IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Marriage of:

CARRIE LANE ACEVES, *Petitioner/Appellee*,

v.

LUIS ROBERT ACEVES, JR., *Respondent/Appellant*.

No. 1 CA-CV 16-0233 FC
FILED 2-14-2017

Appeal from the Superior Court in Maricopa County
No. FN2015-090701
The Honorable Jeffrey A. Rueter, Judge

AFFIRMED

APPEARANCES

Steven D. Keist P.C., Phoenix, AZ
By Steven D. Keist, Jackson L. Walsh
Counsel for Petitioner/Appellee

Luis Robert Aceves, Jr., Huntington Beach, CA
Respondent/Appellant

MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Judge Patricia K. Norris joined.

M c M U R D I E, Judge:

¶1 Luis Robert Aceves, Jr. ("Husband") appeals from a decree dissolving his marriage to Carrie Lane Aceves ("Wife"). For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 The parties married in 1994 and separated in 2010. In July 2015, Wife filed a petition for dissolution. Following a one-day trial in February 2016, the superior court entered a decree dissolving the marriage, dividing the community property and debt, and awarding Wife spousal maintenance of $750 per month for five years. Husband appealed.

DISCUSSION[1]

¶3 We view the evidence in the light most favorable to upholding the decree. *In re Marriage of Foster,* 240 Ariz. 99, 100, ¶ 2 (App. 2016). We will uphold the superior court's factual findings, unless they are "clearly erroneous or unsupported by any credible evidence," but we "draw our own legal conclusions from [those] facts." *Valento v. Valento*, 225 Ariz. 477, 481, ¶ 11 (App. 2010). We do not reweigh conflicting evidence on appeal and will defer to the court's determinations regarding witness

[1] We address Husband's arguments as best we can discern them. We consider waived: (1) "arguments not supported by adequate explanation, citations to the record, or authority," *see In re Aubuchon*, 233 Ariz. 62, 64-65, ¶ 6 (2013); and (2) those raised for the first time on appeal. *See Amparano v. ASARCO, Inc.*, 208 Ariz. 370, 374, ¶ 13 (App. 2004); *Trantor v. Fredrikson*, 179 Ariz. 299, 300 (1994). Therefore, we consider waived Husband's arguments regarding the parties' retirement accounts, Wife's 401K, the daughter's college expenses, and Wife's student loans.

credibility and the weight to give the evidence. *Hurd v. Hurd*, 223 Ariz. 48, 52, ¶ 16 (App. 2009) (citation omitted).

A. Disclosure of Evidence.

¶4 Husband argues that Wife failed to timely disclose her evidence before trial, putting him at a "significant disadvantage" and preventing him from fully presenting his case. But Husband did not move to compel discovery, nor did he object at trial to the admission of Wife's evidence. Because Husband did not raise the issue with the superior court or give the court an opportunity to resolve any dispute, we will not consider it on appeal.[2] *See Airfreight Express Ltd. v. Evergreen Air Ctr., Inc.*, 215 Ariz. 103, 109, ¶ 17 (App. 2007).

B. Division of Property and Debt.

¶5 Husband challenges the superior court's division of property and debt. In a dissolution proceeding, the court must assign each spouse his or her sole and separate property and divide the community property and debt equitably. Ariz. Rev. Stat. ("A.R.S.") § 25-318(A);[3] *see Birt v. Birt*, 208 Ariz. 546, 552, ¶ 25 (App. 2004). We review the division of community property and debt for a clear abuse of discretion. *In re Marriage of Inboden,* 223 Ariz. 542, 544, ¶ 7 (App. 2010).

1. Termination of the Marital Community.

¶6 Husband argues the superior court erred by concluding the marital community continued until July 30, 2015, when he was served with the petition for dissolution; instead, he posits, the marital community terminated in September 2010, when the parties separated and began

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[2] Husband claims that he raised this issue at the resolution management conference in December 2015, but the record does not so reflect. Husband bears the burden to ensure the record contains the transcripts necessary for us to consider the issues raised on appeal. *Baker v. Baker*, 183 Ariz. 70, 73 (App. 1995); *see also* ARCAP 11(b), (c). In the absence of a transcript, we presume the record supports the superior court's rulings. *Kohler v. Kohler*, 211 Ariz. 106, 108, ¶ 8, n.1 (App. 2005) (citing *Baker*, 183 Ariz. at 73).

[3] Absent material revision after the relevant date, we cite a statute's current version.

divorce proceedings in Virginia. We find no error. A marital community exists until service of a petition for dissolution of marriage or legal separation, if the petition results in a decree of dissolution of marriage or legal separation. A.R.S. § 25-211(A)(2). Although the parties separated in 2010, no evidence indicating that a Virginia court entered a decree of legal separation or any order that would bear on this proceeding exists. *See Lynch v. Lynch*, 164 Ariz. 127, 129 (App. 1990) (discussing former § 25-211).[4]

2. Community Debt.

i. Separation Agreement.

¶7 Husband argues the superior court failed to consider a "Temporary Custody and Financial Agreement" the parties entered into in Virginia in 2010. Although the record reflects a reference to this agreement in Husband's resolution management statement, he did not allege or produce the agreement at trial.[5] We will not consider evidence or legal theories that were not presented to the superior court. *See Brookover v. Roberts Enters., Inc.*, 215 Ariz. 52, 57, ¶ 16, n.1 (App. 2007) (court will consider only evidence presented to a superior court prior to its ruling); *Winters v. Ariz. Bd. of Educ.*, 207 Ariz. 173, 177, ¶ 13 (App. 2004) ("When a challenge is not raised with specificity and addressed in the trial court, we generally do not consider it on appeal.").

¶8 More broadly, although a separation agreement may bind the parties, *see Sharp v. Sharp*, 179 Ariz. 205, 208 (App. 1994); A.R.S. § 25-317, their intent to contract must be based on objective evidence. *Tabler v. Indus. Comm'n*, 202 Ariz. 518, 521, ¶¶ 12-13 (App. 2002); *Ames v. Ames*, 239 Ariz. 246, 249, ¶ 15 (App. 2016) (quotation omitted). At trial, neither party asserted that they had reached an agreement when the court asked if they had "reach[ed] any agreements at all on anything[.]" Husband testified the parties went to counseling in Virginia; Wife testified they tried to reach a separation agreement in 2010, but were unable to do so. At best, the record presents conflicting testimony about "some dividing up" of property and debt in 2010. Thus, we cannot say the superior court erred in not finding a separation agreement between the parties, much less one within the meaning of § 25-317. *See Thomas v. Thomas,* 142 Ariz. 386, 390 (App. 1984)

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[4] Because we affirm on this issue, we deem moot Husband's arguments regarding an agreement vis-à-vis the parties' retirement accounts and expenses related to their children's education.

[5] *See supra* note 3.

("An appellate court may 'infer [] findings necessary to sustain [the judgment] if such additional findings do not conflict with express findings and are reasonably supported by the evidence.'" (quoting *Wippman v. Rowe,* 24 Ariz. App. 522, 525 (1975)).

ii. "Separation Debt."

¶9 Husband argues the superior court erred by allocating him one-half of the "separation debt," *i.e.,* approximately $4,000 of credit card debt acquired by Wife while the parties were separated. All debt incurred by either spouse during marriage is presumed to be a community obligation. *Hrudka v. Hrudka*, 186 Ariz. 84, 91-92 (App. 1995), *superseded in part by statute* A.R.S. § 25-324 *as recognized in Myrick v. Maloney,* 235 Ariz. 491 (App. 2014); *see* A.R.S. § 25-211(A). To overcome the presumption, Husband was required to offer clear and convincing evidence to the contrary. *See Hrudka*, 186 Ariz. at 91-92. Husband did not carry his burden on this issue.[6]

iii. "Joint Debt."

¶10 Husband argues he was entitled to reimbursement for one-half of the "joint debt" he paid while the parties were separated. Although he submitted evidence of community debt paid before service of the petition, he did not establish he paid community debt out of his sole and separate property. *See Cooper v. Cooper*, 130 Ariz. 257, 259-60 (1981) ("[T]he burden is upon the [party] claiming that the commingled funds . . . are separate [property] to prove that fact . . . by clear and satisfactory evidence.").

C. Spousal Maintenance.

¶11 Husband argues Wife was not entitled to an award of spousal maintenance. A party is eligible for spousal maintenance if he or she meets

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[6] Nor did Husband allege abnormal or excessive expenditures or make a prima facie showing of waste. *See* A.R.S. § 25-318(C); *Helland v. Helland,* 236 Ariz. 197, 201, ¶ 17 (App. 2014); *Gutierrez v. Gutierrez,* 193 Ariz. 343, 346, ¶ 7 (App. 1998).

one of four criteria. A.R.S. § 25-319(A);[7] *Boyle v. Boyle*, 231 Ariz. 63, 65, ¶ 9 (App. 2012). Once eligibility is established, the superior court must determine the appropriate amount and duration of maintenance by considering 13 factors enumerated in A.R.S. § 25-319(B). *Elliott v. Elliott*, 165 Ariz. 128, 136 (App. 1990). We review an award of spousal maintenance for an abuse of discretion. *Leathers v. Leathers*, 216 Ariz. 374, 376, ¶ 9 (App. 2007). Based on that deference, we view the evidence in the light most favorable to Wife, and we will affirm the superior court's order, if the record contains any reasonable supporting evidence. *See Gutierrez v. Gutierrez*, 193 Ariz. 343, 348, ¶ 14 (App. 1998).

¶12 The superior court found Wife was eligible for an award based on all four criteria under A.R.S. § 25-319(A). Husband purports to dispute these findings, but his arguments seem more properly directed at the court's findings under § 25-319(B), specifically age, employment history, earning ability, and financial resources.

¶13 Husband contends the parties have similar levels of education and professional work experience. Wife testified to the contrary. We defer to the superior court to determine Wife's credibility and the weight to give the evidence. *See Hurd*, 223 Ariz. at 52, ¶ 16 (citation omitted). Husband contends Wife was voluntarily underemployed and not working to her income potential. When the evidence conflicts regarding earning potential, we accept the superior court's factual findings. *Cf. Engel v. Landman*, 221 Ariz. 504, 510-11, ¶¶ 21-24 (App. 2009) (discussing attributed income in determining child support). Husband contends the superior court failed to consider that he continues to support two of the parties' children. But there generally is "no duty to support a child who has reached the age of

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[7] As relevant here, those criteria are whether the spouse seeking maintenance:

> 1. [l]acks sufficient property, including property apportioned to the spouse, to provide for that spouse's reasonable needs[;] 2. [i]s unable to be self-sufficient through appropriate employment or . . . lacks earning ability in the labor market adequate to be self-sufficient[;] 3. [c]ontributed to the educational opportunities of the other spouse[; and] 4. [h]ad 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)(1)-(4).

majority," *Mendoza v. Mendoza,* 177 Ariz. 603, 604 (App. 1994), and Husband has not proven such a duty exists here.

¶14 Lastly, Husband argues the superior court failed to consider spousal maintenance he paid pursuant to a separation agreement, and he requests those payments be credited against the award. Again, because Husband did not timely raise this argument before the superior court, we will not address it on appeal. *See In re MH 2007-001264,* 218 Ariz. 538, 540, ¶ 16 (App. 2008).

¶15 We presume the superior court considered all the financial information the parties submitted. *Fuentes v. Fuentes*, 209 Ariz. 51, 55, ¶ 18 (App. 2004). Although the court had discretion to issue a different ruling, the record supports the court's findings and award of spousal maintenance.

CONCLUSION

¶16 For the foregoing reasons, we affirm. Wife requests an award of attorney's fees pursuant to A.R.S. § 25-324. After considering the financial resources of the parties and the reasonableness of their positions throughout the proceedings, we decline to award fees on appeal. We award costs to Wife upon compliance with Arizona Rule of Civil Appellate Procedure 21.

AMY M. WOOD • Clerk of the Court
FILED: AA