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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: 01/03/2013
RUTH A. WILLINGHAM,
CLERK
BY: s/s

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:) No. 1 CA-CV 12-0387
)
DEIVA NAYAGAM MEYYAPPAN,) DEPARTMENT C
)
Appellant,) **MEMORANDUM DECISION**
)
v.) (Not for Publication -
) Rule 28, Arizona Rules of
UMA MAHESWARI DEIVA,) Civil Appellate Procedure)
)
Appellee.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FC 2011-052224

The Honorable Gerald Porter, Judge

AFFIRMED

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Scottsdale

H A L L, Judge

¶1 Deiva Nayagam Meyyappan (Husband) appeals from the family court's order setting aside a default dissolution decree entered in his favor. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 On August 2, 2011, Husband filed a petition for dissolution of marriage. In the petition, Husband requested sole legal custody of the parties' minor child, an award of his sole and separate property, and an equitable division of the community debts and liabilities. The petition also acknowledged that Wife "is entitled to reasonable spousal maintenance" and stated that Husband "is not seeking child support."

¶3 Uma Maheswari Deiva (Wife) did not file a timely answer and Husband filed a petition for default judgment. On November 22, 2011, the Honorable Eartha Washington entered a default judgment decree. The decree awarded Husband sole legal custody of the parties' child, found "spousal maintenance is not warranted," and awarded Husband all identified property.

¶4 On December 28, 2011, Wife filed a motion for relief from judgment, citing, generally, Arizona Rules of Family Law Procedure (Family Rule) 85. In the motion, Wife claimed that Husband immediately seized the petition for dissolution after it was served upon her at the marital residence. Wife further explained that shortly thereafter she traveled to India to visit family members and was unaware the divorce proceedings were

taking place until a relative in India informed her that she was divorced following the entry of the default divorce decree. Wife argued that she was "unfairly taken advantage of," that the division of assets is "substantially unfair," and that "there is no provision for spousal maintenance."

¶15 On March 1, 2012, the family court held a hearing for oral argument on Wife's motion for relief from judgment. After hearing oral argument from both parties, the family court found insufficient evidence to support a finding that Husband had committed fraud. Ariz. R. Fam. L.P. 85(C)(1)(c). Instead, the family court set aside the default decree pursuant to Family Rule 85(C)(1)(f), finding "that the decree itself is one-sided, that it does not adequately and equitably as the law requires distribute property in accordance with a 12-year marriage. It also doesn't appropriately address custody and parenting time issues[.]"

¶16 This appeal followed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101(A)(2) (Supp. 2012).

DISCUSSION

¶17 We review a court's ruling on a motion for relief from judgment pursuant to Family Rule 85(C) for an abuse of discretion. See *Maker v. Urman*, 211 Ariz. 543, 550, ¶ 21, 124 P.3d 770, 777 (App. 2005); see also *Cohen v. Frey*, 215 Ariz. 62

n.1, 157 P.3d 482, 484 n.1 (App. 2007). "To find an abuse of discretion, there must either be no evidence to support the [] court's conclusions or the reasons given by the court must be clearly untenable, legally incorrect, or amount to a denial of justice." *Charles I. Friedman, P.C. v. Microsoft Corp.*, 213 Ariz. 344, 350, ¶ 17, 141 P.3d 824, 830 (App. 2006) (internal quotation omitted). Moreover, we may affirm the court if it was correct for any reason. *Forszt v. Rodriguez*, 212 Ariz. 263, 265, ¶ 9, 130 P.3d 538, 540 (App. 2006).

¶8 Pursuant to Family Rule 85(C)(1)(f), a family court may grant a defaulted party's motion for relief for "any other reason justifying relief from the operation of the judgment." Like the corresponding provision in Arizona Rule of Civil Procedure 60(c)(6), this subsection of Family Rule 85(C) is a "residual clause which reserves to the court power to do justice in a particular case when relief is not available" under the other subsections of the Rule. *East v. Hedges*, 125 Ariz. 188, 189, 608 P.2d 327, 328 (App. 1980). Thus, the court may exercise its discretion under Family Rule 85(C)(1)(f) and grant relief when the judgment "is harsh, rather than fair and equitable." *Birt v. Birt*, 208 Ariz. 546, 551, ¶ 22, 96 P.3d 544, 549 (App. 2004).

¶9 Here, the family court found good cause to set aside the default decree because the decree is "one-sided" and does

not "adequately and equitably . . . distribute property." The default decree allocates all identified property to Husband, including three parcels of real property and ten checking, savings and brokerage accounts. Although Husband argued in his response to the motion for relief from judgment that Wife has separate property with "an approximate value of \$35,000" and an interest in her family's property in India, the default decree allocates no property to Wife. Moreover, we also note that, contrary to the petition for dissolution, the default decree does not provide for a reasonable award of spousal maintenance. See Ariz. R. Fam. L.P. 44(G) ("A judgment by default shall not be different in kind from or exceed the amount requested in the pleadings."). Therefore, we conclude that the family court did not abuse its discretion in setting aside the default decree.¹

¶10 Husband and Wife each request an award of their attorneys' fees incurred on appeal pursuant to A.R.S. § 25-324 (Supp. 2012). In the exercise of our discretion, we deny both requests.

¹ Under the circumstances here, in which the court found the decree facially inequitable, an evidentiary hearing was unnecessary. Cf. *Duckstein v. Wolf*, 230 Ariz. 227, 229, ¶ 1, 282 P.3d 428, 430 (App. 2012) (holding "that when a motion to set aside a default judgment presents contested issues of material fact and a party requests an evidentiary hearing, the trial court should conduct an evidentiary hearing before ruling on the motion").

CONCLUSION

¶11 For the foregoing reasons, we affirm.

_____/s/_____
PHILIP HALL, Presiding Judge

CONCURRING:

_____/s/_____
PETER B. SWANN, Judge

_____/s/_____
SAMUEL A. THUMMA, Judge