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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re the Marriage of: RICHARD S. DOUGALL, Petitioner/Appellant, and MYRNA R. DOUGALL, Respondent/Appellee.	2 CA-CV 2011-0182 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. D20074351

Honorable Sharon Douglas, Judge Pro Tempore

AFFIRMED

Law Office of David Lipartito, P.C.
By David Lipartito
Tucson
Attorney for Petitioner/Appellant

E C K E R S T R O M, Presiding Judge.

¶1 Appellant Richard Dougall challenges the trial court's order that reduces but reaffirms his monthly spousal maintenance obligation to appellee, Myrna Dougall.[1] Richard claims the court erred by directly or indirectly taking into account the fact that he receives veterans' disability income when determining the award. We affirm for the reasons set forth below.

Factual and Procedural Background

¶2 We view the record in the light most favorable to upholding the trial court's decision. *Cullum v. Cullum*, 215 Ariz. 352, ¶ 9, 160 P.3d 231, 233 (App. 2007). After the parties' marriage was dissolved in 2008, the trial court ordered Richard to pay Myrna $750 in monthly spousal maintenance. We upheld this maintenance award in an unpublished decision. *In re Marriage of Dougall*, No. 2 CA-CV 2009-0058, ¶¶ 1, 5 (memorandum decision filed Feb. 10, 2010).

¶3 In 2011, Richard then filed a petition to modify or terminate his maintenance obligation. In the petition, he noted that the recently enacted A.R.S. § 25-530 prohibited a court from "consider[ing]" veterans' disability payments when "determining whether to award spousal maintenance or the amount of any award." Richard claimed that because the majority of his income came from veterans' disability payments, a spousal maintenance award was no longer appropriate. At minimum, he contended his obligation to Myrna should be "reduced significantly" as a result of the statute, as well as other changed circumstances.

[1]Although the order also established certain arrearage amounts, Richard does not challenge this aspect of the order, and we therefore do not address any issue relating to arrearages.

¶4 After an evidentiary hearing, the trial court acknowledged the applicability of § 25-530 and stated that it did "not consider[] as income for the purposes of making a determination of the award of spousal maintenance . . . the income [Richard] received from the Veterans Administration." The court then found that Richard had a monthly income from the Social Security Administration totaling $1,245.30, whereas Myrna was indigent and had been receiving only government assistance. The court thus reduced Richard's spousal maintenance obligation to $500 per month. This appeal followed.

Discussion

Amount of Award

¶5 Richard first argues the trial court erred in ordering the $500 monthly award. He maintains, specifically, that if his $1,245 social security payment were considered his only source of income, consistent with § 25-530 and *In re Marriage of Downing*, 228 Ariz. 298, ¶¶ 6-7, 265 P.3d 1097, 1099 (App. 2011), then his remaining income after paying spousal maintenance would not allow him to support himself. A determination of spousal maintenance must take into account "[t]he ability of the spouse from whom maintenance is sought to meet [his or her] needs." A.R.S. § 25-319(B)(4); *accord Cullum*, 215 Ariz. 352, ¶ 23, 160 P.3d at 236. Richard therefore concludes the court either implicitly considered income that is not to be considered under § 25-530, or the court ordered spousal maintenance based upon an income source that is insufficient to sustain it, thereby abusing its discretion. We disagree.

¶6 A trial court has "substantial discretion" in setting the amount of spousal maintenance. *Rainwater v. Rainwater*, 177 Ariz. 500, 502, 869 P.2d 176, 178 (App.

1993). When exercising this discretion, a court must consider and balance all the relevant factors listed in § 25-319(B). *Rainwater*, 177 Ariz. at 502, 869 P.2d at 178. Those factors include the ability of the spouse seeking maintenance "to meet that spouse's own needs independently." § 25-319(B)(9). Although the ability of the spouse paying maintenance to meet his or her own needs is an important consideration under the statute, it is neither a dispositive factor nor an exclusive consideration. Too frequently, there are insufficient funds to meet the needs of both parties. And a spousal maintenance award that simply reflects this fact does not constitute an abuse of discretion.

¶7 Richard points to the "self support reserve test" set forth in Arizona's child support guidelines, A.R.S. § 25-320 app. § 15, to buttress his argument. Under the current child support guidelines, a minimum monthly income of $903 is generally deemed necessary "to maintain at least a minimum standard of living." *Id.* After Richard pays the spousal maintenance here, which represents about forty percent of his social security income, he correctly notes that he has only $745 left over for himself each month.

¶8 But even if we agreed that the logic of the "self support reserve test," a concept set forth only in the child support guidelines, should apply equally to spousal maintenance, that test would not deprive the trial court of the discretion to order the award here. Richard overlooks that under the child support guidelines, when "it is evident that both parents have insufficient income to be self supporting," a trial court is given the discretion to decide "whether and in what amount the child support order (the amount the noncustodial parent is ordered to pay) may be reduced." *Id.* Here, Myrna

was living only on government assistance in the absence of any maintenance award. And no language in the statutory provision addressing spousal maintenance requires the trial court to preserve the self-sufficiency of the spouse paying maintenance. *See* § 25-319(B).

¶9 We previously have enforced a spousal maintenance and child support order that required a husband to pay fifty percent of his net income, including social security payments. *See, e.g.*, *Lopez v. Lopez*, 125 Ariz. 309, 310-11, 609 P.2d 579, 580-81 (App. 1980). Here, the trial court specifically stated that it had not considered Richard's disability income. We presume the court followed the law and considered all the evidence before issuing its decision. *See Fuentes v. Fuentes*, 209 Ariz. 51, ¶¶ 18, 32, 97 P.3d 876, 880-81, 883 (App. 2004). Accordingly, we find no abuse of discretion and no basis to disturb the court's spousal maintenance award.

Eligibility for Award

¶10 We also have considered and rejected Richard's argument that the trial court abused its discretion in finding Myrna was entitled to spousal maintenance under A.R.S. § 25-319(A). The record provides an adequate evidentiary basis to support the court's conclusion. *See Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶ 14, 972 P.2d 676, 681 (App. 1998). Myrna testified she has no income and cannot work, and the court reaffirmed its earlier finding that her age and the long duration of her marriage to Richard could prevent her from being self-sufficient through employment. *See*

§ 25-319(A)(2), (4). As an appellate court, we defer to the trial court's determinations on these matters. *See Gutierrez*, 193 Ariz. 343, ¶ 13, 972 P.2d at 680.[2]

Disposition

¶11 For the foregoing reasons, we affirm the $500 monthly spousal maintenance award.

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

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

[2]Myrna has not filed an answering brief in this court. In the exercise of our discretion, we decline to treat her failure to file a brief as an admission of error. *See In re Marriage of Diezsi*, 201 Ariz. 524, ¶ 2, 38 P.3d 1189, 1190 (App. 2002); *Guethe v. Truscott*, 185 Ariz. 29, 30, 912 P.2d 33, 34 (App. 1995).