast, Wife presented evidence that based on the parties' 2006-2008 tax returns, Husband made approximately \$150,000-\$200,000 per year from MCM. Wife acknowledged that MCM's profits declined after 2008, but she claimed that Husband, and not the economy, was largely responsible for MCM's decline. Wife testified that the business's demise strategically coincided with the divorce proceedings and that Husband's failure to aggressively bid for jobs and his habit of drinking alcohol were more to blame than the economic downturn. Wife also presented expert testimony estimating MCM's value to be \$406,000.

¶16 Following the hearing, the court entered a decree dissolving the marriage. The court awarded Wife sole legal custody of the minor child and ordered Husband to pay Wife \$691.97 per month in child support. After analyzing the factors set out in Arizona Revised Statutes ("A.R.S.") section 25-319

(2007), the court awarded Wife spousal maintenance in the amount of \$500 per month for a period of 42 months. Upon considering the parties' individual and business tax returns for 2006-2008 and the testimony of their experts concerning the value of MCM, the court determined MCM to be worth \$125,000, and ordered Husband to pay Wife an equalization payment of \$62,500. Finally, the court found Husband had considerably more resources available to contribute to Wife's attorney fees and costs and Husband had acted unreasonably in the litigation, and granted Wife's request for attorney fees and costs. Husband timely appealed.

Discussion

¶7 Husband argues the court abused its discretion in creating its own method of valuation to determine the value of MCM. He takes issue with the fact that the court "did not identify which portions of each [expert's] method it used." Husband cites *Kelsey v. Kelsey*, 186 Ariz. 49, 918 P.2d 1067 (App. 1996), in support of this position. However, in *Kelsey*, a party, prior to trial, requested that the court make findings of fact and conclusions of law pursuant to Arizona Rule of Civil Procedure 52(a). *Kelsey*, 186 Ariz. at 50-51, 918 P.2d at 1068-69. Rule 52(a) was not invoked in this case; therefore, we affirm if any evidence supports the court's ruling. See

Mitchell v. Mitchell, 152 Ariz. 317, 323, 732 P.2d 208, 214 (1987).

¶18 The court must determine an asset's true economic value in order to equitably divide the marital property upon dissolution. *In re Molloy*, 181 Ariz. 146, 151-52, 888 P.2d 1333, 1338-39 (App. 1994). "The valuation of assets is a factual determination" left to the trial court's discretion. *Kelsey*, 186 Ariz. at 51, 918 P.2d at 1069. The trial court exercises this discretion by considering various methods of valuing businesses as explained and applied by the testimony of qualified expert witnesses. *Id.*

¶19 The trial court's determination of issues of credibility and resolution of conflicting evidence regarding the value of MCM is supported by substantial evidence, and we will not disturb the trial court's findings on appeal. See *Lee v. Lee*, 133 Ariz. 118, 123, 649 P.2d 997, 1002 (App. 1982). Wife's expert based his valuation of MCM on tax returns and records of the business from 2006 through 2008. In doing so he recognized that his valuation "may be missing data and minimizing or eliminating steps" because Husband refused to provide him with more complete data. Husband's expert testified that MCM had no value and was no longer a going concern in light of the economic decline. However, the trial court properly considered the

testimony of Wife's expert that there were serious flaws in the methodology and conclusions of Husband's expert.

¶10 Based on the entire record before us, we cannot say the court abused its discretion in determining MCM's value to be \$125,000. See *Lee*, 133 Ariz. at 123, 649 P.2d at 1002. In reaching its conclusion, the court relied upon MCM's tax returns for 2006-2008, as well as the opinions of the parties' experts. Despite the conflict in the experts' opinions, the court properly exercised its discretion in weighing these opinions and taking into consideration the different methods they used to value MCM. *Kelsey*, 186 Ariz. at 51, 918 P.2d at 1069 ("If an expert fails to calculate the value of an asset according to standard methodology, that failure goes to the weight of the expert's opinion, not the admissibility."). Husband has not provided the relevant transcripts; thus we "must presume that the findings by the trial court were supported by the evidence at trial." *Walker v. Walker*, 18 Ariz. App. 113, 114, 500 P.2d 898, 899 (1972).

¶11 The evidence in the record supports the court's determination that MCM was not valueless. MCM's tax returns for 2006, 2007, and 2008 show that despite fluctuations in ordinary business income, MCM was able to increase the amount of

compensation for officers.¹ Additionally, although the court decided Wife's expert was more credible than Husband's expert, it did not totally discredit the economic factors discussed by Husband and his expert.

¶12 Husband next challenges the court's award of spousal maintenance. He argues the court erred when it attributed earning capacity to him for purposes of calculating spousal maintenance without first considering the factors set out in *Pullen v. Pullen*, 223 Ariz. 293, 222 P.3d 909 (App. 2009). Husband argues that in the absence of a consideration of the *Pullen* factors, the court must have relied on its valuation for MCM to attribute an income to Husband and that the award of spousal maintenance based on this valuation must be reversed.

¶13 The trial court did not expressly state in the decree whether it was attributing earning capacity to Husband for purposes of calculating spousal maintenance.² However, the record does contain sufficient financial information from which the trial court could have made this determination. For

¹ For example, in considering the opinion of Husband's expert that MCM "had no value as of December 31, 2009," the court could consider the fact that MCM's 2008 business tax returns show gross receipts of over \$1,000,000.

² Once again, we do not have the relevant hearing transcripts on this issue; Husband failed to make those transcripts part of the record before this court.

example, Husband's tax returns show that from 2006-2008 he made between \$100,000-\$150,000 from MCM. Husband concedes in his financial affidavit that he made approximately \$100,000 in 2007 and 2008. In addition, in the child support worksheet, the court attributed a gross monthly income of \$5,000 to Husband; we presume the court used this attributed income when calculating the spousal maintenance award.

¶14 We review the court's attribution of income to a party, and the determination of what factors to apply in doing so, *de novo*; however, we review for abuse of discretion the manner in which the court applies those factors. *Pullen*, 223 Ariz. at 295, ¶ 9, 222 P.3d at 911. *Pullen* sets out the following five factors for the court to consider, in addition to other evidence, when "determining whether to use actual income or earning capacity to calculate spousal maintenance":

- (1) The reasons asserted by the party whose conduct is at issue;
- (2) The impact upon the obligee of considering the actual earnings of the obligor;
- (3) When the obligee's conduct is at issue, the impact upon the obligor of considering the actual earnings of the obligee and thereby reducing the obligor's financial contribution to the support order at issue;
- (4) Whether the party complaining of a voluntary reduction in income acquiesced in the conduct of the other party; and
- (5) The timing of the action in question in relation to the entering of a decree or the execution of a written agreement between the parties.

Id. at 297-98, ¶¶ 15, 18, 222 P.2d at 913-14. We review for clear error to determine whether sufficient evidence supported the court's application of these factors. *Id.* at 296, ¶ 9, 222 P.3d at 912.

¶15 When determining spousal maintenance, the trial court first examined whether Wife was entitled to such an award under A.R.S. § 25-319(A). Finding she was so entitled, the court then turned to the amount and duration of spousal maintenance that would "achieve independence for both parties and . . . require an effort toward independence by the party requesting maintenance." *Schroeder v. Schroeder*, 161 Ariz. 316, 321, 778 P.2d 1212, 1217 (1989). After a full consideration of the thirteen statutory factors set out in A.R.S. § 25-319(B), the court found that Wife was entitled to an award of \$500 per month, for 42 months. See *Leathers v. Leathers*, 216 Ariz. 374, 377, ¶ 10, 166 P.3d 929, 932 (App. 2007) ("The trial court must consider thirteen factors [set out in A.R.S. § 25-319(B)], as each may be relevant in the particular case . . .").

¶16 Although the trial court did not expressly consider the factors listed in *Pullen* before attributing an income of \$5,000 per month to Husband for purposes of determining spousal maintenance, "the record supports its decision under that

analysis." See *Pullen*, 223 Ariz. at 298, ¶ 19, 222 P.2d at 914. The court recognized that Husband testified his business was no longer a going concern because of the economic decline, but the court believed Husband was "overstating the downturn and his capability to otherwise earn income." The court noted that Wife is a licensed LPN but she can only work 32 hours per week because of physical limitations; furthermore Husband has historically been able to meet his needs and those of Wife. The court considered Wife's actual earnings of \$22.75 per hour coupled with her limited ability to work and the impact of Wife's earning capacity on Husband's financial contribution. The fact that the court noted Wife's testimony regarding Husband's lack of effort in maintaining the business after the filing of the petition for dissolution indicates the court concluded that Wife did not acquiesce in the decline of the business. Furthermore, the court's findings show that the timing of MCM's decline in connection with the divorce proceedings makes Husband's "lack of effort to keep the business going" suspect.

¶17 With an appreciation for the trial court's superior position to determine the amount and duration of a spousal maintenance award, we find no grounds to reverse the award. See *Pullen*, 223 Ariz. at 298, ¶ 22, 222 P.3d at 914 (stating that

trial court "is given broad discretion in determining what is a reasonable amount"). We conclude the trial court properly considered Husband's future earnings and/or earning capacity when attributing income to him for the purposes of its spousal maintenance award. *Williams v. Williams*, 166 Ariz. 260, 266, 801 P.2d 495, 501 (App. 1990).

¶18 Finally, Husband challenges the court's award of attorney fees and costs to Wife pursuant to A.R.S. § 25-324 (Supp. 2011). Husband argues the court's attribution of income to Husband as a basis for finding that there was a disparity of financial resources between Husband and Wife was error. We review an award of attorney fees for abuse of discretion. *Kelsey*, 186 Ariz. at 54, 918 P.2d at 1072. The trial court may consider the pre-decree financial resources of both parties and the reasonableness of the positions taken by each when determining whether to award attorney fees or costs. A.R.S. § 25-324(A); *Kelsey*, 186 Ariz. at 54, 918 P.2d at 1072. The court recognized a substantial disparity of financial resources between Husband and Wife; this disparity is evidenced by Husband's capability throughout the marriage of "meeting his own needs and those of [Wife]" and wife's physical limitations and ailments permitting her to "work no more than 32 hours per week." Furthermore, the court found Husband "acted unreasonably

in the litigation"; Husband did not cooperate or communicate with Wife's expert regarding the valuation of MCM or with Wife's counsel regarding payments for community assets sold. Considering the entire record, and, in the absence of the trial transcripts presuming the record supports the court's findings, we find no abuse of discretion in the trial court's award to Wife of her attorney fees and costs. See *Walker*, 18 Ariz. App. at 114, 500 P.2d at 899.

Conclusion

¶19 For the reasons above, we affirm the trial court's decree of dissolution.

/S/

ANDREW W. GOULD, Judge

CONCURRING:

/S/

JOHN C. GEMMILL, Presiding Judge

/S/

PETER B. SWANN, Judge