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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



DIVISION ONE
FILED: 03/29/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

SUSAN LEE RAMSEY, a single) No. 1 CA-CV 11-0401
female,)
) DEPARTMENT C
Plaintiff/Appellee,)
) **MEMORANDUM DECISION**
v.) (Not for Publication -
) Rule 28, Arizona Rules
DAW CHENG HUANG aka JEANNE HUANG) of Civil Appellate
aka JEANNE HUANG CHAO, a single) Procedure)
female,)
)
Defendant/Appellant.)
_____)

Appeal from the Superior Court in Mohave County

Cause No. S8015CV201000716

The Honorable Lee Frank Jantzen, Judge

AFFIRMED

Sippel Law Firm P.L.L.C.)
By Mark A. Sippel)
Carlene H. Lacy)
Attorneys for Appellee)

Law Offices of H. Paul Honsinger, P.C.)
By H. Paul Honsinger)
Attorneys for Appellant)

D O W N I E, Judge

¶1 Jeanne Huang appeals from an adverse judgment entered against her after a bench trial. Finding no error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In 2004, Huang and Susan Ramsey formed Modern Techniques Beauty College, L.L.C. ("LLC") to operate a beauty school. Ramsey and Huang orally agreed Huang would take 51% of the profits and Ramsey would take 49%, but they had no written operating agreement. Ramsey was responsible for day-to-day school operations and served as the school's primary instructor. Huang was the investor, financial expert, and owner of the building used by the school.

¶3 Disagreements arose, and in 2010, Ramsey sued Huang. She asked the court to dissolve the LLC and alleged a breach of the covenant of good faith and fair dealing, and unauthorized assumption of power.¹ Huang filed an answer and counterclaim. Huang agreed the parties' business relationship should be dissolved and alleged that Ramsey had taken company funds for improper purposes, withheld daily receipts, and was "guilty" of "wrongdoing, lack of good faith and fair dealings." Huang admitted taking LLC funds totaling \$50,130.65 for "back rent."

¶4 The court ordered the LLC dissolved. It conducted a two-day bench trial regarding the remaining claims. In an

¹ Ramsey also requested an injunction regarding business conduct and accounts, which the court granted.

unsigned ruling, the court found Huang had violated her fiduciary duties and acted in bad faith by making "financial decisions that were not in the best interest of the partnership and that she knew would result in the failing of the business venture." The court ruled that Ramsey should have received a salary of \$3000 per month "throughout her time as the person running the beauty school, and that after accounting for all the benefits [Ramsey] received from the company, including the use of a car, [Ramsey] is owed \$51,366.34." The court further ruled:

Based on [Huang's] actions and keeping in mind that the company has been dissolved for some time and that a perfect dissolution is not possible, **IT IS ORDERED**

- 1) the remaining money in the business account is awarded to [Ramsey]; and
- 2) the property (not the building) belonging to the business is awarded to [Ramsey]; and
- 3) [Ramsey] file a business tax return for 2010, with accounting available to [Huang]; and
- 4) [Ramsey] must file articles of dissolution with the Arizona Corporation Commission; and
- 5) [Ramsey] is given custody of the books and records; and
- 6) [Huang] is ordered to pay attorneys fees and costs of [Ramsey].

¶15 Ramsey lodged a proposed form of judgment awarding her \$51,366.34, plus the business bank accounts, property, books and records. She also requested attorneys' fees and costs totaling \$19,064.65. The court entered judgment in favor of Ramsey for \$71,424.39, including \$19,064.65 in attorneys' fees and \$993.40 in costs. Huang timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(B).

DISCUSSION

¶16 Huang contends the trial court erred by: (1) precluding certain trial testimony; and (2) awarding Ramsey back pay. We address each argument in turn.

I. Witness Testimony

¶17 On the second day of trial, Huang called D.L. to testify about D.L.'s review of LLC business expenses. When D.L. testified about documents she and Huang had obtained "yesterday," Ramsey objected based on the failure to disclose the documents prior to trial. Ramsey also argued Huang had laid insufficient foundation for testimony by D.L. about business records. According to Ramsey, D.L. was not an LLC employee, accountant, bookkeeper, or "expert in any kind of way." The trial court explained the basis of each objection to Huang, who was representing herself, and advised Huang she could testify about these topics later in her case.

¶18 Ramsey also objected when Huang asked D.L. to explain the results of her "audit" of LLC credit card transactions. The court again explained the objection to Huang and itself posed questions about D.L.'s auditing credentials. When Ramsey raised a foundational objection to D.L.'s continued testimony, the court explained that Huang had not established that D.L. had "any level of professionalism" or "any ability to review bank statements better than [Huang] or better than anybody else that might be involved in this case." The court sustained Ramsey's objection, but advised Huang she could testify about this topic.²

¶19 Huang later questioned D.L. about a conversation regarding donations made to the LLC, and Huang attempted to introduce a document purportedly containing a handwritten comment about the donations. The donations at issue, though, were made "several years ago," the conversation occurred one week before trial, the writer was not available for cross-examination, and the handwritten document was never disclosed to Ramsey. The trial court sustained Ramsey's objections.

¶10 We will not overturn a trial court's decision regarding the admission or exclusion of evidence absent a clear

² As Huang acknowledges on appeal, she failed to address these topics later in her own testimony.

abuse of discretion and resulting prejudice. *Schwartz v. Farmers Ins. Co. of Ariz.*, 166 Ariz. 33, 37, 800 P.2d 20, 24 (App. 1990) (citation omitted). "The question of whether a lay witness is qualified to testify as to any matter of opinion is a preliminary determination within the sound discretion of the trial court whose decision must be upheld unless shown to be clearly erroneous or an abuse of discretion." *Groener v. Briehl*, 135 Ariz. 395, 398, 661 P.2d 659, 662 (App. 1983) (citations omitted).

¶11 We find no abuse of discretion here. The trial court properly precluded the challenged testimony by D.L. because Huang did not overcome Ramsey's disclosure and foundation objections. Pro per litigants are held to the "same familiarity with court procedures" expected of lawyers. *Higgins v. Higgins*, 194 Ariz. 266, 270, ¶ 12, 981 P.2d 134, 138 (App. 1999). Notwithstanding this standard, throughout trial, the court assisted Huang with procedural matters, made great efforts to explain the evidentiary objections to her, and explained that Huang could better testify about business-related expenditures than D.L., who was not employed or associated with the school in any professional way. Additionally, evidence of Ramsey's alleged misuse of the debit card was admitted through other avenues.

II. Back Pay

¶12 Huang next claims the court erred by awarding Ramsey \$51,366.34 -- an amount she contends "appears to represent 'back wages.'" Huang asserts "there was no basis in the record for making such an award." We disagree.

¶13 "[W]e must accept the trial court's findings of fact on appeal unless they are clearly erroneous or unsupported by any credible evidence" *Smith v. Melson, Inc.*, 135 Ariz. 119, 121, 659 P.2d 1264, 1266 (1983). The record reflects that Ramsey and Huang initially agreed to defer Ramsey's salary and rent payments to Huang until the LLC made a profit. However, after the parties' disagreements arose, Huang wrote herself checks for "back rent," yet she refused to reimburse Ramsey for back pay.

¶14 The trial court found Huang had violated her fiduciary duties and acted in bad faith by making financial decisions that would cause the business's failure. The court further determined Ramsey should have received a salary of \$3000 per month. It took into account the financial benefits Ramsey actually received from the company and ultimately awarded Ramsey significantly less than she had requested. All of these findings are supported by the record, which we view in the light most favorable to sustaining the trial court's judgment.

McElwain v. Schuckert, 13 Ariz. App. 468, 469, 477 P.2d 754, 755 (1970). The court could reasonably have concluded that Huang's self-reimbursement for "back rent" triggered a corresponding obligation to compensate Ramsey for back pay.

III. Attorneys' Fees and Costs

¶15 Ramsey requests attorneys' fees on appeal pursuant to ARCAP 21, which is not a substantive basis for a fee award. We therefore deny her request. See *Ezell v. Quon*, 224 Ariz. 532, 539, ¶¶ 31-32, 233 P.3d 645, 652 (App. 2010). As the prevailing party, though, Ramsey is awarded her appellate costs upon compliance with ARCAP 21.

¶16 Ramsey also requests a fee award as a sanction under ARCAP 25. We impose such sanctions with "great reservation." *Ariz. Tax Research Ass'n v. Dep't of Revenue*, 163 Ariz. 255, 258, 787 P.2d 1051, 1054 (1989) (citations omitted). Although we disagree with Huang on substantive grounds, we cannot label her appeal wholly frivolous. And though Huang failed to fully comply with the Arizona Rules of Civil Appellate Procedure, her infractions do not warrant the imposition of sanctions. In the exercise of our discretion, we decline to award fees to Ramsey as a sanction. See *Ariz. Dep't of Revenue v. Gen. Motors Acceptance Corp.*, 188 Ariz. 441, 446, 937 P.2d 363, 368 (App. 1996) (the court of appeals has discretion whether to award fees pursuant to ARCAP 25).

CONCLUSION

¶17 The judgment of the superior court is affirmed.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
PATRICIA K. NORRIS, Presiding Judge

/s/
PATRICIA A. OROZCO, Judge