

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

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

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In re the Matter of:

FOREST WILLIAM HALL, *Petitioner/Appellant*,

*v.*

MELISSA ANN HALL, *Respondent/Appellee*.

No. 1 CA-CV 14-0695 FC  
FILED 2-2-2016

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Appeal from the Superior Court in Yavapai County  
No. P1300DO201200009  
The Honorable Joseph P. Goldstein, Judge *Pro Tempore*

**VACATED AND REMANDED**

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COUNSEL

Law Office of Daniel DeRienzo, PLLC, Prescott Valley  
By Daniel J. DeRienzo  
*Counsel for Petitioner/Appellant*

Berkshire Law Office, PLLC, Phoenix  
By Keith Berkshire, Maxwell Mahoney, Megan Lankford  
*Counsel for Respondent/Appellee*

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**MEMORANDUM DECISION**

Presiding Judge Diane M. Johnsen delivered the decision of the Court, in which Judge Kent E. Cattani and Judge John C. Gemmill joined.

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**J O H N S E N**, Judge:

¶1 Forest William Hall ("Husband") appeals the superior court's order calculating spousal maintenance arrearages owed to Melissa Ann Hall ("Wife"). For the reasons that follow, we vacate the order and remand for further proceedings.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Pursuant to a consent decree dissolving Husband and Wife's marriage, Husband was ordered to pay spousal maintenance of \$1,500 per month for 36 months, a total obligation of \$54,000. More than three years later, Husband filed a petition to terminate spousal support, asking the superior court to terminate the income withholding order and to credit him for various payments to Wife. After a hearing, the superior court credited Husband with having paid a total of \$43,399.43, ruling he owed \$10,600.57 in arrearages.

¶3 Husband timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2016) and 12-2101(A)(1) (2016).<sup>1</sup>

**DISCUSSION**

¶4 We review a superior court award of spousal maintenance for an abuse of discretion. *Gutierrez v. Gutierrez*, 193 Ariz. 343, 348, ¶ 14 (App. 1998). We view the evidence in the light most favorable to the prevailing party and will affirm the award if there is any reasonable evidence to support it. *Id.* Because the superior court is in the best position to judge the credibility of witnesses and resolve evidentiary conflicts, we generally defer to its factual findings. *Id.* at 347, ¶ 13. We review questions of law *de novo*. *See In re Marriage of Pownall*, 197 Ariz. 577, 580, ¶ 7 (App. 2000).

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<sup>1</sup> Absent material revision after the relevant date, we cite a statute's current version.

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¶5 At trial, the superior court received an exhibit showing \$41,149.45 in payments Husband made to Wife through the Clearinghouse. Husband argued he paid Wife an additional \$10,091.89 that should be counted toward his spousal maintenance obligation. The court admitted bank records evidencing \$7,770 paid by check or direct transfers from Husband to Wife. In addition, Husband testified he had made \$2,321.89 in payments through the Clearinghouse after the date of the official summary on the exhibit the court admitted. Wife did not dispute receiving the check or direct transfers, but argued they should not be credited against Husband's maintenance obligation because he had agreed to give her money when she needed it for the couple's children.<sup>2</sup>

¶6 In an under-advisement ruling, the superior court held it did "not find that the parties had an agreement (enforceable or otherwise) that [Husband] would pay to [Wife] additional funds." But the court declined to credit most of the non-Clearinghouse payments toward Husband's support obligation. It allowed only a \$750 check annotated as "alimony" and one or more unspecified transfers totaling \$1,500 that coincided with the "monthly dollar amount ordered" in the decree. The court did not address Husband's contention that he had paid an additional \$2,321.89 through the Clearinghouse after the date of the exhibit in evidence.

¶7 Pursuant to A.R.S. § 25-510(B) (2016), Clearinghouse records of payment "are prima facie evidence of all payments made and disbursed to the person or agency to whom the support payment is to be made and are rebuttable only by a specific evidentiary showing to the contrary." Subsection (G) of the statute further provides:

Any direct payments not paid through the clearinghouse or any equitable credits of principal or interest permitted by law and allowed by the court after a hearing shall be applied to support arrearages as directed in the court order. The court shall make specific findings in support of any payments or credits allowed.

A.R.S. § 25-510(G). Under these provisions, Husband had the burden to prove any maintenance payments not shown in the Clearinghouse record.

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<sup>2</sup> There is no child support order in place, and child support is not at issue in this appeal.

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*See Lopez v. Lopez*, 125 Ariz. 309, 310 (App. 1980) (in action for arrearages, payor has burden of proof of payment).

¶8 On appeal, Wife does not dispute receiving any of the payments in the records Husband offered in evidence. Accordingly, the payments should be credited as spousal maintenance unless they were made for a different purpose.

¶9 The superior court declined to credit Husband for the payments, but did not explain the basis for its ruling. Husband bore the burden of proving the purpose of the payments, and testified they were intended to be spousal maintenance. Wife testified she and Husband had a broad agreement by which he would give her money above and beyond his monthly support obligation. The court, however, expressly found there was no such agreement. Without any other findings or explanation, the basis for the court's decision to decline to credit Husband with payments received by Wife is not sufficiently clear to permit our appellate review.

¶10 We note also that the superior court did not address the payments Husband testified he made to Wife through the Clearinghouse after the date of the exhibit in evidence. Although the trial transcript can be read to support Husband's contention that Wife did not dispute receiving those payments, the court did not address the issue in its ruling.

¶11 Accordingly, we vacate the order and remand so that the superior court may clarify or further consider the purpose of the \$5,520 in non-Clearinghouse payments and to allow the court to consider the \$2,321.89 Husband alleges he made through the Clearinghouse.

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¶12 Wife also requests attorney's fees incurred on appeal pursuant to A.R.S. § 25-324 (2016). Section 25-324 allows the court to award reasonable fees "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings[.]" A.R.S. § 25-324(A). In our discretion, we decline to award fees on appeal, but note that nothing in this decision precludes the superior court from awarding fees on remand.

**CONCLUSION**

¶13 For the foregoing reasons, we vacate the superior court's order and remand for further proceedings consistent with this decision.



Ruth A. Willingham · Clerk of the Court

FILED : ama