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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 07/26/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

In re the Marriage of: )  
)  
D. GABRIELLE BIBARS, ) 1 CA-CV 11-0473  
)  
Petitioner/Appellant,) )  
)  
v. ) DEPARTMENT B  
)  
MAEN AHMED BIBARS, ) **MEMORANDUM DECISION**  
) (Not for Publication -  
Respondent/Appellee. ) Rule 111, Rules of  
) Arizona Supreme Court)  
)  
\_\_\_\_\_ )

Appeal from the Superior Court of Maricopa County

Cause No. FC2008-092214

The Honorable James P. Beene, Judge

**AFFIRMED**

D. Gabrielle Bibars  
*In propria persona*

Pine

Rad L. Vucichevich  
Attorney for Respondent-Appellee

Phoenix

**T H O M P S O N**, Judge

¶1 D. Gabrielle Bibars (wife) appeals from the trial court's decree of dissolution of marriage. Finding no abuse of discretion, we affirm.

## **BACKGROUND**

¶2 Maen A. Bibars (husband) and wife were married in 1993. A petition for dissolution was filed in 2008 and the two divorced upon entry of a consent decree in 2011; the court had previously approved the parties' joint legal custody agreement and parenting plan regarding their two minor children. Among other things, the court ordered husband to pay \$2,000 a month in spousal maintenance for five years, divided their various community properties including Bright International<sup>1</sup> and awarded wife attorneys' fees and costs in the amount of \$20,000 pursuant to Arizona Revised Statutes (A.R.S.) § 25-324 (Supp. 2011). Wife filed a motion for new trial which was denied.<sup>2</sup> Wife timely appealed.

## **ISSUES ON APPEAL**

¶3 Wife asserts on appeal that:

1. The court erred in its calculation of spousal maintenance in the amount of \$2,000 a month for five years.

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1 Husband was ordered to pay wife \$94,375 for her community share of the increase in value of Bright International, \$18,841 for their Vancouver condominium, \$1,500 for his vehicle and \$2,965.50 for the 2008 tax refund.

2 Wife in her post-trial motions raised two of the issues on appeal: the division of the community interest in Bright International and the attorneys' fees issue. She did not raise the issue of spousal maintenance.

2. The court erred in its property division in regards to Bright International.
3. The court erred in its award to wife of \$20,000 in attorneys' fees when her attorney and expert expenses exceeded \$200,000.

## DISCUSSION

### A. *Spousal Maintenance*

¶4 The amount and duration of spousal maintenance is determined pursuant to A.R.S. § 25-319(B) (Supp. 2011). The court must consider thirteen factors, including the standard of living during the marriage, the duration of the marriage, each spouse's age, employment history and ability to work, the financial abilities and resources of each spouse. *See id.* On review, we examine an award of spousal maintenance under an abuse of discretion standard. *See Berger v. Berger*, 140 Ariz. 156, 167, 680 P.2d 1217, 1228 (App. 1983). Therefore, we view the evidence in the light most favorable to sustaining wife's spousal maintenance award and will affirm if there is any reasonable evidence to support it. *See Thomas v. Thomas*, 142 Ariz. 386, 390, 690 P.2d 105, 109 (App. 1984).

¶5 At trial wife apparently requested \$5,000 per month for six years. The court found she did qualify for an award of maintenance under A.R.S. § 25-319(A) because she lacked earning

ability in the labor market adequate to be self sufficient and lacked sufficient property, even given the community property award, to be self sufficient. The court awarded wife \$2,000 a month for five years. The detailed eleven-page order included, among others, the following findings under A.R.S. § 25-319(B): the family had a good standard of living with husband earning approximately \$125,000 a year<sup>3</sup>, the marriage lasted fifteen years, wife is forty-six years old but that her work history during the marriage was not significant (primarily working part-time at Bright International), she intends to return to graduate school with the goal of becoming self-sufficient, husband has the financial means to pay spousal maintenance, wife needs to seek further education to increase her earning potential, and that wife should be able to complete her studies and find suitable employment in approximately five years.<sup>4</sup> The court declined to award wife the amount she requested finding "[wife] received sufficient income during the pendency of this case and is obtaining significant property through the dissolution of the marriage. This property can be used to support her financial

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3 The court determined that husband earns \$10,166 per month and wife earns \$1,273 per month.

4 The court also noted that over the approximately three years when the divorce was pending wife "received sufficient income" from husband.

needs. Additionally, Mother is capable of finding employment and may have to work while she seeks to further her education." The court, however, made the award modifiable.

¶16 Wife makes numerous assertions related to the spousal maintenance award, including that the court may have undervalued her contribution to the marital community and Bright International and that the court underestimated their standard of living. The court was in the best position to judge the credibility of the witnesses and the weight of evidence. *Goats v. A.J. Bayless Mkts., Inc.*, 14 Ariz. App. 166, 171, 481 P.2d 536, 541 (1971). We will not substitute our opinion for that determination. See *id.* at 169, 481 P.2d at 539.

¶17 Further, wife has not provided us with a transcript of the hearing.<sup>5</sup> We presume, in the absence of a transcript, that the testimony supports the trial court's findings of fact. *Biddulph v. Biddulph*, 147 Ariz. 571, 574, 711 P.2d 1244, 1247 (App. 1985); see also ARCAP 11(b) (requiring appellant to order copy of any transcript deemed necessary for appeal). Wife, as the appellant, had the responsibility to "mak[e] certain the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised." *Baker v.*

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5 While wife filed a notice of filing and service of transcript, the transcript itself was never filed.

*Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995) (citing Ariz. R. Civ. P. 11). On this record we cannot conclude the court abused its discretion.

¶8 Even given the absence of the transcript, however, it is clear from the minute entry that the court did consider the factors of A.R.S. § 25-319(B) in reaching its measured determination. Such a determination given the evidence that does exist in the record before us, is not an abuse of discretion. We affirm the court's award.

*B. Bright International*

¶9 By statute, the court is obligated to determine the parties' separate property and to divide their community property "equitably, though not necessarily in kind . . . ." A.R.S. § 25-318(A) (2007). On review, we view the evidence in the light most favorable to sustaining the trial court's division of community property and determine whether there was evidence that reasonably supports the court's findings. *Berger*, 140 Ariz. at 161-62, 680 P.2d at 1222-23. We review questions of law under a de novo standard. *Brink Elec. Constr. Co. v. Ariz. Dep't of Revenue*, 184 Ariz. 354, 358, 909 P.2d 421, 425 (App. 1995) (citation omitted).

¶10 Here, the court found that Bright International was the sole and separate property of husband and that he co-owns

the company, 50:50, with his brother. Based on the testimony, including each parties' expert testimony, the court found an increase in value of the community interest of the business to be \$188,750. The court awarded wife one half of that increase.

¶11 On appeal, wife asserts that the community interest value of \$188,750 the court used was confusing and not one given specifically by any expert. Wife points to the community interest valuations from her expert, which ranged from \$300,559 (using the *Cockrill*<sup>6</sup> fair return methodology) to \$464,826 (using the *Rueschenberg*<sup>7</sup> allocation of increased value methodology) depending on the methodology used and as detailed in Exhibit 35 in the record on appeal. Again, we do not have the trial testimony where both husband and wife's experts were examined and cross-examined, and therefore assume the trial testimony supported the court's findings. See *Biddulph*, 147 Ariz. at 574, 711 P.2d at 1247. We note, however, even wife's valuation document acknowledges that "fair value (also known as investment

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6 *Cockrill v. Cockrill*, 124 Ariz. 50, 54, 601 P.2d 1334, 1337-38 (1979) (instituting an apportionment rule that apportions to the community the profits or increase in separate property attributable to each to achieve "substantial justice between the parties").

7 *Rueschenberg v. Rueschenburg*, 219 Ariz. 249, 254, 196 P.3d 852, 857 (App. 2008) (holding the trial court must equitably apportion the combined total of the profits and increase in value of the separate business if community efforts caused a portion of that increase and substantial justice required it).

value) refers to a standard of value of a business to a particular investor without regard to a sale or exchange. . . . without the application of discounts for lack of marketability or lack of control associated with the subject non-controlling interest.”

¶12 Also in the record is husband’s expert’s analysis which examined the calculations and methodologies of wife’s expert opinion. That report noted mathematical errors, criticized the rate of return, and drew different conclusions, specifically that even under the *Rueschenberg* methodology the “increase in equity value allocable to the marital community would not exceed \$72,886 to \$161,326 using the Rueschenberg 2/3-1/3 ‘split.’”

¶13 The court had the evidence before it and was in the best position to determine credibility; we will not disturb its findings of fact unless they are clearly erroneous. See *Farmers Ins. Co. of Ariz. v. Young*, 195 Ariz. 22, 28, ¶ 19, 985 P.2d 507, 513 (App. 1998) (citing *Lee Dev. Co. v. Papp*, 166 Ariz. 471, 475-76, 803 P.2d 464, 468-69 (App. 1990)). Because there was evidence that reasonably supports the court’s valuation, we affirm.

C. *Attorneys’ Fees and Costs Below*

¶14 The court awarded wife \$20,000 in attorneys’ fees



under A.R.S. § 25-324. The court stated:

It is clear from the evidence presented at the January 11, 2011 trial that there is a significant disparity in the incomes between Father and Mother, in that Father earns significantly more income than Mother. The Court has considered [the] reasonableness of the positions each party has taken throughout the proceedings, and the financial resources of both parties

before awarding \$20,000 inclusive of attorney fees and expert fees. Wife asserts that the court erred because her attorneys' fees and expert costs exceeded \$200,000 and the long delay prior to trial and husband's actions resulted in the excessive fees. We do not find the court abused its discretion in awarding wife these fees and costs. See *Magee v. Magee*, 206 Ariz. 589, 590, ¶ 1, 81 P.3d 1048, 1049 (App. 2004).

*D. Attorneys' Fees on Appeal*

¶15 Husband requests attorneys' fees and costs on appeal pursuant to A.R.S. § 25-324. Section 25-324 requires us to examine both the financial resources and the reasonableness of the positions of each party. After doing so, we find that the parties should bear their own fees and costs on appeal.

**CONCLUSION**

¶16 For the foregoing reasons, we affirm.

/s/

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JON W. THOMPSON, Judge

CONCURRING:

/s/

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PATRICIA A. OROZCO, Presiding Judge

/s/

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LAWRENCE F. WINTHROP, Judge