

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Marriage of:

GUS T. SCHULTZ, *Petitioner/Appellee*,

v.

TARYN C. SCHULTZ, *Respondent/Appellant*.

No. 1 CA-CV 16-0316 FC
FILED 7-20-2017

Appeal from the Superior Court in Maricopa County
No. FC2012-090815
The Honorable Stephen M. Hopkins, Judge

AFFIRMED

COUNSEL

McWhorter Law Firm PLLC, Mesa
By Heath H. McWhorter
Counsel for Petitioner/Appellee

Law Office of Joel L. Brand, Phoenix
By Joel L. Brand
Counsel for Respondent/Appellant

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OPINION

Judge Jon W. Thompson delivered the opinion of the Court, in which Presiding Judge Randall M. Howe and Judge Lawrence F. Winthrop joined.

T H O M P S O N, Judge:

¶1 Taryn C. Schultz (Mother) appeals from an order crediting Gus T. Schultz (Father) for spousal maintenance payments he made directly to Mother instead of through the Support Payment Clearinghouse (Clearinghouse). For the reasons stated below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Pursuant to the parties' consent decree of legal separation, which was later converted to a decree of dissolution, Father was obligated to pay \$3,000 a month in spousal maintenance to Mother for three years. After Father fell behind in his spousal maintenance obligation, Mother filed a petition for contempt re: nonpayment of support. Mother alleged Father owed \$35,000 in spousal maintenance arrearages. Father acknowledged that he was behind in his obligation but argued he should receive credit for the payments he made directly to Mother that were not shown on the Clearinghouse statements. Father provided copies of cancelled checks Mother cashed between June 2012 and January 2013 totaling \$18,210. Mother did not deny receiving these payments, but argued Father was not entitled to credit for these direct payments pursuant to Arizona Revised Statutes (A.R.S.) § 46-441(H) (2017),¹ which states: "Payment of any money directly to an obligee or to a person other than the support payment Clearinghouse shall not be credited against the support obligation unless the direct payments were ordered by the court, or made pursuant to a written support agreement by the parties."

¶3 The trial court concluded Father was entitled to credit for the direct payments despite the language in A.R.S. § 46-441(H) because: (1) the parties' consent decree constituted a written agreement and did not specify that payments could not be made directly, and (2) Mother failed to assert this statutory defense when she accepted Father's direct payments as

¹ Absent material revision after the relevant date, we cite the current version of the statutes.

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support. Finding “Mother’s hyper-technical argument” was unreasonable in light of the fact that she did not dispute the payments, the court awarded Father \$1025 in attorneys’ fees. Mother filed a timely notice of appeal, and we have jurisdiction pursuant to A.R.S. § 12-2101(A)(1)(2017).

DISCUSSION

A. Direct Payment of Spousal Maintenance

¶4 Mother argues the trial court erred by ignoring the mandatory language in A.R.S. § 46-441(B) and (H) that precludes the court from crediting an obligor for support payments made directly to the obligee absent a court order or written agreement. Father contends the court’s ruling is supported by A.R.S. § 25-510(G) (2017), which provides:

Any direct payments not paid through the Clearinghouse or any equitable credits of principal or interest permitted by law and allowed by the court after a hearing shall be applied to support arrearages as directed in the court order. The court shall make specific findings in support of any payments or credits allowed.

We review issues of statutory interpretation *de novo*. *Clark v. Clark*, 239 Ariz. 281, 282, ¶ 6, 370 P.3d 1119, 1120 (App. 2016).

¶5 Pursuant to A.R.S. § 25-510(B), Clearinghouse records of payment “are prima facie evidence of all payments made and disbursed to the person or agency to whom the support payment is to be made and are rebuttable only by a specific evidentiary showing to the contrary.” As noted above, A.R.S. § 25-510(G) also contemplates that the court may hold a hearing to determine whether an obligor is entitled to credit for “[a]ny direct payments not paid through the Clearinghouse or any equitable credits of principal or interest *permitted by law*[.]” (Emphasis added). Thus, A.R.S. § 25-510 authorizes the trial court to credit direct support payments if the obligor meets his burden of proving he made support payments not shown in the Clearinghouse records. *See Lopez v. Lopez*, 125 Ariz. 309, 310, 609 P.2d 579, 580 (App. 1980) (holding payor has burden of proving payment in action for arrearages).

¶6 However, A.R.S. § 46-441(H) provides that direct payments shall not be credited against a support obligation unless the direct payment was court-ordered or made pursuant to a written agreement by the parties. Mother contends A.R.S. § 25-510(G), which allows credit only for direct payments “permitted by law” permits only direct payments allowed by

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A.R.S. § 46-441. She argues A.R.S. § 46-441 allows only direct payments pursuant to a court order or written agreement by the parties and because Father's direct payments were not made pursuant to court order or written agreement, the trial court erred in allowing credit for the direct payments. See A.R.S. § 46-441(B), (H).

¶7 We do not interpret A.R.S. § 25-510(G) so narrowly. In interpreting statutes, we consider all relevant statutory provisions and attempt to interpret related statutes consistently and harmoniously to avoid rendering any provision superfluous or void. *Clark*, 239 Ariz. at 283, ¶ 9, 370 P.3d at 1121 (citing *State v. Cid*, 181 Ariz. 496, 499-500, 892 P.2d 216, 219-20 (App. 1995)).

¶8 Pursuant to A.R.S. § 25-510(G), the court may allow credit for any direct payments permitted by law. In Arizona, dissolution actions are considered equitable actions, and the courts may exercise full equitable powers. *Wick v. Wick*, 107 Ariz. 382, 384, 489 P.2d 19, 21 (1971). Arizona law recognizes the equitable defense of waiver to claims for support arrearages. See *Ray v. Magnum*, 163 Ariz. 329, 332, 788 P.2d 62, 65 (1989); *Schnepp v. State ex rel. Dep't of Econ. Sec.*, 183 Ariz. 24, 27-28, 899 P.2d 185, 188-89 (App. 1995). Thus, if Father can successfully establish the equitable defense of waiver, his direct payments were permitted by law and properly credited by the trial court.

¶9 To establish waiver, Father must show by clear and compelling evidence that Mother "voluntarily and intentionally abandoned a known right." *Ray*, 163 Ariz. at 332, 788 P.2d at 65; *Schnepp*, 183 Ariz. at 28, 399 P.2d at 189. Father provided copies of the cancelled checks Mother endorsed totaling over \$18,000. Although the consent decree stated Father was to make his support payments via wage assignment through the Clearinghouse, Mother accepted each of Father's direct payments without ever objecting, without claiming the payments were not for support, and without raising any statutory defense.² Mother did not dispute that Father made these payments. In light of these facts, we agree with the trial court's conclusion that Mother waived her claim for arrearages resulting from the direct payments. Failing to credit Father for more than \$18,000 in direct support payments would be inequitable and result in a windfall to Mother.

² We have no transcript of the hearing addressing the direct payments. In the absence of a transcript, we presume the record supports these findings by the trial court. See *Myrick v. Maloney*, 235 Ariz. 491, 495, ¶ 11, 333 P.3d 818, 822 (App. 2014).

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¶10 Mother contends Father cannot avail himself of this equitable defense because he comes to court with unclean hands as a result of having failed to pay his spousal maintenance. Although Father was behind on his support obligation, he did not seek a reduction in the monthly obligation or relief from the remaining unpaid support. Rather, Father requested credit for the amount he actually paid and which Mother did not dispute. As to this issue, Father's hands are clean and his conduct does not preclude equitable relief. *See* 27A Am. Jur. 2d *Equity* § 98 (2017) (“[W]here a party comes into equity for relief he or she must show that his or her conduct has been fair, equitable, and honest as to the particular controversy in issue.”) (Emphasis added).

¶11 The direct payments were permitted by law, *i.e.*, the equitable defense of waiver, and were properly credited to Father after a hearing pursuant to A.R.S. § 25-510(G). On appeal, Mother does not dispute the amount of direct payments Father claimed he made; therefore, we affirm the trial court order that Father's spousal maintenance arrearages are \$15,724.62 plus \$1,245.61 in interest as of December 31, 2015.

B. Attorneys' Fees Award

¶12 Mother also appeals the award of attorneys' fees to Father, arguing that her position at trial was not unreasonable. An award of attorneys' fees pursuant to A.R.S. § 25-324 (2017) is reviewed for an abuse of discretion. *Myrick*, 235 Ariz. at 494, ¶ 6, 333 P.3d at 821. The trial court properly permitted credit for Father's direct payment; thus, Mother's position was incorrect. The court was within its discretion to characterize Mother's position as hyper-technical and unreasonable, particularly in light of Mother's failure to dispute that Father made over \$18,000 in support payments which she accepted as such without objection.

ATTORNEYS' FEES AND COSTS ON APPEAL

¶13 Both parties request an award of attorneys' fees and costs on appeal pursuant to A.R.S. § 25-324. In the exercise of our discretion we decline to award either party attorneys' fees on appeal. As the successful party on appeal, Father is entitled to an award of costs on appeal upon compliance with Arizona Rule of Civil Appellate Procedure 21. *See* A.R.S. § 12-342 (2017).

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CONCLUSION

¶14 We affirm the trial court's order regarding Father's spousal maintenance arrearages and award of attorneys' fees to Father.



AMY M. WOOD • Clerk of the Court
FILED: AA