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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: 01/10/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

In re the Marriage of:) 1 CA-CV 11-0259 A
)
DOUGLAS SKAGGS BRINTON,) DEPARTMENT D
)
Petitioner/Appellant,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
CAROL ANN BRINTON SHURTZ,)
)
Respondent/Appellee.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FC2006-093272

The Honorable James P. Beene, Judge

REVERSED AND REMANDED

Steven M. Ellsworth, P.C.
by Steven M. Ellsworth
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Mesa

Carol Shurtz, Respondent/Appellee
In Propria Persona

Safford

P O R T L E Y, Judge

¶1 Douglas Skaggs Brinton ("Husband") appeals the trial court's denial of his motion to terminate his spousal maintenance obligation to Carol Ann Brinton Shurtz ("Wife") in spite of her remarriage. For the following reasons, we reverse and remand for entry of an order terminating the obligation.

FACTUAL AND PROCEDURAL HISTORY

¶2 After twenty-five years of marriage, Husband and Wife executed a dissolution of marriage consent decree (the "Decree") in February 2007. Pursuant to the Decree, Husband agreed to pay Wife spousal maintenance and child support each month for ten years beginning in February 2007. Husband did not stay current with the support payments from February 2007 to March 2010, when Husband filed a motion to terminate his spousal maintenance and child support obligations. Wife filed a motion to put into place monthly payments for unpaid child support and to garnish Husband's wages to recover his ordered contribution to credit card debt identified in the Decree.

¶3 A hearing was held in February 2011 to consider both motions.¹ Husband testified that the spousal support obligation terminated as a matter of law because Wife remarried in 2008. The court, however, denied Husband's request based on a clause

¹ Husband's request to terminate child support payments was moot because the accrual of payments after the child had reached the age of majority had been resolved prior to the hearing.

in the Decree stating that the "amount and duration of spousal maintenance shall be non-modifiable. The only exception to being non-modifiable is that if the Dinar from Iraq owned by the parties reaches a value of ten cents (\$00.10) per Dinar, the spousal maintenance shall cease." The court also ordered Husband to pay Wife his half of the credit card debt identified in the Decree.

¶4 Husband has appealed, and we have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") section 12-2101 (West 2011).

DISCUSSION

A. Standard of Review

¶5 Husband argues that the trial court erred when it affirmed his obligation to pay spousal support in spite of Wife's remarriage. We review the court's order de novo because whether A.R.S. § 25-327(B) (West 2011) terminates the obligation in spite of the "non-modifiable" language in the Decree requires us to interpret the statute. See *Palmer v. Palmer*, 217 Ariz. 67, 69-70, ¶ 7, 170 P.3d 676, 678-79 (App. 2007) (citations omitted) (de novo review applied to interpretation of statute and divorce decree).

B. Spousal Maintenance

¶16 The court denied Husband's motion with respect to spousal support because it concluded that A.R.S. § 25-327(B) did not apply. Under the statute, "[u]nless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated on the death of either party or the remarriage of the party receiving maintenance." A.R.S. § 25-327(B). Husband argues that the court erred when it concluded that the spousal support clause in the Decree constituted the parties' agreement that the payments would not terminate if Wife remarried.

¶17 Husband relies on *Palmer* for the proposition that unless the Decree specifically provides for the continuation of payments after remarriage, section 25-327(B) operates to terminate the obligation as a matter of law. In *Palmer*, the parties' divorce decree stated that the "term and amount of spousal maintenance is non-modifiable until October 31, 2008, except such shall end upon the death of [the wife]." 217 Ariz. at 69, ¶ 3, 170 P.3d at 678. Even though Mr. Palmer's ex-wife remarried in March 2005, the court ordered him to continue to pay spousal support notwithstanding A.R.S. § 25-327(B). *Id.* at ¶¶ 4-5.

¶18 The court reasoned that the statute did not apply because the Palmers' decree specified that spousal support would

terminate upon Ms. Palmer's death and therefore provided for continued support notwithstanding remarriage. *Id.* at 70, ¶ 9, 170 P.3d at 679. We reversed the court's order and held that the statute requires "an express provision regarding the effect of remarriage" to compel continued spousal support. *Id.* at 70-71, ¶¶ 12-13, 170 P.3d at 679-80. Because the decree did not expressly provide that Mr. Palmer's obligation would continue after the wife's remarriage, we concluded that her remarriage terminated the obligation as a matter of law. *Id.* at 71, ¶ 13, 170 P.3d at 680. We reach the same result here.

¶9 Like the decree in *Palmer*, the Decree in the present case specified a condition that would terminate Husband's obligation but made no reference to remarriage. Absent "an affirmative, unambiguous statement that the parties intended . . . to avoid the application of § 25-327(B)," however, a spousal maintenance obligation ends upon the death or remarriage of the receiving spouse. *Diefenbach v. Holmberg*, 200 Ariz. 415, 418, ¶ 8, 26 P.3d 1186, 1189 (App. 2001). Consequently, we grant Husband's appeal and reverse and remand the court's order denying Husband's request to terminate his spousal maintenance obligation.

¶10 Husband requests his attorney's fees on appeal. In the exercise of our discretion, we deny the request for fees but

grant Husband his appellate costs upon compliance with Arizona Rule of Civil Procedure 21.

CONCLUSION

¶11 Based on the foregoing, we reverse the order denying Husband's request to terminate spousal maintenance payments and remand this case for entry of an order terminating the obligation.

/s/

MAURICE PORTLEY, Judge

CONCURRING:

/s/

JON W. THOMPSON, Presiding Judge

/s/

JOHN C. GEMMILL, Judge