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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

RAYOTIS PERKINS, *Petitioner/Appellee*,

v.

BEVERLY BRIGHT PERKINS, *Respondent/Appellant*.

No. 1 CA-CV 16-0430 FC
FILED 3-28-2017

Appeal from the Superior Court in Maricopa County
No. FC2009-094007
The Honorable Stephen M. Hopkins, Judge

AFFIRMED IN PART; VACATED IN PART; AND REMANDED

COUNSEL

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Counsel for Petitioner/Appellee

Beverly Perkins, Apache Junction
Respondent/Appellant Pro Se

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MEMORANDUM DECISION

Judge Randall M. Howe delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Patricia A. Orozco joined.

H O W E, Judge:

¶1 Beverly Bright Perkins (“Wife”) appeals the family court’s order reducing spousal maintenance paid by Rayotis Perkins (“Husband”) and granting his attorneys’ fees at a 10% interest rate. For the following reasons, we affirm the family court’s modification of Husband’s spousal maintenance obligation and award of attorneys’ fees, but vacate the interest rate imposed and remand so that the family court can impose the correct rate.

FACTS AND PROCEDURAL HISTORY

¶2 Husband and Wife married in 1990, but after 19 years, Husband petitioned for dissolution. The family court issued its decree of dissolution nearly two years later, which ordered that Husband pay wife \$1,000 in monthly spousal maintenance for a 10-year period. In so ordering, the family court considered several factors, including Wife’s inability to meet her own financial needs and the unlikelihood that she would find employment to do so, even though she was self-employed as a bookkeeper. The family court also noted that Husband had a doctorate degree, made approximately \$100,000 per year working as a school’s assistant principal, had an earning ability far greater than Wife’s, and consequently could meet her needs as well as his own.

¶3 Approximately four years later, Husband lost his job. Husband told Wife about his situation while he was looking for another job, requesting that she agree to reduced spousal maintenance payments until he could find one. Wife refused to cooperate or acknowledge Husband’s job loss. When Husband later sent Wife a letter with terms for reduced payments, Wife refused to sign, alleging that Husband had money and stating that the parties would have to go to court. She also threatened that she would “ask for MORE money.”

¶4 In August 2015, Husband petitioned for termination of his monthly spousal maintenance obligation or reduction to \$502. At the

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subsequent evidentiary hearing, Husband testified that he was forced to resign because his former employer decided not to renew his contract and a resignation would reflect more favorably than a non-renewal to potential future employers. After an unsuccessful two-week job search in the area where he lived, he found and accepted a position at a school an hour away. Husband also testified that because he resigned in the late summer, he had only a narrow window of opportunity to find a job before the academic year began. The new position paid \$51,000 per year, which he stated was insufficient to cover his needs and the monthly spousal maintenance amount. Husband introduced tax returns from the preceding years and his current pay stubs to prove the pay decrease.

¶5 Wife objected to Husband's petition, arguing that she believed that Husband had additional income sources that he was hiding from the family court. She further argued that Husband had voluntarily taken a significant pay cut to avoid paying spousal maintenance and that his two-week job search showed that he refused to find a position that would pay at his full earning capacity. Wife attempted to introduce evidence relating to these claims, but the court precluded most of the offered evidence as either irrelevant or without foundation.

¶6 Wife also argued that she had been seriously ill and that because of that, she earned less than she did at the time of the divorce, did not have an ability to earn income sufficient to support herself, and had an increased need for support. To establish her inability to support herself, Wife attempted to introduce financial statements and tax returns. The family court refused to admit them, however, because Wife had not disclosed them before the hearing or even before her testimony.

¶7 In summer 2016, the family court reduced Husband's spousal maintenance to \$500 per month for the remainder of the 10-year period. The court concluded that Husband had met his burden of establishing substantial and continuing circumstances – namely the loss of his previous job and a significantly reduced income. The court found that Husband did not voluntarily quit his job to evade his spousal maintenance obligation. The court also found that, contrary to Wife's allegations, Husband diligently searched for a new job during the narrow hiring window before the academic year. Finally, the court found that because Husband was forced to resign or not be renewed, his likelihood of finding future employment at his previous salary would be slim. Despite Wife's continued inability to work at a full-earning capacity, the court specifically noted that it based its decision to modify spousal maintenance only on Husband's inability to pay, not a diminished need for the support.

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¶8 The family court also awarded Husband reasonable attorneys' fees of \$9,474.19 at an interest rate of 10%. The court concluded that although Husband had considerably more resources than Wife, Wife had acted unreasonably in the litigation. Specifically, the court noted that Wife had refused to consider Husband's requests to lower his spousal maintenance obligation when he lost his job and that Wife did not disclose any of her own financial information before the hearing. Finally, the family court noted that Wife did not actually dispute Husband's contentions through competent evidence or testimony, but instead used only insinuation and speculation. Wife timely appealed.

DISCUSSION

1. Spousal Maintenance Modification

¶9 Wife first argues that the family court erred by reducing Husband's monthly spousal maintenance; his changed circumstances are not "continuing" because he has an earning capacity higher than his current salary. We review the family court's modification of spousal maintenance for an abuse of discretion. *In re Marriage of Priessman*, 228 Ariz. 336, 338 ¶ 7, 266 P.3d 362, 364 (App. 2011). We view the evidence in the light most favorable to sustaining the family court's ruling and will affirm if any reasonable evidence supports it. *Little v. Little*, 193 Ariz. 518, 520 ¶ 5, 975 P.2d 108, 110 (1999). Because reasonable evidence supports the family court's modification of Husband's spousal maintenance obligation, it did not abuse its discretion.

¶10 The family court may modify a spousal maintenance award when the moving party establishes a substantial and continuing change in circumstances. A.R.S. § 25-327(A). In determining whether such a change exists, the family court must compare the current circumstances with those present at the time of the dissolution. *MacMillian v. Schwartz*, 226 Ariz. 584, 588 ¶ 12, 250 P.3d 1213, 1217 (App. 2011). The court should consider the same factors it considered when granting the original spousal maintenance award, including both parties' financial resources and ability to earn sufficient income to support themselves. A.R.S. § 25-319(B); *Nace v. Nace*, 107 Ariz. 411, 413, 489 P.2d 48, 50 (1971).

¶11 Husband's change in circumstances was substantial and continuing. When the court issued the decree of dissolution, Husband was gainfully employed as an assistant principal and earning a yearly salary of approximately \$100,000. Husband then lost that job and found another that only paid half of his previous salary. Husband produced his income tax

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returns from the preceding few years and his current pay stubs to prove the pay reduction. Additionally, Husband testified that he had to act quickly in finding another job because the academic year was about to begin. Husband's diligent search for a job within a short time frame and ultimate acceptance of one an hour away supports the family court's conclusion that Husband did not voluntarily quit his job to avoid paying Wife more spousal maintenance. This evidence sufficiently meets Husband's burden of proof.

¶12 Wife argues that Husband's current lower salary is not continuing because Father is highly educated and therefore capable of eventually finding a position with higher pay. However, the family court specifically found that because Father had to resign or not be renewed, his likelihood of finding a future job with comparable pay would be slim. Additionally, Husband's reduced salary was continuing at the time of the evidentiary hearing and was not speculative or temporary. *See Fletcher v. Fletcher*, 137 Ariz. 497, 498, 671 P.2d 938, 939 (App. 1983) (rejecting mother's argument that father's new job with reduced pay was only temporary because the reduced pay was continuing at the time of the hearing, and advising that if father later got a new job with higher pay, mother could petition for an upward modification); *see also Richards v. Richards*, 137 Ariz. 225, 226, 669 P.2d 1002, 1003 (App. 1983) (finding that the family court erred by terminating spousal maintenance in anticipation of future income that the spouse receiving the payments may earn because "such matters are best left to future modification proceedings"). Finally, Wife argues that the family court erred because she demonstrated an increased need for spousal maintenance. But the court specifically stated that it based its modification solely on Husband's reduced income, not because Wife had any diminished need for it. Accordingly, the family court did not abuse its discretion.

2. Attorneys' Fees and Interest Rate

¶13 Wife also argues that the family court abused its discretion by granting Husband's attorneys' fees at a 10% interest rate. We review the family court's order granting attorneys' fees for an abuse of discretion. *MacMillian*, 226 Ariz. at 592 ¶ 36, 250 P.3d at 1221. We will defer to the family court's credibility determinations because the court is in the best position to weigh the evidence, observe the parties, and judge the witnesses' credibility. *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, 334 ¶ 4, 100 P.3d 943, 945 (App. 2004). The family court has the discretion to order that a party pay the other party's reasonable attorneys' fees and costs. A.R.S. § 25-324(A). Before doing so, the family court must consider both parties' financial resources and the reasonableness of their positions throughout the litigation. *Id.* An objective standard applies in assessing the

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reasonableness of the parties' positions. *In re Marriage of Williams*, 219 Ariz. 546, 548-49 ¶ 10, 200 P.3d 1043, 1045-46 (App. 2008).

¶14 Because the record supports the family court's finding that Wife acted unreasonably, the court did not err by granting Husband's request for attorneys' fees. As required, the family court considered both parties' financial resources. Even though Husband earns half of what he previously did, he still has greater financial resources than Wife. Nevertheless, the record supports the court's finding that Wife acted unreasonably. Husband attempted to avoid going through the family court by reaching out to Wife, informing her of his employment situation, and asking that she temporarily agree to reduced payments. However, Wife refused to cooperate and instead threatened to make him pay more. Wife's disagreement with a reduction is not in itself unreasonable, but refusing to acknowledge Father's changed circumstances, demanding to go to court, and threatening to ask for more money without foundation in law or fact may properly be deemed so by the family court. Additionally, although Wife maintained that she had an increased need for spousal maintenance, she failed to disclose any of her financial statements to Husband or the court before the hearing or even before her own testimony. Finally, Wife attempted to admit exhibits and testimony which had neither relevancy to the hearing nor proper foundation for admission. Thus, the family court did not err.

¶15 Wife next argues that the family court erred by imposing a 10% interest rate on the attorneys' fees judgment. Interest on a judgment must be the "lesser of ten per cent per annum or at a rate per annum that is equal to one per cent plus the prime rate as published by the board of governors of the federal reserve system in statistical release H. 15 . . . on the date that the judgment is entered." A.R.S. § 44-1201(B); *see also Cuellar v. Vettorel*, 235 Ariz. 399, 403 ¶ 12, 332 P.3d 625, 629 (App. 2014) (stating that a "judgment" may include attorneys' fees). The family court entered its order awarding Husband attorneys' fees in June 2016. At that time, the statutory interest rate was 4.5%.¹ Thus, the family court erred by imposing a 10% interest rate. Because the family court imposed the incorrect interest rate on the attorneys' fees judgment, we vacate the judgment's interest

¹ The prime rate is published on the Federal Reserve's website. *See* Board of Governors of the Federal Reserve System, available at <https://www.federalreserve.gov/releases/h15/data.htm> (last visited March 22, 2017).

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provision and remand to the family court so that it can correct the interest rate from the date of the judgment.

3. Attorneys' Fees on Appeal

¶16 Wife and Husband each request their reasonable attorneys' fees and costs on appeal pursuant to A.R.S. § 25-324. In our discretion, we deny both requests.

CONCLUSION

¶17 For the foregoing reasons, we affirm the family court's modification of Husband's spousal maintenance obligation and award of attorneys' fees, but vacate the interest rate imposed and remand so that the family court can impose the correct rate.



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