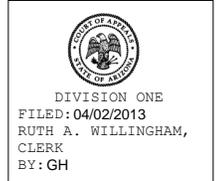


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



In re the Marriage of:) 1 CA-CV 12-0124
)
JENNIFER WESTROM,) DEPARTMENT C
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
MIKE WESTROM,)
)
Respondent/Appellant.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FC2010-007970

The Honorable Pamela S. Gates, Judge

AFFIRMED

Hallier & Lawrence, PLC Phoenix
By Andrea Christine Lawrence
and

Jones Skelton & Hochuli, PLC Phoenix
By Eileen Dennis GilBride
Attorneys for Petitioner/Appellee

Law Office of John C. Churchill Phoenix
By John A. Shannon, Jr.
Attorneys for Respondent/Appellant

J O H N S E N, Judge

¶1 Mike Westrom ("Husband") timely appeals from a dissolution decree, arguing the superior court erroneously awarded certain real property to Jennifer Westrom ("Wife"). We affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 The parties married on May 5, 2005. Prior to the marriage, Husband owned two parcels of farmland in Minnesota called the Renstrom Property and the Giese Property. During the marriage, Husband transferred title of those properties to MJW Holdings, LLC, a company managed equally by Husband and Wife and solely owned by M & J Property Holdings, LLC. Although the relevant corporate document is not in the record, Husband acknowledges that M & J Property Holdings was owned by a family trust that he created with Wife. Consistent with Husband's acknowledgment that the family trust owned M & J Property Holdings, which in turn owned MJW Holdings, Wife testified that she owned 50 percent of MJW Holdings.

¶3 Wife petitioned for dissolution on December 17, 2010. On December 21, 2010, Husband caused the sale of the Renstrom Property for nearly \$1,375,000 and used approximately \$672,000 of the sale proceeds to purchase the Amundsen Property, another parcel of Minnesota farmland. He used approximately \$325,000 of

the sale proceeds to purchase an interest in KLM Hydroponics Investments LLC.¹

¶4 After a trial, the superior court found that the Renstrom Property and the Giese Property both were community property. The court then equitably divided the marital assets, awarding Husband the Giese Property and the interest in KLM Hydroponics, and awarding Wife the Amundsen Property.

¶5 Husband timely appealed. This court has jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1) (West 2013).²

DISCUSSION

A. Legal Principles.

¶6 Husband argues the superior court erred in finding that the Renstrom Property and Giese Property were community property and by dividing the marital property substantially equally. The superior court's characterization of property is a conclusion of law that we review *de novo*, *In re Marriage of Pownall*, 197 Ariz. 577, 581, ¶ 15, 5 P.3d 911, 915 (App. 2000), but we will not disturb its factual determinations unless they are clearly erroneous, *Hrudka v. Hrudka*, 186 Ariz. 84, 92, 919 P.2d 179, 187 (App. 1995). "A finding of fact is not clearly erroneous if

¹ Husband used the remaining sale proceeds to pay off debts secured by the Renstrom Property.

² Absent material revisions after the relevant date, we cite a statute's current version.

substantial evidence supports it, even if substantial conflicting evidence exists." *Kocher v. Dep't of Revenue of Ariz.*, 206 Ariz. 480, 482, ¶ 9, 80 P.3d 287, 289 (App. 2003).

B. Transmutation.

¶7 Property acquired by a spouse prior to marriage is separate property. A.R.S. § 25-213(A) (West 2013). The character of the property is not changed after marriage except by "commingling, gift, agreement or otherwise." See *Muchesko v. Muchesko*, 191 Ariz. 265, 271, 955 P.2d 21, 27 (App. 1997). Thus, the parties may, "[by] their intent, transmute the character of separate property to community property." *Noble v. Noble*, 26 Ariz. App. 89, 93, 546 P.2d 358, 362 (1976).

¶8 It is undisputed that Husband acquired the Renstrom Property and the Giese Property before the parties' marriage. Wife argued, and the superior court found, that Husband converted those properties to community property during the marriage. In particular, the court found the circumstances clearly demonstrated that Husband intended to effect a change in the status of the property when he transferred title of the Renstrom Property and Giese Property to MJW Holdings. The court also found Husband was not credible when he testified that he did not intend for the Renstrom Property and the Giese Property to become community property.

¶9 There is ample evidence to support the superior court's finding that Husband intended to transmute the Renstrom Property and the Giese Property to community property. Wife testified that during the parties' meetings with their estate-planning attorney, Husband told the attorney that he wanted all of his property to become community property. Wife further testified the purpose of the family trust and the limited liability companies was for estate planning and to avoid liability, and that she intended to transmute her sole and separate property to community property when she and Husband created the trust. Husband agreed Wife's real property changed status at the time the trust was formed, but denied that had been his intent with respect to his own property. We cannot say the superior court erred by accepting Wife's testimony and finding Husband was not credible when he testified that he did not intend to transfer any interest in his sole and separate property to the community.

¶10 The superior court's determinations of the credibility of the witnesses, coupled with Husband's documented transfer of the property to MJW Holdings, which allowed Wife joint control, support the court's conclusion that Husband intended to effect a change in the status of his separate property. Accordingly, we affirm the court's determination that the Renstrom Property and the Giese Property were community property.

C. Equitable Division of Community Property.

¶11 Husband also argues the superior court erred by dividing the community property equally, rather than equitably.

¶12 The superior court is required to divide community property "equitably, though not necessarily in kind, without regard to marital misconduct." A.R.S. § 25-318(A) (West 2013). "In most cases, dividing jointly held property substantially equally will be the most equitable unless there exists a sound reason to divide the property otherwise." *In re Marriage of Inboden*, 223 Ariz. 542, 544, ¶ 6, 225 P.3d 599, 601 (App. 2010) (citations omitted). The superior court's determination of what is equitable will depend on the particular facts of the case, *id.* at 545, ¶ 13, 225 P.3d at 602, and it should consider "all factors that bear on the equities of the division, including the length of the marriage; the contributions of each spouse to the community, financial or otherwise; the source of funds used to acquire the property to be divided; the allocation of debt; as well as any other factor that may affect the outcome," *id.* at 547, ¶ 18, 225 P.3d at 604. The superior court has broad discretion to determine what allocation is equitable under the circumstances, and we will not disturb its ruling absent a clear abuse of discretion. *Id.* at 544, ¶ 7, 225 P.3d at 601.

¶13 Husband argues the superior court erred by dividing the parties' assets and debts substantially equally because Wife's contributions to the Renstrom Property and Giese Property were

negligible. Although the source of funds for the disputed properties was one factor the court was permitted to consider in arriving at an equitable division of property, evidence relating to other factors also was presented at trial. The parties were married for more than five years and Wife testified they contributed joint funds, including monies she earned through her employment, to pay the farms' taxes and insurance. In addition, evidence indicated Husband mortgaged the properties and made investments without Wife's knowledge or consent, received additional undisclosed monies from the sale of the properties and took monies from the parties' jointly held accounts. Accordingly, this is not one of the "rare occasions" when the circumstances, facts, and fairness required the court to award property mainly to one spouse. See *Toth v. Toth*, 190 Ariz. 218, 221-22, 946 P.2d 900, 903-04 (1997). The superior court did not abuse its discretion in equally dividing the community property.

CONCLUSION

¶14 For the foregoing reasons, we affirm the decree. Both parties request an award of attorney's fees on appeal pursuant to A.R.S. § 25-324 (West 2013). Having considered the relevant factors under § 25-324, and in the exercise of our discretion, we deny both requests. As the prevailing party on appeal, however, Wife is entitled to recover costs upon compliance with Arizona

Rule of Civil Appellate Procedure 21. See A.R.S. § 12-341 (West 2013).

_____/s/_____
DIANE M. JOHNSEN, Judge

CONCURRING:

_____/s/_____
SAMUEL A. THUMMA, Presiding Judge

_____/s/_____
MICHAEL J. BROWN, Judge