FILED BY CLERK
APR 30 2012
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ROBERT W. NICHOLS and MARY ANN NICHOLS, husband and wife, Plaintiffs/Judgment Debtors/Appellees, v. W. DAVID WESTON, assignee of EDSON WHIPPLE and LOUISE WHIPPLE, husband and wife, Defendant/Judgment Creditor/Appellant.	2 CA-CV 2011-0159 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C312608

Honorable Stephen C. Villarreal, Judge

AFFIRMED

Gibson, Nakamura & Associates, P.L.L.C.
By Scott D. Gibson — Tucson
Attorneys for Appellees

W. David Weston — Salt Lake City, Utah
In Propria Persona

E S P I N O S A, Judge.

¶1 Judgment creditor W. David Weston appeals from the trial court's order quashing writs of garnishment relating to certain bank accounts of judgment debtors Robert and Mary Ann Nichols. Weston argues the court erred in granting the Nicholses' motion to quash the writs of garnishment because he asserts the accounts are non-wages, not subject to a prior claim, and not otherwise exempt. For the reasons stated below, we affirm.

Factual Background and Procedural History

¶2 We view the evidence in the light most favorable to sustaining the judgment. *Figueroa v. Acropolis*, 192 Ariz. 563, 564-65, 968 P.2d 1048, 1049-50 (App. 1997). In July 2001, Louise Whipple, on behalf of herself and the estate of Edson Whipple, obtained a joint and several liability judgment against the Nicholses and their business partners for the sum of $848,947, which they subsequently assigned to Weston. Weston renewed garnishment liens on the Nicholses' earnings, and in August 2010 sought to collect the $1,353,039 balance of the judgment by garnishing several non-wage financial accounts pursuant to A.R.S. §§ 12-1572 through 12-1597. The Nicholses objected to the writs of garnishment on the grounds the accounts contained residual wages already subject to Weston's garnishment, were exempt under Arizona or federal law, or were subject to priority claims. After several hearings, the trial court quashed the writs of garnishment as to all accounts, finding that Mary Ann Nichols's Individual Retirement Account (IRA) was exempt under A.R.S. § 33-1126(B), but not explicitly stating its reasons for quashing the writ as to the remaining accounts. Final judgment was

entered eight months later. On appeal, Weston asserts the court erred in quashing the writs of garnishment as to all accounts except Mary Ann Nichols's IRA.

Discussion

¶3 We review questions of law *de novo*, but will uphold the trial court's factual findings if they are "justified by any reasonable construction of the evidence." *Figueroa*, 192 Ariz. at 564, 968 P.2d at 1049.

Joint Checking Accounts

¶4 Weston contends the trial court erred in quashing the writs of garnishment issued as to the Nicholses' joint checking accounts at Wells Fargo Bank and Compass Bank, arguing the funds are subject to garnishment as non-wages. *See* A.R.S. § 12-1598.01(A); *Frazer, Ryan, Goldberg, Keyt & Lawless v. Smith*, 184 Ariz. 181, 186, 907 P.2d 1384, 1389 (App. 1995) (deposited earnings do not retain exemption as earnings). The Nicholses respond that the court did not quash the writs of garnishment based upon the classification of money in the accounts as wages, but rather because the "nominal" balance remaining after deduction of exemptions and bank fees[1] was insufficient to justify the cost of garnishment proceedings.[2]

---

[1]The parties agree A.R.S. § 33-1126(A)(9) provides an exemption from garnishment for each spouse. *See also* A.R.S. § 33-1121.01 (each spouse entitled to own exemption). However, the Nicholses calculate, without citation to any such finding by the trial court, that approximately $200 remained in the Wells Fargo Bank accounts and $70 in the Compass Bank accounts after subtracting exemptions and bank fees. Weston asserts it is an open question whether the banks may charge fees against the accounts. Based upon our resolution of this appeal, we need not address these questions.

[2]The Nicholses' answering brief does not comply with Rule 13(a)(6), (b), Ariz. R. Civ. App. P., and is entirely unhelpful to this court in reaching its decision. None of their

¶5 Weston has not provided this court with certified transcripts of the relevant trial court proceedings, but instead has improperly appended portions of various transcripts to his opening brief. *See* Ariz. R. Civ. App. P. 11(b)(1) (appellant's duty to include certified transcript in record on appeal if relevant). If the appellant does not include the entire certified transcript as part of the record on appeal, the appellant must "file a description of the parts of the certified transcript which the appellant intends to include in the record and a concise statement of the issues the appellant intends to present on the appeal." Ariz. R. Civ. App. P. 11(b)(5); *see Baker v. Baker*, 183 Ariz. 70, 72-73, 900 P.2d 764, 766-67 (App. 1995) (appellant required to designate all documents necessary for resolution of appeal). This court will not consider improperly filed, uncertified portions of transcripts, but only those documents properly designated as part of the record on appeal.[3] *In re 6757 S. Burcham Ave.*, 204 Ariz. 401, ¶¶ 11-12, 64 P.3d 843, 846-47 (App. 2003).

¶6 Neither the trial court's minute entry nor its signed order states the reason the court quashed the writs of garnishment as to the Nicholses' joint checking accounts.

---

contentions is substantiated by meaningful legal analysis. The brief refers to only one statute, § 33-1126(A)(8), which is miscited, the intended citation clearly being to § 33-1126(A)(9), which is not dispositive of the issue raised; cites no case law; provides no references to the record on appeal other than to the final order from which the appeal has been taken; and improperly cites to Weston's appendix, which is not part of the record. Counsel is advised that future disregard of the rules may result in the brief being stricken and/or other sanctions. *See* Ariz. R. Civ. App. P. 25; *Nelson v. Nelson*, 137 Ariz. 213, 216-17, 669 P.2d 990, 993-94 (App. 1983).

[3]Although Weston appears in propria persona, he is held to the same standard of familiarity with procedural rules as an attorney. *See Copper State Bank v. Saggio*, 139 Ariz. 438, 441, 679 P.2d 84, 87 (App. 1983).

Review of the court's minute entries, however, establishes that its ruling, entered after multiple hearings, was based on the pleadings, arguments, testimony from both parties, and the opinion of an expert in tax law. In the absence of a complete record, we presume the missing portions support the actions of the court. *Baker*, 183 Ariz. at 73, 900 P.2d at 767. Absent certified transcripts, we cannot determine the basis for the court's ruling and cannot ascribe error to its conclusions based on the appellant's unsupported claims. *See* Ariz. R. Civ. App. P. 13(a)(6) (appellant's brief shall contain arguments with citation to parts of record relied on).

Mary Ann Nichols's USAA Mutual Fund

¶7 Weston next argues the trial court could not have properly quashed the writ of garnishment as to Mary Ann Nichols's USAA money market account based on the Nicholses' argument which "has no merit" that the account was separate property and was, therefore, exempt from garnishment. He asserts there was no evidence presented that the account was Mary Ann Nichols's separate property. Weston alternatively argues that even if the funds in the account were Mary Ann Nichols's separate property, the account nevertheless would be subject to Weston's judgment as a separate debt.

¶8 All property acquired by a spouse during marriage, except by gift, devise, or descent, is presumed to be community property. A.R.S. §§ 25-211(A)(1), 25-213(A). This presumption applies, irrespective of which spouse holds legal title. *Sommerfield v. Sommerfield*, 121 Ariz. 575, 577-78, 592 P.2d 771, 773-74 (1979). Weston asserts no evidence rebutted the presumption that Mary Ann Nichols's money market account was community property. However, the trial court's classification of the money market

account necessarily involved a fact-intensive inquiry. *See, e.g., id.* at 578, 592 P.2d at 774 (to determine whether bank account was community or separate property, trial court evaluated husband's testimony regarding when and how funds had been obtained and admitted evidence regarding title ownership of account). As noted earlier, Weston has not provided this court with complete transcripts of the relevant trial court proceedings. The court's minute entry does not specify whether the court quashed the writ of garnishment of the money market account based on a finding that the funds were the separate property of Mary Ann Nichols, or for some other reason. And, contrary to the Nicholses' assertion, the minute entry does not contain findings as to the nature of the funds, stating only that the account contained funds "owned by Ms. Nichols." *See id.* at 577-78, 592 P.2d at 773-74. Based on the limited record before us, we are unable to review this issue. *See* Ariz. R. Civ. App. P. 11(b)(1) ("If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence . . . , the appellant shall include in the record a certified transcript of all evidence relevant to such finding or conclusion.").

¶9 Weston also asserts that because Mary Ann Nichols "is jointly liable, as a partner, with the other defendants," her separate property "is subject to garnishment to satisfy the [joint and several] judgment." In so arguing, he appears to conflate the principles of separate versus community debt with joint and several liability, implying the debt could be both community debt and the separate debt of Mary Ann Nichols. When community property is invested in a partnership it retains its community property character even if one spouse does not actively participate in the partnership. *Id.*, *citing*

Cummings v. Weast, 72 Ariz. 93, 98-99, 231 P.2d 439, 443 (1951). A partnership interest is personal property subject to the control of either spouse as co-managers of the community. *Chase Bank of Ariz. v. Acosta*, 179 Ariz. 563, 571, 880 P.2d 1109, 1117 (App. 1994). Likewise, debt incurred by one spouse during marriage is presumed to be a community obligation. *Am. Express Travel Related Servs. Co. v. Parmeter*, 186 Ariz. 652, 654, 925 P.2d 1369, 1371 (App. 1996). The liabilities arising from a community partnership interest generally may not be converted into the separate debt of one spouse. *Chase Bank*, 179 Ariz. at 573, 880 P.2d at 1119.

¶10 Contrary to Weston's alternative argument, Mary Ann Nichols's status as a business partner did not convert her interest in the partnership into a separate asset, *see* A.R.S. § 25-214(B) (either spouse may separately bind the community), and naming her as a party to the amended complaint likewise did not convert the judgment into a separate property debt, *see* A.R.S. § 25-215(D) (spouses shall be sued jointly to recover community debt). Moreover, Wilson's garnishment of the Nicholses' community assets, namely, the Nicholses' wages, precludes the notion that the debt could be the separate debt of Mary Ann Nichols. *Cf. Thompson v. Thompson*, 126 Ariz. 129, 131-32, 613 P.2d 289, 291-92 (App. 1980) (party who asserts one position in bankruptcy proceedings to continue garnishment is estopped from assuming inconsistent position in another judicial proceeding).

¶11 In sum, the limited record shows the trial court heard testimony and considered evidence as to the classification of the accounts. Absent complete, certified transcripts, we cannot determine the reason the court quashed the writ of garnishment of

the money market account or what evidence it relied on to reach that determination.[4] As noted above, we must presume the missing portions of the record support the court's rulings. *Baker*, 183 Ariz. at 73, 900 P.2d at 767. Accordingly, Weston has not demonstrated that the court erred.

Disposition

¶12 For the reasons set forth above, the judgment is affirmed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

[4]The same reasoning applies to Weston's challenge to Robert Nichols, Jr.'s prior security interest against "all [the Nicholses'] property," protecting his parents' financial accounts from garnishment. He argues the court could not quash the writs of garnishment on that ground because the Nicholses had no standing to assert a third-party claim on the funds, or alternatively, the "perfection of the lien is void as a fraudulent transfer." Although evidence was presented that showed Robert Nichols, Jr. held a potential security interest against the accounts, it is not clear from the partial record before us whether the court relied upon that reasoning to quash the writ of garnishment of any account. *See Baker*, 183 Ariz. at 73, 900 P.2d at 767 (missing portions of record presumed to support trial court's ruling).