

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

FILED BY CLERK

JUL -5 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

CARDINAL & STACHEL, P.C., an	)	2 CA-CV 2012-0030
Arizona professional corporation,	)	DEPARTMENT A
	)	
Plaintiff/Appellant,	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
v.	)	Rule 28, Rules of Civil
	)	Appellate Procedure
KIERAN CURTISS, widower of LEELA	)	
CURTISS (deceased),	)	
	)	
	)	
Defendant/Appellee.	)	

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APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CV200900627

Honorable James L. Conlogue, Judge

AFFIRMED

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Stachel & Associates, P.C.  
By Robert D. Stachel, Jr. and Jennie McLaughlin

Sierra Vista  
Attorneys for Plaintiff/Appellant

Law Office of Michael Johns  
By Charles M. Johns

Sierra Vista  
Attorneys for Defendant/Appellee

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H O W A R D, Chief Judge.

¶1 Appellant Cardinal & Stachel, P.C.,<sup>1</sup> (Stachel) appeals from the trial court’s judgment in favor of Kieran Curtiss. That judgment found Kieran not liable for attorney fees incurred by his deceased wife, Leela Curtiss in dissolution of marriage proceedings. On appeal, Stachel argues the court erred in finding Leela’s objective intent in contracting for legal services was not to benefit the marital community and improperly considered factors beyond the scope of the parties’ joint pretrial statement. Stachel further contends that A.R.S. § 25-315 permits payment of attorney fees from community assets. For the following reasons, we affirm.

### **Factual and Procedural Background**

¶2 “Because this case was tried to the court, we view the evidence in the light most favorable to upholding the trial court’s decision.” *Double AA Builders, Ltd. v. Grand State Constr. L.L.C.*, 210 Ariz. 503, ¶ 9, 114 P.3d 835, 838 (App. 2005). Following an incident involving domestic violence, Leela Curtiss signed a fee agreement with Stachel “for Representation and Advice Related to: Dissolution of Marriage/Legal Separation; Temporary Orders.” Leela filed a petition for legal separation, claiming that the marriage was “irretrievably broken.” Kieran filed a petition for conciliation/reconciliation, but withdrew it following Leela’s objection. Kieran filed a response to Leela’s petition, converting the proceedings to dissolution proceedings. Before these proceedings were finalized, Leela died.

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<sup>1</sup>Cardinal & Stachel, P.C., is currently Stachel & Associates, P.C.

¶3 Stachel subsequently sued Kieran for the attorney fees and costs incurred during the dissolution proceedings. Kieran moved to dismiss the complaint for failure to state a claim upon which relief could be granted and the court granted Kieran’s motion, dismissing the case. Stachel appealed and we reversed the trial court’s judgment, finding that “attorney fees incurred in dissolution may, in some circumstances, be community debt,” and we remanded the case so the court could determine whether the attorney fees were community debt. *Cardinal & Stachel, P.C. v. Curtiss*, 225 Ariz. 381, ¶¶ 12, 14, 238 P.3d 649, 653-54 (App. 2010). After a bench trial, the court determined that “[t]he evidence clearly shows that [Leela] had no objective intent to benefit the community in the dissolution proceeding,” and thus, “[t]he legal expenses [Leela] incurred . . . are not community debt.” This appeal followed.

### **Benefit to the Community**

¶4 Stachel first argues the relevant time to determine Leela’s intent was at the time of the execution of the legal services contract and the trial court erred by considering subsequent conduct when determining her intent. Following a bench trial, we will affirm if any evidence supports the judgment; however we review de novo any legal conclusions. *Inch v. McPherson*, 176 Ariz. 132, 136-37, 859 P.2d 755, 759-60 (App. 1992). The court had the opportunity to evaluate witnesses’ credibility and “[w]e will not reweigh the evidence or substitute our evaluation of the facts.” *Castro v. Ballestros-Suarez*, 222 Ariz. 48, ¶ 11, 213 P.3d 197, 200-01 (App. 2009). Instead, we will affirm if a reasonable trier of fact could reach the same result. *Id.*

¶5           Aside from statutory exceptions not relevant here, “‘the test of whether an obligation is a community debt’ is whether the obligation is ‘intended to benefit the community.’” *Cardinal & Stachel, P.C. v. Curtiss*, 225 Ariz. 381, ¶ 7, 238 P.3d 649, 651 (App. 2010), *quoting Schlaefel v. Fin. Mgmt. Serv., Inc.*, 196 Ariz. 336, ¶ 10, 996 P.2d 745, 748 (App. 2000); *see also* A.R.S. § 25-215(D) (“Except as prohibited in [A.R.S.] § 25-214, either spouse may contract debts and otherwise act for the benefit of the community.”). We have held that one spouse’s attorney fees from a dissolution action may be community debt if “‘the surrounding circumstances at the time of the transaction’” show an objective intent to benefit the community. *Id.* ¶ 12, *quoting Hofmann Co. v. Meisner*, 17 Ariz. App. 263, 267, 497 P.2d 83, 87 (1972). Although the benefit to the community need not be the primary or sole intent, the spouse must have some intent to benefit the community. *Id.* ¶ 10. The question of intent is an issue of fact, left to the trier of fact. *Chopin v. Chopin*, 224 Ariz. 425, ¶ 7, 232 P.3d 99, 102 (App. 2010).

¶6           Although Stachel cites *Cardinal & Stachel* and *Hofmann Co.* as authority for the proposition that the relevant issue here is Leela’s intent at the time she entered the legal services contract, it does not cite any authority establishing courts may not consider subsequent conduct in determining that intent. And evidence of subsequent conduct can be relevant to determining Leela’s intent when she executed the legal services contract. *Chopin*, 224 Ariz. 425, ¶ 7 & n.1, 232 P.3d at 101 & n.1, *relying on Taylor v. State Farm Mut. Auto. Ins. Co.*, 175 Ariz. 148, 153, 854 P.2d 1134, 1139 (1993) (court “may

consider surrounding circumstances” including “subsequent conduct” to determine intent of parties to contract). Therefore, the trial court did not err in considering subsequent conduct in determining Leela’s intent.

¶7 Stachel also argues the community benefitted from Leela’s representation because the petition for separation would have provided for Leela’s medical care.<sup>2</sup> Stachel relies on cases considering whether debt from medical care is a community obligation.<sup>3</sup> However, the issue here is not whether necessary medical care is a community obligation, but whether the evidence demonstrates Leela intended to benefit the community by retaining an attorney. And although Leela’s attorney testified she thought it would benefit the community for Leela to continue with her medical insurance, she did not testify that Leela intended to benefit the community.

¶8 Rather, the evidence produced at trial supports the trial court’s findings and conclusion that Leela had not intended to benefit the community. Leela’s attorney testified that at the initial meeting, Leela was looking for “justice . . . [and] an attorney to help afford Leela some security, in terms of going forward, protection from poverty, [and] protection from injury.” The attorney further stated that “the clearest

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<sup>2</sup>Although Stachel contends Kieran did not address this argument, which is a confession of error, that doctrine is discretionary and “we are reluctant to reverse based on an implied confession of error when, as here, the trial court has correctly applied the law.” *Nydam v. Crawford*, 181 Ariz. 101, 101, 887 P.2d 631, 631 (App. 1994).

<sup>3</sup>Stachel notes it is a crime for a spouse to fail or refuse to provide another spouse medical care. *See* A.R.S. § 13-3611. However, we have decided previously that § 13-3611 does not give rise to a private cause of action by a third party. *See Phx. Baptist Hosp. & Med. Ctr., Inc. v. Aiken*, 179 Ariz. 289, 294-95, 877 P.2d 1345, 1350-51 (App. 1994).

communication . . . of why she was visiting” the attorney was that Leela “really, really wanted security and safety.” The attorney testified that initially Leela did not want to file for divorce because she “wanted to live in her house,” “wanted the . . . financial support of her husband,” “wanted her status as a wife,” and “needed the health insurance.” And in the petition for separation, Leela avowed the marriage was irretrievably broken and did not request conciliation proceedings. Instead, she objected to Kieran’s petition for conciliation and filed for an order of protection against him.<sup>4</sup> And Leela disposed of personal property worth approximately \$50,000 from the house.<sup>5</sup> Viewed in the light most favorable to upholding the trial court’s decision, none of this evidence demonstrates any intent to benefit the community. *See Cardinal & Stachel*, 225 Ariz. 381, ¶ 7, 238 P.3d at 651. Therefore, the court’s finding was not clearly erroneous. *See Castro*, 222 Ariz. 48, ¶¶ 11-12, 213 P.3d at 200-01.

¶9 Stachel also alleges the community benefitted from Leela’s representation because spousal maintenance, an orderly division of assets, and an attorney who acts as an intermediary all benefit the community. However, Stachel did not make these

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<sup>4</sup>Stachel notes in a different portion of the argument that conciliation proceedings would have violated conditions of release imposed on Kieran in a criminal case arising from the domestic violence incident, however, it cites to no evidence of the conditions of release nor does it explain the relevance to Leela’s intent.

<sup>5</sup>Stachel additionally argues the trial court erred by stating in its decision, “It appears that [Leela] caused the fire” at the family residence which “damaged the residence and destroyed a large amount of community property.” The court had found the statement concerning Leela starting the fire to be hearsay. However, even excluding this statement, no reasonable finder of fact could have concluded Leela intended to benefit the community. Thus, any error was harmless. *See Creach v. Angulo*, 189 Ariz. 212, 214, 941 P.2d 224, 226 (1997).

arguments in the trial court. An objection on one ground does not preserve another for appeal. *See Romero v. Sw. Ambulance*, 211 Ariz. 200, ¶ 6, 119 P.3d 467, 470-71 (App. 2005). Thus, Stachel has waived these arguments on appeal. *See id.*

### **Scope of Decision**

¶10 Stachel next asserts the trial court decided issues not included in the joint pretrial statement by noting that not all of the fees requested for legal services related to the dissolution and by stating the case should have been brought as a probate proceeding. It contends requiring this action to be brought as a probate proceeding would be against sound public policy. We review a court's decision to consider issues not presented in a pretrial statement for an abuse of discretion. *See Sheppard v. Crow-Barker Paul No. 1 Ltd. P'ship*, 192 Ariz. 539, ¶¶ 37-40, 968 P.2d 612, 619-20 (App. 1998). Generally, pretrial statements limit the contested issues at trial. *Leathers v. Leathers*, 216 Ariz. 374, ¶ 19, 166 P.3d 929, 933 (App. 2007).

¶11 We will not reverse a decision unless an error prejudices the substantial rights of a party. *Creach v. Angulo*, 189 Ariz. 212, 214, 941 P.2d 224, 226 (1997). Instead, Rule 61, Ariz. R. Civ. P., requires that any such harmless error must be disregarded. The trial court noted some of Leela's attorney fees were used to assist Leela in a criminal prosecution of Kieran and "a possible tort action," both arising from the domestic violence. However, in its conclusion, the trial court did not distinguish those fees from any fees for the dissolution. And although the court opined that Stachel should have brought a probate claim, it separately determined Leela "had no objective intent to

benefit the community.” Stachel has provided no evidence as to how these statements would prejudice a substantial right, in light of the lack of any evidence showing Leela intended to benefit the community. Thus, any error the court made in considering issues not contained in the pretrial statement and any related policy considerations is harmless. *See Creach*, 189 Ariz. at 214, 941 P.2d at 226.

### **Further Statutory Argument**

¶12 Stachel finally asserts A.R.S. § 25-315 permits a spouse to incur community debt by retaining an attorney on a family law matter without considering whether the spouse intended to benefit the community. However, Stachel did not make this argument in the trial court and has waived it for appeal. *See Romero v. Sw. Ambulance*, 211 Ariz. 200, ¶ 6, 119 P.3d 467, 470-71 (App. 2005). Moreover, we previously rejected this argument in Stachel’s first appeal. *Cardinal & Stachel, P.C. v. Curtiss*, 225 Ariz. 381, n.4, 238 P.3d 649, 652 n.4 (App. 2010) (interpreting § 25-315 to require benefit to community).

### **Attorney Fees**

¶13 Both parties request costs and attorney fees on appeal as the successful party to an action arising out of a contract, pursuant to A.R.S. §§ 12-341 and 12-341.01. Costs incurred on appeal may be recovered pursuant to A.R.S. § 12-342 rather than § 12-341. *Motzer v. Escalante*, 228 Ariz. 295, ¶ 17, 265 P.3d 1094, 1097 (App. 2011). We deny Stachel’s request, but grant Kieran his request for costs and reasonable attorney fees upon compliance with Rule 21, Ariz. R. Civ. App. P.



**Conclusion**

¶14 For the foregoing reasons, we affirm the judgment in favor of Kieran.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge