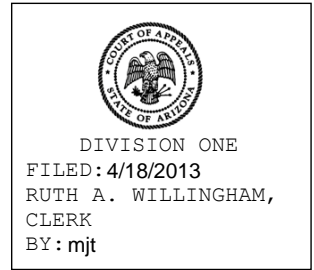


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

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 12-0289
)
DONNA KAYE KRZYZEWSKI,) DEPARTMENT B
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
STEVE JOSEPH KRZYZEWSKI,)
)
Respondent/Appellant.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FN2011-003542

The Honorable Daniel J. Kiley, Judge

AFFIRMED

Steve Joseph Krzyzewski
In Propria Persona

Litchfield Park

Donna Kaye Krzyzewski
In Propria Persona

Surprise

G O U L D, Judge

¶1 Steve J. Krzyzewski ("Husband") appeals from the family court's decree of dissolution of his marriage to Donna K. Krzyzewski ("Wife"). He challenges various evidentiary findings

of the court, the valuation of various assets, and spousal maintenance. For the reasons that follow, we affirm.

Facts and Procedural History

¶2 Husband and Wife married on November 19, 1966. Following trial, the court entered a signed minute entry on March 2, 2012 denying Husband's request for spousal maintenance. The court also divided the former couple's personal property, awarding Wife \$3,634.50 plus interest based on Wife's share of an insurance settlement; \$955.50 plus interest for her share of income tax refunds; \$7,890.46 for her interest in vehicles and auto parts; and \$3,932.50 for her share of household furnishings, appliances, equipment and other personal property.

¶3 Husband timely appeals. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1) (West 2013).

Discussion

¶4 Husband argues that the trial court's judgment should be vacated because he did not receive certain exhibits that Wife's attorney had mailed to his address of record "due to an unforeseen error on the part of the U.S[.] Postal Service." He also contends that the vehicles and parts were "extremely overvalued," that he should not be required to pay Wife her share of the insurance proceeds or tax refund because he already

used the money to pay his expenses, that Wife did not assist him in selling the former couple's personal property at a yard sale prior to foreclosure and he thought she did not want any of the personal property, and that he should have been awarded spousal maintenance. We address each argument in turn.

I. Exhibits

¶5 Husband contends that "because the exhibits [were] not delivered prior to the trial date[,] a proper defense could not be formulated." However, in the trial court Husband never specified what relief he was seeking as a result of this alleged error, nor did he request a continuance based on his late receipt of the exhibits.

¶6 Our review of the record shows that if any party is at fault for the non-delivery of the exhibits, it would appear to be Husband. Husband had an affirmative duty to notify the court of his change of address. Ariz. R. Fam. Law. P. 23 ("During the pendency of an action, parties who are not represented by counsel shall keep the court apprised of their current mailing addresses. Each party shall notify the court within ten (10) days of any changes in the party's mailing address."). Not only did Husband fail to update his address, he chose to have all of his mail forwarded to "general delivery" at the post office. Under these circumstances, it appears that Husband's own actions

created a significant risk that he would not receive the exhibits in a timely manner.

¶7 At the evidentiary hearing below, Wife's counsel stated that he sent the exhibits to Husband in the mail, satisfying the requirements of Rule of Family Law Procedure 43(C)(2)(c), which provides that after an initial appearance, a paper is served by "mailing it via U.S. mail or any other national courier service to the person's last known address - in which event service is complete upon mailing." Husband does not appear to dispute Wife's counsel's claim that the documents were properly sent; rather, he argues that the late delivery was "due to an unforeseen error on the part of the U.S[.] Postal Service." Our review of the record reveals that Husband never provided an updated address to Wife's counsel. Ariz. R. Fam. L.P. 42(C)(2)(c).

¶8 Because of Husband's failure to update his address in accordance with court rules, we agree with the trial court that Husband accepted "the risk that mail sent to him at that address may not actually reach him." We find no error.

II. Valuation of Vehicles and Parts

¶9 Husband next asserts that certain vehicles and parts were "extremely overvalued" because two of the vehicles did not belong to him and the other two were moved to a storage lot

where they were traded for storage fees incurred at the storage lot.

¶10 We will not overturn a trial court's use of a particular valuation method absent an abuse of discretion. *Cockrill v. Cockrill*, 139 Ariz. 72, 74, 676 P.2d 1130, 1132 (App. 1983). "The valuation of assets is a factual determination that must be based on the facts and circumstances of each case." *Kelsey v. Kelsey*, 186 Ariz. 49, 51, 918 P.2d 1067, 1069 (App. 1996) (citing *In re Marriage of Molloy*, 181 Ariz. 146, 150, 888 P.2d 1333, 1337 (App. 1994)).

¶11 At trial, Wife presented a video of the parties' former marital residence. In the video, numerous auto parts can be seen as well as four Monte Carlos that appear to be in need of a great deal of restoration work. Wife also presented evidence that the auto parts had a combined value of \$4,820.92 and that the Monte Carlos had a combined value of \$10,960.00 according to an independent appraiser.

¶12 The trial court did not find credible Husband's testimony that some of the vehicles and auto parts belonged to other individuals because he never made any such assertion at trial. We defer to the trial court's determinations regarding credibility, and find no error. *Reynolds v. United Producers and Consumers Co-op*, 17 Ariz. App. 145, 147, 495 P.2d 1352, 1354 (1972) (explaining that "[t]he trial court, sitting without a

jury, is judge of the credibility of witnesses, the weight of the evidence, and the reasonable inferences to be drawn therefrom").

III. Insurance Proceeds and Tax Refund

¶13 Husband next argues that he should not be required to pay Wife her share of community assets in the form of insurance proceeds and tax refunds because he already spent the money on his living expenses.

¶14 When reviewing the division of community property, "we consider the evidence in a light most favorable to upholding the trial court's ruling and will sustain that ruling if the evidence reasonably supports it." *Kohler v. Kohler*, 211 Ariz. 106, 107, ¶ 2, 118 P.3d 621, 622 (App. 2005) (citation omitted). We review the division of community property for abuse of discretion. *Id.* "An abuse of discretion may occur when a trial court commits an error of law in the process of exercising its discretion." *Id.* (citation omitted).

¶15 It appears that the trial court did not find Husband's testimony regarding his dissipation of these community assets to be credible. For example, Husband testified that he "was going to use that money from the insurance" to do dental work that was estimated to cost approximately \$16,000, according to an estimate he submitted as Exhibit 19. As explained above, we defer to the trial court's determinations regarding credibility,

and find no error. *Reynolds*, 17 Ariz. App. at 147, 495 P.2d at 1354.

IV. Personal Property

¶16 Husband next contends that Wife did not assist him in selling the former couple's personal property at a yard sale prior to foreclosure and that one witness told him that she did not want anything from the house. However, Husband never made either argument below, and thus waived these arguments. See *Odom v. Farmers Ins. Co. of Ariz.*, 216 Ariz. 530, 535, ¶ 18, 169 P.3d 120, 125 (App. 2007) ("Generally, arguments raised for the first time on appeal are untimely and deemed waived.").

¶17 Even if they were not waived, however, they would not change the outcome. No witness at the evidentiary hearing testified that Wife did not want any of the personal property items. In addition, Wife testified that she believed that Husband had moved these items to a storage unit. As explained above, we defer to the trial court's determinations regarding credibility, and find no error. *Reynolds*, 17 Ariz. App. at 147, 495 P.2d at 1354.

V. Spousal Maintenance

¶18 Finally, Husband contends that he should have been awarded spousal maintenance. "An award of spousal maintenance is within the sound discretion of the trial court and we will reverse only upon a finding of an abuse of that discretion." *In*

re Marriage of Pownall, 197 Ariz. 577, 583, ¶ 31, 5 P.3d 911, 917 (App. 2000) (citation and internal quotation marks omitted). We view the evidence in the light most favorable to the non-appealing party and "will affirm the judgment if there is any reasonable evidence to support it." *Cullum v. Cullum*, 215 Ariz. 352, 354, ¶ 9, 160 P.3d 231, 233 (App. 2007).

¶19 To be eligible for a spousal maintenance award, Husband was required to demonstrate that he met at least one of the four conditions specified in A.R.S. § 25-319 (West 2013), which provides that spousal maintenance may be awarded if the spouse seeking maintenance:

1. Lacks sufficient property, including property apportioned to the spouse, to provide for that spouse's reasonable needs.
2. Is unable to be self-sufficient through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home or lacks earning ability in the labor market adequate to be self-sufficient.
3. Contributed to the educational opportunities of the other spouse.
4. Had a marriage of long duration and is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.

A.R.S. § 25-319 (West 2013).

¶20 Contrary to Husband's argument, there is ample evidence that the court considered each of the conditions listed

under A.R.S. § 25-319. Moreover, the trial court found that none of these conditions were applicable to Husband.

¶21 Husband sought an award of \$600 per month for the rest of his life. However, as the trial court explained in his order, Husband's affidavit showed that his monthly expenses exceeded his available income by only "approximately \$150 [\$154.50] per month." In addition, Husband presented no evidence to suggest that he was incapable of holding a job, and as the trial court noted, Husband "would be able to earn *in excess of* \$600 per month simply by working 20 hours per week earning minimum wage." Nor did Husband present any evidence at the hearing to suggest that he contributed to Wife's educational opportunities. Instead, it appeared that community funds had been used to fund Husband's course of study at ITT Technical Institute. With regard to the last condition, the court found that "[t]here is no reason to believe that [Husband] is unable to secure a part-time job paying minimum wage," and such a job "would enable [Husband] to earn more than enough additional income to close the gap between his monthly income and his monthly expenses." Husband fails to explain how the court's findings would constitute an abuse of discretion.

¶22 Husband also fails to explain how the trial court allegedly abused its discretion in finding that Wife lacked the ability to support husband. To justify a spousal maintenance

award, the court must consider not only the needs of the spouse requesting support, but also the ability of the other spouse to pay. *In re Marriage of Foster*, 125 Ariz. 208, 210-11, 608 P.2d 785, 787-88 (App. 1980). Here, Wife's monthly expenses exceeded her monthly income by \$502. While Husband had challenged some of Wife's expenses as unreasonable at trial, the court disagreed, and Husband does not challenge the reasonableness of Wife's expenses on appeal. He simply alleges that "There is no proof that the amounts on the AFI [Affidavit of Financial Information] are accurate and they are backed-up by bank statements." Husband's nonspecific claim that Wife's affidavit is inaccurate lacks merit, and he provides no evidence to contradict her claims or the trial court's findings.

¶23 Wife affirmed that the facts contained in her affidavit were true, and that "any false information may constitute perjury." She also submitted W-2s and bank statements that supported the accuracy of her affidavit. This evidence supports the trial court's conclusion that she could not afford to pay spousal maintenance. Accordingly, we find no error.

Conclusion

¶24 For the foregoing reasons, we affirm.

/S/

ANDREW W. GOULD, Judge

CONCURRING:

/S/

JOHN C. GEMMILL, Judge

/S/

RANDALL M. HOWE, Judge