

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

In re the Marriage of:

LISA QUIGLEY, *Petitioner/Appellee*,

v.

ROGER QUIGLEY, *Respondent/Appellant*.

No. 1 CA-CV 14-0826 FC
FILED 3-15-2016

Appeal from the Superior Court in Maricopa County
No. FC2013-006781
The Honorable Joseph P. Mikitish, Judge

AFFIRMED

COUNSEL

Lisa Quigley, Phoenix
Petitioner/Appellee

Roger Quigley, Glendale
Respondent/Appellant

MEMORANDUM DECISION

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

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HOWE, Judge:

¶1 Roger Quigley (“Husband”) appeals portions of the divorce decree dissolving his marriage to Lisa Quigley (“Wife”). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Husband and Wife were married in 1991, and Wife filed a petition for dissolution in August 2013. At the evidentiary hearing, Wife testified to the couple’s standard of living, that she worked at the beginning of their marriage, but ceased working when she and Husband had children. Wife subsequently became ill, however, and began receiving disability benefits. She testified that her health was deteriorating and that she needed spousal maintenance assistance to meet her living expenses. Wife also testified that she had contributed to Husband’s earning ability over the years by taking care of the children while he worked and supporting him while he attended school and trained for other careers. Husband testified about his finances, claiming that to the extent that his retirement benefits were earned during the marriage, they should be divided equally. Husband also testified that he had never seen Wife’s financial affidavit and that he had never received disclosures regarding her bank accounts and disability award and knew nothing about debts and other loans that she might have acquired during the marriage.

¶3 The family court entered a decree dissolving the marriage, dividing the community property and debt, and awarding Wife spousal maintenance of \$600 for 120 months. Husband moved to amend the judgment or alternatively for a new trial, but also filed a notice of appeal. This Court stayed the appeal until the family court ruled on Husband’s motion and entered a final judgment. After the family court entered a signed minute entry modifying the decree, we reinstated the appeal.

DISCUSSION

1. Community Property and Debt

¶4 As we understand Husband’s argument, he contends that the family court could not divide the community assets or debt “on the basis of just” Wife’s testimony at the hearing because Wife failed to disclose

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financial documents.¹ Husband contends that the family court should have either imposed sanctions or delayed ruling until Wife made proper disclosures. We review the equitable distribution of property for an abuse of discretion. *Bell-Kilbourn v. Bell-Kilbourn*, 216 Ariz. 521, 523 ¶ 4, 169 P.3d 111, 113 (App. 2007). We accept the family court's factual findings unless they are clearly erroneous. *Hrudka v. Hrudka*, 186 Ariz. 84, 91, 919 P.2d 179, 186 (App. 1995), *superseded in part by statute on other grounds as stated in Myrick v. Maloney*, 235 Ariz. 491, 494 ¶ 8, 333 P.3d 818, 821 (App. 2014). We consider the evidence in the light most favorable to upholding the family court's ruling and will uphold it if the evidence reasonably supports it. *Kohler v. Kohler*, 211 Ariz. 106, 107 ¶ 2, 118 P.3d 621, 622 (App. 2005). Because the evidence supports the family court's ruling regarding the community property and debt, the court did not abuse its discretion.

¶5 Pursuant to A.R.S. § 25-318(A), the family court shall divide community property "equitably, though not necessarily in kind, without regard to marital misconduct." Here, the family court ordered that "any financial accounts containing community property as of the date of service shall be split equally." The only community financial account named in the decree was Husband's retirement account. Although Husband argues that his retirement account should not be divided until "all monies are accounted for," in his pretrial statement, Husband "propose[d] that the retirement assets he accumulated during the marriage be divided equally." The joint "pretrial statement controls the subsequent course of the litigation" and has "the effect of amending the pleading." *Carlton v. Emhardt*, 138 Ariz. 353, 355, 674 P.2d 907, 909 (App. 1983); *see also* Ariz. R. Fam. Law P. 34(b) (family court may allow the pleadings to be amended when merits of the action will be subserved and in the absence of prejudice). Moreover, Husband testified that his proposal was to divide his retirement benefits equally "to the extent that they were earned during the marriage." Accordingly, the court properly divided Husband's retirement account.

¶6 Husband's argument that Wife's alleged disclosure violations caused the family court to improperly divide community assets is unavailing. He does not explain how Wife's alleged failure to disclose documents prejudiced him. Moreover, Husband did not move to compel

¹ Wife did not file an answering brief. "When a debatable issue is raised on [appeal], the failure to file an answering brief generally constitutes a confession of error." *Gibbons v. Indus. Comm'n of Ariz.*, 197 Ariz. 108, 111 ¶ 8, 3 P.3d 1028, 1031 (App. 1999). We may exercise our "discretion to waive this general rule to address a purely legal issue," however. *Id.* Because this case presents such issues, we address its merits.

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any disclosure of any documents, did not request a continuance, and did not make any objections at trial regarding any alleged disclosure violations. Nor has Husband argued that financial accounts held by the minor children included community property.

¶7 Also, although Husband claims that Wife’s alleged disclosure violations affect the division of community debt, he makes no substantive argument supporting his claim in his brief; the issue is thus waived on appeal. *See* Ariz. R. Civ. App. P. 13(a)(6)-(7) (opening briefs shall include “statement of the issues presented for review” and “contentions concerning each issue presented for review”); *Carrillo v. State*, 169 Ariz. 126, 132, 817 P.2d 493, 499 (App. 1991) (“Issues not clearly raised and argued on appeal are waived.”); *MacMillan v. Schwartz*, 226 Ariz. 584, 591 ¶ 33, 250 P.3d 1213, 1220 (App. 2011) (noting that failure to argue a claim in the opening brief constitutes abandonment and waiver). Finding no abuse of discretion, we affirm the family court’s division of community property and debt.

2. Spousal Maintenance

¶8 Husband also argues that the trial court erred in awarding Wife spousal maintenance. We review the family court’s award of spousal maintenance for an abuse of discretion. *Leathers v. Leathers*, 216 Ariz. 374, 376 ¶ 9, 166 P.3d 929, 931 (App. 2007). When reviewing an award of spousal maintenance, we must first determine if the family court abused its discretion in determining entitlement to spousal maintenance pursuant to factors set forth in A.R.S. § 25-319(A), and then determine the propriety of the family court’s award about the amount and duration pursuant to A.R.S. § 25-319(B). *Gutierrez v. Gutierrez*, 193 Ariz. 343, 348 ¶ 15, 972 P.2d 676, 681 (App. 1998). We view the evidence in the light most favorable to Wife, to whom spousal maintenance was awarded, and will affirm if the record contains any reasonable supporting evidence. *Id.* at ¶ 14.

¶9 Pursuant to A.R.S. § 25-319(A), the family court may grant spousal maintenance if it finds the spouse seeking maintenance lacks sufficient property to provide for reasonable needs, is unable to be self-sufficient through appropriate employment, contributed to the educational needs of the other spouse, or had a marriage of long duration and is of such an age that may preclude the possibility of gaining adequate employment. Here, the family court found that Wife was entitled to an award of spousal maintenance because she lacked sufficient property to provide for her reasonable needs and was unable to be self-sufficient for appropriate employment because of her health conditions. The court also found that the

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parties had a long marriage, and given her medical condition, she may be precluded from the possibility of gaining employment to be self-sufficient.

¶10 Husband counters that the family court's determination should be vacated because of Wife's failure to make proper disclosures. But at the hearing, Husband told the family court that he had no objections to Wife's eligibility for spousal maintenance. Accordingly, Husband's challenge to Wife's entitlement to spousal maintenance lacks merit.

¶11 Husband also counters that the family court could not determine the spousal maintenance amount without evidence of Wife's "financial stability." Section 25-319(B) provides that the spousal maintenance award shall be for an amount and duration "as the court deems just" after considering 13 enumerated factors, including standard of living during the marriage, duration of the marriage, age, employment history, earning ability, financial resources, and time necessary to acquire sufficient education/skills. Here, after expressly analyzing the 13 factors set forth in the statute, the family court awarded Wife spousal maintenance of \$600 per month for 120 months. In considering these factors, the family court found, among other things, that the parties had a middle-class standard of living during the marriage, Wife worked during a significant portion of the marriage, but began receiving Social Security disability payments because she was physically unable to work, and Husband earned enough to pay spousal maintenance and continue to meet his own reasonable expenses. Consequently, because the record supports the family court's findings, the family court did not abuse its discretion in awarding Wife spousal maintenance.

CONCLUSION

¶12 For the foregoing reasons, we affirm.



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