IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

TARA DARLAND, *Petitioner/Appellant*,

v.

JEFF DARLAND, *Respondent/Appellee*.

No. 1 CA-CV 13-0262 A
FILED 11-14-2013

Appeal from the Superior Court in Maricopa County
No. FC2010-050508
The Honorable Gerald Porter, Judge

AFFIRMED

COUNSEL

Tara Darland, Phoenix

Petitioner/Appellant in propria persona

The Murray Law Offices, PC, Scottsdale
By Stanley D. Murray

Counsel for Respondent/Appellee

MEMORANDUM DECISION

Judge Patricia A. Orozco delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Kent E. Cattani joined.

O R O Z C O, Judge:

¶1 Tara Darland (Wife) appeals from the judgment of the family court ordering her to pay Jeff Darland (Husband) $1,799.49 as reimbursement for Husband's overpayment of community debt obligations pursuant to the parties' property settlement agreement and the decree of dissolution of marriage. For the reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Wife and Husband divorced on September 26, 2011, pursuant to a Decree of Dissolution of [] Marriage (Decree). The Decree incorporated the parties' Shared Custody Agreement relating to the parties' minor children.

¶3 The parties also entered into a property settlement agreement (the Agreement). In the Agreement, the parties agreed to sell their asset, a PreRunner race truck (PreRunner), which was valued at approximately $300,000, at a "commercially reasonable" price. They also agreed to use the net proceeds to pay certain community debts in the following priority before distributing any remaining proceeds to either of the parties:

> (a) balance due on personal Visa in Wife's name (payment not to exceed twenty-five thousand dollars ($25,000)); and Husband will continue to make minimum payments on this Card until the PreRunner is sold;
>
> (b) balance due on personal Visa in Husband's name (payment not to exceed twenty-five thousand dollars ($25,000));
>
> (c) balance due to the Arizona State Department of Revenue for past due taxes for 2006 and 2007 in the approximate amount of seven thousand dollars ($7,000);

(d) balance due to the Internal Revenue Service for past due taxes for 2006 and 2007 in the approximate amount of thirty thousand dollars ($30,000);

(e) balance due for accounting fees owed to Accounting Professions, LLC. in the approximate amount of fifteen thousand dollars ($15,000);

(f) balance due on the [family's business] line of credit owed to Chase Bank (payment not to exceed $100,000)[.]

¶4 Pursuant to the Agreement, Husband was to be responsible for conducting the sale of the PreRunner, satisfying the above community obligations from the proceeds, providing proof of the sale proceeds to Wife, together with an accounting of the funds received and payment of the above obligations. After payment of the above-listed community debts, the Agreement required that the remainder of the proceeds from the sale of the PreRunner be equally divided and distributed between Wife and Husband. Additionally, Husband was required to purchase a vehicle for Wife at a purchase price, and inclusive of all purchase costs of no more than $40,000, within thirty days of entry of the Decree.

¶5 Wife subsequently filed a petition for order to show cause asking the family court to hold Husband in contempt for failing to comply with the family court's order requiring that Husband provide Wife with an accounting of the receipt and distribution of the proceeds from the PreRunner sale. In response, Husband asserted that he used the proceeds from the sale of the PreRunner to satisfy community obligations.[1] Husband also argued he had previously disclosed to Wife the January 2, 2012, sale of the PreRunner for $285,000 and paid the community debts with the proceeds.

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[1] Husband asserted that he paid the following debts in full with the PreRunner Proceeds:

(a) Wife's Visa;
(b) Husband's Visa;
(c) Arizona Department of Revenue;
(d) Internal Revenue Service;
(e) Accounting Professionals, LLC for accounting fees owed; and
(f) Family business line of credit to Chase Bank.

¶6 Wife argued Husband's reporting of payment of the debts was inaccurate and Husband failed to provide Wife with verifiable information regarding the PreRunner sale proceeds. Husband responded that he provided Wife accurate information regarding his payment of the debts, and asserted that from February 3, 2010 through September 30, 2011, he paid an additional $14,046.94 toward community obligations with his sole and separate post community-termination earnings. Husband presented the family court with Exhibit 21, which proposed several different distribution scenarios from the proceeds of the PreRunner sale, each yielding different amounts that Husband owed to Wife (or Wife owed to Husband) for final resolution of this asset distribution.

¶7 The family court held an evidentiary hearing to consider Wife's Petition for order show cause, Husband's Response, and the exhibits filed by both parties. The family court issued an order finding that: Husband had complied with his obligation to purchase a vehicle for Wife; Husband had satisfied the remaining balance owed on community obligations with the proceeds from the PreRunner sale; Husband had also made payments on community obligations using his sole and separate funds following the termination of the community[2]; and Wife was obligated to contribute one-half of these community obligations in the amount of $1,799.49. Accordingly, the family court adopted as its findings the mathematical calculations introduced by Husband's Exhibit 21. The family court then entered judgment against Wife and in favor of Husband in the amount of $1,799.49.

¶8 Wife timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) § 12-2101.A.2 (Supp. 2012).

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[2] Wife filed for divorce on February 2, 2010, and served Husband with the petition for dissolution on February 3, 2010, thus terminating the community on February 3. *See* A.R.S. § 25-315.B (Supp. 2012) ("The court shall provide for an order for equal possession of the liquid assets of the marital property that existed as of the date the petition for dissolution . . . was served.").

DISCUSSION

I. Non-Compliance with Arizona Rules of Civil Appellate Procedure (ARCAP)

¶9 Appellate briefs must comply with ARCAP requirements. *See, e.g.*, *Clemens v. Clark*, 101 Ariz. 413, 414, 420 P.2d 284, 285 (1966) ("The failure of [counsel] to comply with [ARCAP rules] would ordinarily be regarded by this Court as sufficient cause for dismissal."). Here, Appellant's brief does not contain proper references to the record, and under ARCAP 13(a)(4), we may strike the brief's statement of facts. *See Sholes v. Fernando*, 228 Ariz. 455, 457, ¶ 2, n.2, 268 P.3d 1112, 1114, n.2 (App. 2011) ("The [Appellant's] statement of facts fails to make appropriate citations to the record as required by [ARCAP Rule 13(a)(4)], and we therefore have disregarded it."). Nevertheless, in our discretion, we have decided this appeal based on our own review of the record. *See Adams v. Valley Nat. Bank of Ariz.*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984) (recognizing that "courts prefer to decide each case upon its merits rather than to dismiss summarily on procedural grounds.").

II. Family Court's Findings

¶10 When a party raises objections on appeal that a "finding or conclusion is unsupported by the evidence or is contrary to the evidence," it is that party's duty to "include in the record a certified transcript of all evidence relevant to such finding or conclusion." ARCAP 11(b)(1). "In the absence of a transcript, this court will assume that the evidence supported the trial court's findings." *Retzke v. Larson*, 166 Ariz. 446, 449, 803 P.2d 439, 442 (App. 1990).

¶11 Wife argues that the family court misconstrued the Agreement and failed to follow the terms of the Agreement's release language. Wife has not, however, included a transcript of the hearing in the record. The record in this appeal consists of the parties' briefs and a copy of the clerk's file. Without a transcript of the hearing, we must assume that the evidence presented to the family court was sufficient to support its findings. *See, e.g.*, *State ex rel. Dept. of Econ. Sec. v. Burton*, 205 Ariz. 27, 30, ¶ 16, 66 P.3d 70, 73 (2003) ("When a party fails to [ensure that the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised on appeal], we assume the missing portions of the record would support the trial court's findings and conclusions.").

III. Ambiguity in the Agreement

¶12 We review issues of law, as well as issues of contract interpretation, de novo. *See Charles I. Friedman, P.C. v. Microsoft Corp.*, 213 Ariz. 344, 350, ¶ 17, 141 P.3d 824, 830 (App. 2006); *Sw. Soil Remediation, Inc. v. City of Tucson*, 201 Ariz. 438, 442, ¶ 12, 36 P.3d 1208, 1212 (App. 2001). Contract interpretation is "the process by which we determine the meaning of words in a contract." *Taylor v. State Farm Mut. Auto. Ins. Co.*, 175 Ariz. 148, 152, 854 P.2d 1134, 1138 (1993). When interpreting a contract, our purpose is to ascertain and enforce the parties' intent. *ELM Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, 290, ¶ 15, 246 P.3d 938, 941 (App. 2010). Towards that end, we first look to the "plain meaning of the words as viewed in the context of the contract as a whole" to determine the parties' intent. *Id.* at 290-91, ¶ 15, 246 P.3d at 941-42 (citing *United Cal. Bank v. Prudential Ins. Co.*, 140 Ariz. 238, 259, 681 P.2d 380, 411 (App. 1983)).

¶13 Contract language is ambiguous when "it can reasonably be construed to have more than one meaning." *In re Estate of Lamparella*, 210 Ariz. 246, 250, ¶ 21, 109 P.3d 959, 963 (App. 2005). "Whether a contract is reasonably susceptible to more than one interpretation is a question of law, which we review de novo." *Grosvenor Holdings, L.C. v. Figueroa*, 222 Ariz. 588, 593, ¶ 9, 218 P.3d 1045, 1050 (App. 2009).

¶14 In this case, the Agreement is a contract between Husband and Wife that is "separate, enforceable, and self-sustaining." The family court approved the Agreement as "fair and equitable" upon entry of the Decree. Thus, general contract interpretation rules apply.

¶15 The Agreement is silent on the issue of how debts that were accrued and paid between the time of the community's termination and the entry of the Decree would be divided. "Community debts not allocated by a divorce decree remain the joint obligations of the parties," *Fischer v. Sommer*, 160 Ariz. 530, 531, 774 P.2d 834, 836 (App. 1989), and here, the parties did not demonstrate an intent contrary to this standard. Thus, we agree with the family court's findings that: (1) following the community's termination through the date Husband received the PreRunner's proceeds, Husband made payments to community obligations using his sole and separate funds; (2) Wife was obligated to pay one-half of these community obligations; and (3) Wife owes Husband $1,799.49 as reimbursement for his payment of certain community obligations.

IV. Attorney Fees

¶16 Husband requests his attorney fees on appeal. We conclude that neither party took an unreasonable position. Accordingly, in our discretion, we decline to award attorney fees. *See Engel v. Landman*, 221 Ariz. 504, 515, ¶ 47, 212 P.3d 842, 853 (App. 2009). However, as the successful party, Husband is entitled to his costs on appeal upon timely compliance with ARCAP 21.

CONCLUSION

¶17 For the foregoing reasons, we affirm the orders of the family court.