

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: 04/12/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

In re the Marriage of: ) 1 CA-CV 11-0284  
)  
TRENT WILSEY SMALLWOOD, ) DEPARTMENT A  
)  
Petitioner/Appellant, ) **MEMORANDUM DECISION**  
) (Not for Publication -  
v. ) Rule 28, Arizona Rules of  
) Civil Appellate Procedure)  
ROBIN BRITTON SMALLWOOD, )  
)  
Respondent/Appellee. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. FC2007-004005

The Honorable Edward W. Bassett, Judge

**AFFIRMED**

Law Office of Louis Lombardo, PC  
by Louis K. Lombardo  
Attorneys for Petitioner/Appellant

Chandler

Robin Smallwood, Respondent/Appellee  
*In Propria Persona*

Scottsdale

**P O R T L E Y**, Judge

¶1 Trent Wilsey Smallwood ("Father") appeals the denial of his motion for judgment for overpaid child support and the

order that he pay \$3000 in attorneys' fees incurred by his ex-wife, Robin Britton Smallwood ("Mother"). For the following reasons, we affirm the orders of the family court.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

¶12 Father and Mother were married on October 30, 1999, and approximately four years later had twin baby girls. Father filed for divorce in May 2007, and the parties were divorced pursuant to their consent decree filed in February 2009. Under the terms of the decree, Father agreed to pay Mother spousal maintenance of \$6805 a month for seventy-two months and pay \$1500 monthly in child support until modified by court order or mutual agreement.

¶13 A few months later, Father filed a petition to modify child support, alleging a significant decrease in his monthly income, and that the girls were no longer attending a private preschool. After a hearing, the family court modified the child support order and reduced his support obligation to \$0, retroactive to June 1, 2009, which was the first day of the first month after he filed his motion.

¶14 Father subsequently filed a motion asking the family court to enter a judgment that he had overpaid child support by \$19,500 pursuant to Arizona Revised Statutes ("A.R.S.") section

25-527 (West 2012).<sup>1</sup> The court denied the motion. The court also denied his application for attorneys' fees, but granted Mother's fee request in part and ordered Father to pay \$3000 of her fees. Father unsuccessfully moved for a new trial or reconsideration before filing this appeal.

## DISCUSSION

### I. Child Support

¶15 Father argues that the family court erred when it denied his motion for judgment for overpaid child support. He argues that A.R.S. § 25-527(A) provides that "[a]n obligor whose obligation to pay support has terminated may file a request for reimbursement against the obligee for support payments made in excess of the amount ordered. The obligor must file the request . . . within twenty-four months after the termination of the obligation." He asserts that the court misconstrued the statute because it found that his request was premature.

¶16 We review the family court's application and interpretation of a statute de novo. *Thomas v. Thomas*, 203 Ariz. 34, ¶ 7, 36, 49 P.3d 306, 308 (App. 2002) (citation omitted). We note, however, that § 25-527(B) provides that whether a party is entitled to reimbursement is within the court's discretion. A court abuses its discretion when it

---

<sup>1</sup> We cite the current version of the applicable statute because no revisions material to this decision have since occurred.

"commits an error of law in the process of reaching a discretionary conclusion." *In re Marriage of Williams*, 219 Ariz. 546, 548, ¶ 8, 200 P.3d 1043, 1045 (App. 2008) (citation omitted).

¶7 "When interpreting a statute, our primary goal is to give effect to the legislature's intent." *Id.* at 548-49, ¶ 10, 200 P.3d at 1045-46 (citation omitted). The statutory language is the best evidence of the legislature's intent. *Id.* at 549, ¶ 10, 200 P.3d at 1046 (citation omitted). If the statutory text can be reasonably interpreted to have more than one meaning, we look to the historical background, spirit, purpose, and effects of the statute to determine legislative intent. *Id.* at 548-49, ¶ 10, 200 P.3d at 1045-46 (citation omitted).

¶8 Father argues that the court erred by ruling that his support obligation was ongoing and that he may be entitled to a reimbursement only after the obligation ends with his children's emancipation. He contends that the legislature intended the statute "to apply when an obligor was no longer ordered to pay child support to an obligee, and not when a parent was no longer legally obligated to support their children." He also asserts that any other reading of the statute would result in inequity, and would allow Mother to benefit from the overpaid child support, "interest free, for approximately the next 10 years,

when both of the parties' children will emancipate." We disagree with his statutory analysis.

¶9 Section 25-527 provides, in relevant part, that:

A. An obligor whose obligation to pay support has terminated may file a request for reimbursement against the obligee for support payments made in excess of the amount ordered. The obligor must file the request . . . within twenty-four months after the termination of the obligation.

B. The court may enter a judgment for reimbursement against the obligee if the court finds that the obligor's obligation to pay support has terminated and that all arrearages and interest on arrearages have been satisfied.

The statute, which was enacted in 2004,<sup>2</sup> allows a parent whose obligation to pay support has ended to ask the court for a judgment for any excess payments made. *Id.* By its plain language, § 25-527 is not available to a parent whose obligation to pay child support has not been terminated.

¶10 Although Father does not have a current obligation to pay direct financial child support, he may in the future.<sup>3</sup> Regardless, he still has to otherwise support his children. The court ordered Father to provide medical, dental, and vision insurance for the children. Furthermore, Father is responsible

---

<sup>2</sup> See 2004 Ariz. Sess. Laws, ch. 105, § 1 (2d Reg. Sess.) (eff. Apr. 16, 2004).

<sup>3</sup> If either parent experiences a substantial and continuing change in their financial situation, Mother could file a modification petition and, if successful, be entitled to support retroactively.

for fifty percent of the children's medical, dental, and orthodontia expenses not covered by insurance. "Support" is defined as:

the provision of maintenance or subsistence and includes medical insurance coverage, or cash medical support, and uncovered medical costs for the child, arrearages, interest on arrearages, past support, interest on past support and reimbursement for expended public assistance.

A.R.S. § 25-500(9) (West 2012). Thus, Father's obligation to support his children is broader than monthly cash payments. Consequently, because the family court did not terminate Father's obligation to "support" his minor children, see A.R.S. § 25-501(A) (West 2012), the court did not abuse its discretion when it determined that Father was not entitled to a judgment pursuant to § 25-527.

## **II. Attorneys' Fees**

¶11 Father also argues that the court erred when it granted Mother's request for attorneys' fees in part, but denied his request. He asserts the court gave too much weight to its determination that Father filed an unreasonable motion for summary judgment, and too little weight to Mother's "often frivolous" positions throughout the litigation.

¶12 We review an award of attorneys' fees pursuant to A.R.S. § 25-324 (West 2012) for an abuse of discretion. *In re Marriage of Pownall*, 197 Ariz. 577, 583, ¶ 26, 5 P.3d 911, 917

(App. 2000) (citation omitted). Pursuant to § 25-324(A), a family court may award reasonable fees and expenses to a party "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings." The weight attributable to each of these factors is within the court's discretion. See *Williams*, 219 Ariz. at 550, ¶ 15, 200 P.3d at 1047 (citation omitted).

¶13 Here, the family court only awarded Mother \$3000 in fees. The court considered the positions taken by each party, finding that Father took one unreasonable position during the proceedings, but also noting that both Mother and Father "prevailed on at least one issue and failed to prevail on at least one issue." The court weighed the factors and exercised its discretion in making the partial award. We find no error and therefore affirm the ruling.

#### CONCLUSION

¶14 Based on the foregoing, we affirm the court's judgment.

\_\_\_\_\_/s/\_\_\_\_\_  
MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

\_\_\_\_\_  
ANN A. SCOTT TIMMER, Judge

/s/

\_\_\_\_\_  
ANDREW W. GOULD, Judge