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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 12/4/2012
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:) No. 1 CA-CV 11-0567
)
PAULA KRONENWETTER,) DEPARTMENT T
)
Petitioner/Appellee/) **MEMORANDUM DECISION**
Cross-Appellant,) (Not for Publication -
) Rule 28, Arizona Rules
v.) of Civil Appellate
) Procedure)
ROBERT J. KRONENWETTER,)
)
Respondent/Appellant/)
Cross-Appellee.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FN 2009-092733

The Honorable James P. Beene, Judge

AFFIRMED

Childers & Huey P.L.C. Scottsdale
By Joseph M. Huey
Lisa Weiler-Parsons
Petitioner/Appellee/Cross-Appellant

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By Kissandra L. Tysman
Attorneys for Respondent/Appellant/Cross-Appellee

D O W N I E, Judge

¶1 Robert J. Kronenwetter ("Husband") appeals the family court's determination that certain financial accounts are

community property. Paula Kronenwetter ("Wife") cross-appeals from the denial of her motion for new trial. Finding no error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶12 Husband and Wife were married in 1980. In 1991, Husband inherited \$5043.28 from his mother and more than 1000 shares of "Putnam," "PPL," "Delaware Group," "Independent Square," and "Anchor" stocks. In 2002, Husband and Wife met with a "UBS" financial advisor. They decided to open two accounts in Husband's name: "UBS 2420," an individual retirement account containing a variable annuity issued in July 2002 ("Ohio National variable annuity"); and "UBS 2417," including a variable annuity issued in June 2002 ("Ohio National variable annuity") and Blackrock High Yield bonds ("Blackrock Investment") with a May 2004 trade date.

¶13 During the marriage, Wife worked for the Transportation Security Administration and suffered an on-the-job injury. As a result of the injury, the Office of Personnel Management ("OPM") paid Wife a \$12,982.61 lump sum annuity that she deposited into a savings account ("WF 7160 account") in February 2008. Wife also received monthly disability payments.

¶14 In 2009, Wife filed for divorce. Husband contended six accounts were his separate property because they were funded

"[f]rom inheritance":¹

	Dec 2009	Sept 2010
Blackrock	\$6169.94	\$6600.65
Delaware Investments	\$28628.10	\$31865.97
Putnam	\$14297.96	\$15109.05
PPL	\$18290.94	\$16283.20
UBS-2420	\$42685.23	\$43961.85 ²
UBS-2417	\$161702.34	\$165424.20 ³
Total	\$271774.51	\$279244.92

Wife claimed the WF 7160 account as her separate property.

¶15 In May 2010, OPM notified Wife it had overpaid disability benefits and would decrease her monthly payment for 36 months until the \$15,741.41 over-payment ("OPM debt") was recovered.

¶16 After a February 2011 bench trial, the family court entered a dissolution decree that stated, *inter alia*:

The parties contest whether the assets contained in Blackrock Investments, UBS account #2420 and UBS account #2417 are community assets or Husband's sole and separate property. At trial it was established that the parties purchased the UBS accounts during the marriage. The principle assets in the UBS accounts are the Ohio National variable annuities that were purchased in 2002-during the parties' marriage. Since this asset was purchased

¹ Husband and Wife made other property claims, but we confine our review to those pertinent to the issues on appeal.

² This amount includes \$18,162 attributed to an Ohio National variable annuity.

³ This amount includes \$88,742 attributed to an Ohio National variable annuity.

during the marriage, it is considered a community asset "unless changed by agreement of the parties or by operation of law."
. . . .

Although Husband claimed that the source of the funds used to purchase the Ohio National variable annuities was from his mother's inheritance, he has failed to provide sufficient evidence to support this claim. Therefore, the assets contained in Ohio National variable annuities are community property

(Emphasis added.) The court ruled that the WF 7160 account was community property, except for \$13,000 that Wife had "conclusively trace[d]" to a "sole and separate source." The court held Wife solely responsible for the OPM debt. It also ordered her to pay Husband \$3,500 per month in spousal maintenance for ten years.

¶7 The court denied Husband's motion for reconsideration and Wife's motion for new trial.⁴ Husband timely appealed, and Wife timely cross-appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A).

DISCUSSION

I. Financial Accounts

¶8 At trial, Wife abandoned any claimed community interest in the Putnam, PPL, and Delaware investment accounts.

⁴ Wife also filed a Motion to Alter or Amend the Decree of Dissolution to restore her maiden name, correct the date spousal maintenance would begin, and specify that spousal maintenance would terminate upon the death of either party or Husband's re-marriage. The court granted the motion.

The court awarded those accounts to Husband, noting that they "were devised to Husband by his mother in her will and were not commingled with community assets." At issue on appeal is the characterization of the Blackrock Investment, UBS 2420, and UBS 2417 accounts.

¶19 We review *de novo* the family court's characterization of property. *In re Marriage of Pownall*, 197 Ariz. 577, 581, ¶ 15, 5 P.3d 911, 915 (App. 2000) (citation omitted). We view all evidence and reasonable conclusions therefrom in the light most favorable to supporting the decision of the trial court. *Sommerfield v. Sommerfield*, 121 Ariz. 575, 577, 592 P.2d 771, 773 (1979) (citation omitted). There is a presumption that property acquired by either spouse during marriage is community property, and this presumption applies regardless of which spouse holds legal title. *Id.* (citations omitted). Clear and convincing evidence is required to rebut the presumption of community property. *Id.* (citation omitted).

¶10 The UBS and Blackrock Investment accounts were opened during the marriage. Husband did not directly inherit those accounts, which were opened many years after his mother's death. The court therefore properly presumed that those accounts were community property, absent clear and convincing evidence to the contrary.

¶11 The only evidence Husband offered was his own

testimony that the accounts were funded by his inheritance. Husband admitted he had not provided documentation or other proof that the stocks and funds inherited in 1991 were kept separate until 2002 and 2004, when the investment accounts at issue were opened. Wife testified the UBS accounts were opened in Husband's name alone because he was older and would likely retire first. She further testified that \$160,000 in community funds was invested in the UBS accounts.

¶12 Given the evidence before it, a reasonable trier of fact could conclude that Husband failed to rebut the presumption of community property by clear and convincing evidence. See *Kent K. v. Bobby M.*, 210 Ariz. 279, 284-85, ¶ 25, 110 P.3d 1013, 1018-19 (2005) (clear and convincing evidence "indicates that 'the thing to be proved is highly probable or reasonably certain'"; the standard of proof "places a heavier burden upon one party to prove its case to a reasonable certainty"). We affirm the family court's determination that the UBS and Blackrock investment accounts were community property.

II. Wife's Motion for New Trial

¶13 A judgment may be vacated and a new trial granted for "causes materially affecting [a] party's rights," including an "error in the admission or rejection of evidence or other errors of law occurring at the trial or during the progress of the action" or when "the ruling, decision, findings of fact, or

judgment is not justified by the evidence or is contrary to law." Ariz. R. Fam. L.P. 83(A)(5), (6). We review the denial of a motion for new trial for an abuse of discretion. *Drahos v. Rens*, 149 Ariz. 248, 251, 717 P.2d 927, 930 (App. 1985).

¶14 Wife contends the court erred by "failing to expressly make certain essential findings" regarding the spousal maintenance award. She also contends the court abused its discretion by assigning the OPM debt solely to her.

A. Spousal Maintenance

¶15 The family court has substantial discretion in setting spousal maintenance. *Rainwater v. Rainwater*, 177 Ariz. 500, 502, 869 P.2d 176, 178 (App. 1993) (citation omitted). After considering certain factors, the court may award maintenance "in an amount and for a period of time as the court deems just." A.R.S. § 25-319(B). We will affirm the spousal maintenance award if any reasonable construction of the evidence justifies it. *Stevenson v. Stevenson*, 132 Ariz. 44, 46, 643 P.2d 1014, 1016 (1982) (citation omitted).

¶16 The decree stated that spousal maintenance was appropriate because the parties had "a marriage of long duration" and Husband was "of an age that may preclude the possibility of gaining employment adequate to be

self-sufficient.”⁵ See A.R.S. § 25-319(A)(4). The court “considered the factors set forth in A.R.S. § 25-319(B)” in determining the amount and duration of the award, and the decree separately addressed each factor, although the court was not legally required to do so. See *Elliott v. Elliott*, 165 Ariz. 128, 131 n.1, 796 P.2d 930, 933 n.1 (App. 1990) (court must consider each statutory factor, but need not make specific findings regarding each).

¶17 Wife cites no legal authority for her claim that the court erred by not making additional findings. See *Cullum v. Cullum*, 215 Ariz. 352, 355 n.5, ¶ 14, 160 P.3d 231, 234 n.5 (App. 2007) (appellate courts generally do “not consider arguments posited without authority”). Moreover, she admits neither party requested findings of fact and conclusions of law. We therefore presume that the family court found every fact necessary to support its judgment. See *Stevenson*, 132 Ariz. at 46, 643 P.2d at 1016 (citation omitted); see also Ariz. R. Fam. L.P. 82(A).⁶ And to the extent Wife urges us to re-weigh the

⁵ The parties were married for over 29 years. Husband was 66 years old at the time of dissolution. The court found Husband was “unable to be self-sufficient through appropriate employment.” The record supports this finding. Husband worked for Wife’s family’s business for over 20 years, and Wife terminated his employment when she gained a controlling interest in the company.

⁶ Wife’s reported concern about future modification proceedings could have been ameliorated by a timely request for findings of fact.

evidence and reach a different conclusion regarding spousal maintenance, we decline to do so. See *Hollis v. Indus. Comm'n*, 94 Ariz. 113, 116, 382 P.2d 226, 228 (1963) (citation omitted) (the appellate court's role is not to weigh conflicting evidence below).

B. OPM Debt

¶18 Finally, Wife contends the family court abused its discretion by ordering that she was solely responsible for the OPM debt when the WF 7160 account, into which the OPM payments were deposited, was deemed community property. We disagree.

¶19 First, the record fully supports the determination that the WF 7160 account was community property. “[W]here community property and separate property are commingled, the entire fund is presumed to be community property unless the separate property can be *explicitly traced*.” *Cooper v. Cooper*, 130 Ariz. 257, 259, 635 P.2d 850, 852 (1981) (emphasis added). The burden is on the person claiming that commingled funds are separate to prove that assertion by clear and convincing evidence. *Id.* at 259-60, 635 P.2d at 852-53 (citation omitted). Wife acknowledged that separate and community funds were commingled in the WF 7160 account. Other than the \$13,000 she “conclusively trace[d],” the court concluded Wife had not proven the sole and separate nature of funds in that account.

¶20 “Arizona law makes no conceptual distinction between

the division of community assets and the division of community liabilities at dissolution. The authority of the court to allocate community liabilities between the parties is simply an aspect of its duty to effect an equitable division of all community property." *Birt v. Birt*, 208 Ariz. 546, 550, ¶ 17, 96 P.3d 544, 548 (App. 2004). "So long as the trial court acts equitably, it is allowed great discretion in the apportionment of the community assets and obligations." *Neal v. Neal*, 116 Ariz. 590, 594, 570 P.2d 758, 762 (1977). The court is not required to make equal allocations, only equitable ones. *Kamrath v. Kamrath*, 17 Ariz. App. 394, 394, 498 P.2d 468, 468 (1972) (citations omitted); see also *Styers v. Superior Court (Pope)*, 161 Ariz. 477, 479, 779 P.2d 352, 354 (App. 1989) ("[E]quitable and equal allocation are not synonymous.").

¶21 The court obviously gave close attention to the parties' evidence and arguments. It issued a detailed nine-page decree that allocated significant assets and minimal debt. In most instances, the court explained its rationale, making clear it devoted significant effort to fashioning an equitable decree. Even if we might have allocated the OPM debt differently, in reviewing for an abuse of discretion, "[t]he question is not whether the judges of this court would have made an original like ruling, but whether a judicial mind, in view of the law and circumstances, could have made the ruling without exceeding the

