

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



DIVISION ONE
FILED: 10/24/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

In re the Marriage of:) 1 CA-CV 12-0634
)
JULIE ANN SLAY,) DEPARTMENT C
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules
) of Civil Appellate
ANDREW BERNARD HELLMAN,) Procedure)
)
Respondent/Appellant.)
)

Appeal from the Superior Court in Yavapai County

Cause No. P1300DO201100344

The Honorable Joseph P. Goldstein, Judge

AFFIRMED

Andrew Bernard Hellman
Respondent/Appellant Pro Se

Florence

H O W E, Presiding Judge

¶1 Andrew Bernard Hellman (Husband) appeals a dissolution decree from his former spouse Julie Ann Slay-Hellman (Wife) that declared \$25,500 of savings bonds used as a down payment to purchase a home as community property. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Some years before Husband and Wife married in 2007, Husband's parents bought Husband savings bonds valued at \$17,500. Husband's parents transferred the bonds to him at some point after the marriage, when the value of the bonds had increased to \$25,500.

¶3 When Husband was imprisoned in 2008, he and Wife agreed to dissolve their marriage. Thereafter, Husband granted Wife a general power of attorney, providing that "[Wife] shall have full power and authority to . . . [p]erform any act necessary to deposit, negotiate, sell or transfer any note, security, or draft of the United States of America, including U.S. Treasury Securities." Five days later, in a handwritten document reaffirming that he had given Wife a general power of attorney, Husband declared "unequivocally that [Wife] . . . has my full authority and confidence to use and disperse any and all funds that become available in my name." Under the authority of these documents, Wife bought a home on January 26, 2009, using the proceeds from the savings bonds belonging to Husband as a down payment. On February 3, 2009, Husband disclaimed his interest in the home by quitclaim deed.

¶4 After a trial on Wife's petition for dissolution of the marriage, the trial court ordered the marriage dissolved and awarded Wife the home as her sole and separate property. The

court found that "[t]he liquidation of the bonds caused what was Husband's separate property to become community property, an act contemplated by Husband and authorized by" the general power of attorney. The court also found that "Wife's subsequent use of the community funds to acquire separate property resulted in the community having a reimbursement claim for \$25,500[,] of which Husband is entitled to one-half or \$12,750." Offsetting Husband's \$12,750 claim by the community's unsecured debt of \$7,344.72, the court granted him a \$5,405.28 lien against the home.

DISCUSSION

¶15 Husband argues that the family court erroneously designated the proceeds from the bonds used to purchase the home as community property.¹ He also argues that Wife breached her fiduciary duty by liquidating the bonds. Lastly, Husband argues

¹ Husband's brief does not comply with Arizona Rule of Civil Appellate Procedure 13(a) because he does not cite any legal authorities to support his arguments or cite to the record on appeal to support his factual assertions. Despite Husband's pro se status, he is held to the same standards as a qualified attorney, see *In re Marriage of Williams*, 219 Ariz. 546, 549 ¶ 13, 200 P.3d 1043, 1046 (App. 2008), and his failure to comply with Rule 13(a) could constitute a waiver of the issues on appeal, see *Sholes v. Fernando*, 228 Ariz. 455, 461 ¶ 16, 268 P.3d 1112, 1118 (App. 2011). We will nevertheless address Husband's petition based on the record before us, given our preference to resolve cases on their merits. *Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984).

that the court abused its discretion in dividing the community debt.

¶6 We review the trial court's characterization of property de novo and the apportionment of community property for an abuse of discretion. *Davies v. Beres*, 224 Ariz. 560, 562 ¶ 6, 233 P.3d 1139, 1141 (App. 2010). We review the apportionment of community property in the 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, 106 ¶ 2, 118 P.3d 621, 622 (App. 2005). Absent an abuse of discretion, we will not disturb the trial court's equitable apportionment of community property. *Id.*

¶7 Property a spouse acquires before marriage is that spouse's separate property. A.R.S. § 25-213(A). But, "[t]here is a strong legal presumption that all property acquired during marriage is community property." *Carroll v. Lee*, 148 Ariz. 10, 16, 712 P.2d 923, 929 (1986); see also A.R.S. § 25-211(A)(1) (excepting from presumption property acquired by gift, devise, or descent). When "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) (internal citation omitted). A spouse challenging the community property presumption must prove the separate nature of the

property by clear and convincing evidence. See *Carroll*, 148 Ariz. at 16, 712 P.2d at 929; *Cooper*, 130 Ariz. at 259-60, 635 P.2d at 852-53. In a marital-dissolution proceeding, the trial court must assign each spouse his or her separate property and divide the community property "equitably, though not necessarily in kind." A.R.S. § 25-318(A).

¶18 In this case, Husband has not shown how the trial court erred as a matter of law in declaring the proceeds from the bonds used to purchase the home were community property. Although Husband's parents initially gave him the bonds as a gift and were thus his separate property, the bonds became commingled with community property when Wife liquidated the bonds and used the proceeds for a down payment on the home. At that point, the bonds converted to community property. Thus, the trial court committed no error in designating the proceeds from the bonds used to purchase the home as community property.

¶19 Wife breached no fiduciary duty when she liquidated the bonds and used the proceeds as a down payment on the home. Wife was authorized to liquidate the bonds pursuant to a valid general power of attorney that explicitly stated that she had "full power and authority to . . . deposit, negotiate, sell or transfer any note, security, or draft of the United States of America, including U.S. Treasury Securities." No evidence suggests that Husband did not understand the nature or effect of

granting Wife a general power of attorney. See *Golleher v. Horton*, 148 Ariz. 537, 539-40, 715 P.2d 1225, 1227-28 (App. 1985) (holding that "the execution of a power of attorney creates a principal-agency relationship" requiring capacity to act, determined by "whether the person is capable of understanding in a reasonable manner[] the nature and effect of his act."). Nor did Husband limit Wife's authority under the power of attorney. Indeed, the general power of attorney agreement Husband signed stated: "I sign and execute this instrument as my power of attorney and I sign it willingly and that I execute it as my free and voluntary act."

¶10 Nothing in the record shows that Husband revoked the general power of attorney. Rather, five days after executing the power of attorney, Husband executed a second, hand-written document in which he declared that Wife has "full authority. . . to use and disperse any and all funds that become available in my name." Husband also tacitly approved of the liquidation of the bonds as a down payment on the home by relinquishing his interest by quitclaim deed just days after Wife purchased the home. These documents taken together show that Husband authorized Wife to liquidate the bonds such that they became community property. Wife therefore breached no fiduciary obligation to Husband.

¶11 Husband has also failed to demonstrate how the trial court abused its discretion in awarding him one-half of the value of the bonds (\$12,500) less the community's unsecured debt (\$7,344.72). His allegation that insufficient evidence was presented to establish that community debt was incurred—or even existed—is unsupported. During the trial, Wife testified to the various debts she jointly acquired with Husband over the course of their marriage. Husband presented no evidence or testimony to rebut Wife's testimony. The court therefore appropriately accepted Wife's testimony as true. See *Schlaefer v. Fin. Mgmt. Serv., Inc.*, 196 Ariz. 336, 339 ¶ 10, 996 P.2d 745, 748 (App. 2000) (Holding that "all debts incurred during marriage are to be community obligations unless there is clear and convincing evidence to the contrary."). Because Husband has not shown that the trial court erred in its division of the community property and debts, we find no error.

CONCLUSION

¶12 For the foregoing reasons, we affirm the trial court's allocation and division of community assets and debt.

_____/s/_____
RANDALL M. HOWE, Presiding Judge

CONCURRING:

_____/s/_____
SAMUEL A. THUMMA, Judge

_____/s/_____
PATRICIA A. OROZCO, Judge