IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

FERNANDO PEREZ, *Petitioner/Appellee,*

v.

FAITH PEREZ, *Respondent/Appellant*.

No. 1 CA-CV 14-0382 FC
FILED 3-31-2015

Appeal from the Superior Court in Maricopa County
No. FC2013-007512
The Honorable Christopher T. Whitten, Judge

AFFIRMED

COUNSEL

Bishop Law Office P.C., Tempe
By Allyson Del Vecchio
Counsel for Petitioner/Appellee

Faith Perez, Tucson
Respondent/Appellant

MEMORANDUM DECISION

Judge Kenton D. Jones delivered the decision of the Court, in which Presiding Judge John C. Gemmill and Judge Donn Kessler joined.

J O N E S, Judge:

¶1 Faith Perez (Mother) appeals numerous findings and orders of the trial court contained within a decree of dissolution of marriage. For the following reasons, we affirm.

FACTS[1] AND PROCEDURAL HISTORY

¶2 Mother and Fernando Perez (Father) were married in April 2001. The parties have two minor children, born in 2000 and 2007. In November 2013, Father filed for dissolution of the marriage. The trial court conducted a dissolution hearing on April 3, 2014, at which both parties testified; no other evidence was admitted.

¶3 On April 10, 2014, the trial court issued a dissolution decree in which it awarded the parties joint legal decision-making authority, and made Father the primary residential parent to the children. Mother was awarded parenting time during each of the children's summer breaks, spring breaks in odd-numbered years, and winter breaks in even-numbered years.

¶4 The trial court ordered Mother to pay $349.64 per month in child support, and declined her request for spousal maintenance. Each party was awarded his or her sole and separate property, "and other personal property currently in his [or her] possession." The court also found an equal division of community property was appropriate, but that "neither party ha[d] introduced any evidence of any community interests in any real property."

[1] We view the facts in the light most favorable to sustaining the trial court's decree of dissolution. *Wayt v. Wayt*, 123 Ariz. 444, 446, 600 P.2d 748, 750 (1979).

¶5 Mother filed a timely notice of appeal. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1)[2] and -2101(A)(1).

DISCUSSION

¶6 Mother asserts the trial court erred in: (1) making Father the primary residential parent and granting the parties joint legal decision-making authority; (2) its community property determination; (3) failing to award her spousal maintenance; and (4) its division of personal property.

¶7 On appeal, "[w]e do not reweigh conflicting evidence or redetermine the preponderance of the evidence, but examine the record only to determine whether substantial evidence exists to support the trial court's action." *In re Estate of Pouser*, 193 Ariz. 574, 579, ¶ 13, 975 P.2d 704, 709 (1999) (citing *Whittemore v. Amator*, 148 Ariz. 173, 175, 713 P.2d 1231, 1233 (1986)). In our review, we consider only the materials before the trial court at the time it entered the decision subject to appeal. *GM Dev. Corp. v. Cmty. Am. Mortg. Corp.*, 165 Ariz. 1, 4, 795 P.2d 827, 830 (App. 1990).

I. Legal Decision-Making Authority and Parenting Time

¶8 Mother contends the trial court erred by making Father the residential parent of their two minor children and awarding them joint legal decision-making authority because she alleged Father had committed an act of domestic violence against her. We review custody and parenting time orders for an abuse of discretion. *Owen v. Blackhawk*, 206 Ariz. 418, 420, ¶ 7, 79 P.3d 667, 669 (App. 2003) (custody); *Armer v. Armer*, 105 Ariz. 284, 289, 463 P.2d 818, 823 (1970) (parenting time).

A. Joint Legal Decision-Making Authority

¶9 At the dissolution hearing, Mother agreed to joint legal decision-making authority. She now argues, however, that joint legal decision-making is improper under A.R.S. § 25-403.03(A), which precludes a trial court from awarding joint legal decision-making authority if the court "makes a finding of the existence of significant domestic violence pursuant to [A.R.S. §] 13-3601 or if the court finds by a preponderance of the evidence that there has been a significant history of domestic violence." At the hearing, Mother testified Father had sexually assaulted her on one occasion during the marriage, which Father denied. The record reflects the

---

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

court considered A.R.S. § 25-403.03 in making its custody determination, and found Mother had failed to prove Father engaged in acts of domestic violence against her. The record supports the court's conclusion, and we find no abuse of discretion.

B. Father as Primary Residential Parent

¶10 A trial court's determination of parenting time must be made in accordance with the best interests of the children at issue. A.R.S. § 25-403(A). In reaching its decision, the court shall consider all relevant factors, including those enumerated in A.R.S. § 25-403(A), and if the matter is contested, must make specific findings on those factors. A.R.S. § 25-403(A), (B).

¶11 Here, Mother does not contend the court failed to make findings or made insufficient findings. Rather, she argues the trial court improperly weighed the evidence in determining that the children wished to live primarily with Father. The record is clear that both children were interviewed about their preferences regarding parenting time. Although each professed to have good relationships with Mother and Father, both indicated their preference to live primarily with Father in Chandler, as Mother had relocated to Tucson. Sufficient evidence supports the trial court's finding, and we find no abuse of discretion. *Whittemore*, 148 Ariz. at 175, 713 P.2d at 1233 (citing *State ex rel. Herman v. Schaffer*, 110 Ariz. 91, 96, 515 P.2d 593, 598 (1973)).

II. Marital Home

¶12 Mother next argues the trial court erred by not characterizing the marital home as community property. We review the characterization of property *de novo*. *In re Marriage of Pownall*, 197 Ariz. 577, 581, ¶ 15, 5 P.3d 911, 915 (App. 2000).

¶13 Property acquired by the parties during their marriage is presumed to be community property. A.R.S. § 25-211(A); *Armer*, 105 Ariz. at 287, 463 P.2d at 821 (citing *In re Torrey's Estate*, 54 Ariz. 369, 373, 95 P.2d 990, 992 (1939)). Either party may rebut this presumption, "but only by clear and convincing evidence." *Armer*, 105 Ariz. at 287, 463 P.2d at 821 (citing *Smith v. Smith*, 71 Ariz. 315, 317-18, 227 P.2d 214, 215-16 (1951)). "'Property takes its character as separate or community at the time [of acquisition] and retains [that] character' throughout the marriage." *Bell-Kilbourn v. Bell-Kilbourn*, 216 Ariz. 521, 523, ¶ 5, 169 P.3d 111, 113 (App. 2007) (quoting *Honnas v. Honnas*, 133 Ariz. 39, 40, 648 P.2d 1045, 1046 (1982)). However, "married couples are free to determine at any time what the

status of their property is to be, and . . . may convey separate or community property interests to one another." *Bender v. Bender*, 123 Ariz. 90, 93, 597 P.2d 993, 996 (App. 1979) (citing *Sellers v. Allstate Ins. Co.*, 113 Ariz. 419, 422, 555 P.2d 1113, 1116 (1976), and *Ariz. Cent. Credit Union v. Holden,* 6 Ariz. App. 310, 313, 432 P.2d 276, 279 (1967)).

¶14 In Mother's response to Father's petition for dissolution, she alleged the marital home had been purchased during the marriage and was community property. However, the only evidence presented relevant to this characterization was Mother's testimony that she had signed a disclaimer deed to the property in favor of Father.[3] Thus, on this record, the marital home was no longer community property, and the trial court did not err.

III. Spousal Maintenance

¶15 Mother also argues the trial court erred by failing to award her spousal maintenance. We review the denial of spousal maintenance for an abuse of discretion. *Gutierrez v. Gutierrez*, 193 Ariz. 343, 348, ¶ 14, 972 P.2d 676, 681 (App. 1998).

¶16 The first consideration when reviewing a spousal maintenance order is whether the spouse meets any of the requirements for maintenance set forth in A.R.S. § 25-319(A).[4] *Id.* at ¶ 15 (citing *Thomas v.*

---

[3] On appeal, Mother concedes signing the disclaimer deed, but argues for the first time that Father forced her to sign the deed. Because she did not make this argument in the trial court, we do not consider it. *Tripati v. Forwith*, 223 Ariz. 81, 86, ¶ 26, 219 P.3d 291, 296 (App. 2009).

[4] The trial court may only award spousal maintenance where the receiving spouse:

> 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[;]

Thomas, 142 Ariz. 386, 390, 690 P.2d 105, 109 (App. 1984)). Only one of the four requirements need be met to permit an award of spousal maintenance. *Id.* at ¶ 17 (citing A.R.S. § 25-319(A), and *Elliott v. Elliott*, 165 Ariz. 128, 136, 796 P.2d 930, 938 (App. 1990)).

¶17 Here, the trial court found that Mother did not qualify for an award of spousal maintenance. The evidentiary hearing transcript supports the court's determination. In the only relevant exchange regarding spousal maintenance, Mother testified she was capable of finding minimum-wage employment. In the absence of any other evidence on this issue, we find no abuse of discretion.

IV. Personal Property

¶18 The trial court awarded each party his and her "sole and separate property, subject to any liens or encumbrances on the property, all vehicles, household furniture, furnishings, and appliances, and other personal property currently in his [or her] possession." "We review the trial court's division of property for an abuse of discretion." *Pownall*, 197 Ariz. at 581, ¶ 15, 5 P.3d at 915.

¶19 Mother now asserts the trial court erred by failing to award her several family heirlooms and personal items that were in the marital home under Father's control. However, she offered no testimony or evidence at the dissolution hearing concerning these items.[5] Although Mother provided this Court with a list of property to which she claims ownership, this list was not provided to the trial court, and we do not consider it. *GM Dev. Corp.*, 165 Ariz. at 4, 795 P.2d at 830 ("An appellate

---

> 3. Contributed to the educational opportunities of the other spouse[; or]
>
> 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(A).

[5] Following entry of the dissolution decree, Mother filed a motion to reconsider with the trial court, in which she, among other things, provided a list of personal property that she was allegedly prevented from retrieving from the marital home and requested the items be returned. The court denied her motion in this respect. Mother does not challenge the trial court's denial on appeal.

court's review is limited to the record before the trial court."). Therefore, on this limited record, the trial court did not abuse its discretion.

CONCLUSION

¶20 Based upon the foregoing, we affirm. Father requests his attorneys' fees on appeal pursuant to A.R.S. § 25-324 and ARCAP 25. In our discretion, we decline the request.

Ruth A. Willingham · Clerk of the Court
FILED: ama