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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

SCOTT R. VIANDS, *Petitioner/Appellee*,

v.

SHANNON L. VIANDS, *Respondent/Appellant*.

No. 1 CA-CV 16-0534 FC
FILED 9-26-2017

Appeal from the Superior Court in Maricopa County
No. FC2015-002050
The Honorable Pamela Hearn Svoboda, Judge

AFFIRMED

COUNSEL

Tiffany & Bosco, PA, Phoenix
By Kelly Mendoza, Justin P. Nelson
Counsel for Respondent/Appellant

Dickinson Wright PLLC, Phoenix
By Marlene A. Pontrelli, Michael R. Scheurich
Counsel for Petitioner/Appellee

MEMORANDUM DECISION

Judge Margaret H. Downie delivered the decision of the Court, in which Presiding Judge Michael J. Brown and Judge Jennifer B. Campbell joined.

D O W N I E, Judge:

¶1 Shannon L. Viands (“Wife”) appeals from orders denying her request for attorneys’ fees and awarding \$25,000 in fees to Scott R. Viands (“Husband”). Finding no legal error or abuse of discretion, we affirm.

FACTS AND PROCEDURAL HISTORY¹

¶2 On July 22, 2015, Wife accepted service of Husband’s petition for dissolution. The next morning, she took the parties’ minor child to his first day of kindergarten at Fulton Elementary School (“Fulton”), located 19 miles from the parties’ home. Wife had not previously discussed the matter with Husband or the child, both of whom believed the child would begin kindergarten at the local neighborhood school.

¶3 Husband sought temporary orders to resolve the school choice issue. The parties’ attempt to mediate the issue was unsuccessful, and the family court ultimately declined to issue temporary orders regarding school choice. In the decree, the court awarded joint legal decision-making authority to the parties, with Husband having final authority as to educational decisions.

¶4 At trial, Husband called an expert witness to value the community lien that arose from the use of community funds to pay the mortgage on Husband’s separate property residence during the marriage. The family court adopted the expert’s lien calculation and awarded Wife \$37,369 as her share of the community lien. Wife was ordered to pay \$6,503 in rent to Husband for continuing to live in the home after the

¹ We view the record in the light most favorable to sustaining the family court’s rulings. See *Little v. Little*, 193 Ariz. 518, 520, ¶ 5 (1999).

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community terminated. The court rejected Husband's contention that Wife should pay rent dating back to the beginning of the marriage.

¶5 The court found that both parties had acted unreasonably during the litigation and that they had comparable financial resources. Specifically, the court ruled:

Wife acted unreasonably by doing the following: 1) refusing to move from Husband's separate residence and/or not paying the fair rental value; 2) unilaterally deciding to enroll the Child 19 miles away for school without consulting [Husband] and not being willing to consider compromises; 3) refusing an offer that the community lien was worth \$38,500 and Husband's expert came to approximately that amount after being retained and preparing her analysis; and 4) fail[ing] to timely provide disclosures under [Arizona Rule of Family Law Procedure ("Rule")] 49. Husband acted unreasonably by failing to timely provide disclosures under Rule 49 as evidenced in part by exhibits 157, 161, 167, 171, and 172.

After considering Husband's amended application seeking \$40,835.25 in attorneys' fees and costs, the court ordered Wife to pay \$25,000. The court denied Wife's claim for attorneys' fees. We have jurisdiction over Wife's timely appeal pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1).

DISCUSSION

¶6 The family court may award attorneys' fees under A.R.S. § 25-324(A) "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings." We will not disturb a ruling on attorneys' fees absent an abuse of discretion. *Williams v. Williams*, 219 Ariz. 546, 548, ¶ 8 (App. 2008). "An abuse of discretion occurs when a court commits an error of law in the process of reaching a discretionary conclusion," or when the record does not support the court's decision. *Id.*; *Little v. Little*, 193 Ariz. 518, 520, ¶ 5 (1999). However, interpretation of a statute is a legal issue that we review *de novo*. *Castro v. Ballesteros-Suarez*, 222 Ariz. 48, 52, ¶ 12 (App. 2009).

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I. The Court Properly Considered Wife's Positions.

¶7 Wife contends the court erred in concluding that her refusal to move out or pay rent to reside in Husband's separate property residence after the community terminated and her decision to enroll the child in Fulton constituted legal positions. According to Wife, neither action violated a court order or statute and therefore, did not constitute a legal position. In support of this argument, Wife cites *Williams*, 219 Ariz. at 548, ¶ 10, which held that a party's "legal position be evaluated by an objective standard of reasonableness." However, the issue in *Williams* was whether the court properly considered a party's subjective intent and *pro se* status in deciding that her legal positions were reasonable. *Id.* at 548-49, ¶¶ 10, 13. *Williams* analyzed the reasonableness component of § 25-324(A) and did not address what constitutes a legal position. *Id.* at ¶¶ 10-13. Wife also relies on *Muchesko v. Muchesko*, 191 Ariz. 265, 273 n.4 (App. 1997), which also did not address what constitutes a legal position, but merely noted that § 25-324 "allow[s] courts to consider the reasonableness of a party's legal position."

¶8 Nothing in the statute or common law supports Wife's contention that an unreasonable legal position is only one that is contrary to a court order or statute. Section 25-324(A) directs courts to consider the "reasonableness of the positions each party has taken throughout the proceedings." A legal position is one asserted in relation to the litigation. Wife's arguments about remaining in the residence rent-free and authority to determine where the child would attend school were positions she took throughout the litigation. The family court properly considered the reasonableness of those positions in determining whether to award attorneys' fees.

¶9 Wife also contends that because she enrolled the child in Fulton before Husband filed the dissolution petition, she did not take this position "throughout the litigation." But the record reflects that although Wife researched schools and enrolled the child in Fulton before the petition was filed, she did not tell Husband or the child until after being served with the petition. The parties took the child to the local school for pre-enrollment activities, and the child expected to attend that school. Wife did not have the child begin school on Fulton's first day of class. Moreover, the parties continued to litigate the school choice issue through trial. Under these circumstances, the court properly considered Wife's position regarding school choice in deciding whether to award attorneys' fees.

II. Evidence Supports the Fee Award.

¶10 Wife next contends the record does not support a finding that she acted unreasonably. We conclude otherwise.

A. Marital Residence

¶11 According to Wife, it was not unreasonable to remain in the residence or to oppose Husband's claim for post-petition rent because he never asked her to move out or sought to evict her. Husband, however, testified at trial that he asked Wife to move out on multiple occasions and also asked her to pay rent. On appeal, we do not "reweigh the evidence or substitute our evaluation of the facts." *Castro*, 222 Ariz. at 52, ¶ 11. Viewing the evidence in the light most favorable to affirming the family court's ruling, *id.*, we discern no abuse of discretion in concluding that Wife's conduct vis-à-vis the residence was unreasonable.

B. School Choice

¶12 Wife argues her decision to enroll the child in Fulton was not unreasonable because she historically made educational decisions and enrolled him before the petition was filed. Wife also contends she considered Cielo – the school Husband suggested – but had legitimate reasons for rejecting it. Wife testified Cielo was not a good choice because it was only four minutes closer and Husband's preference was based only on test scores.

¶13 As discussed *supra*, Wife researched and enrolled the child in Fulton without telling him or Husband until after the petition was served. Wife did not have the child attend the first day of classes, and she took him to Fulton without telling him or Husband in advance and after attending pre-registration activities at his local school. Evidence regarding the parties' willingness to consider alternative schools was conflicting. As noted *supra*, we view the evidence in the light most favorable to sustaining the judgment and do not reweigh evidence.

¶14 Sufficient evidence supports the conclusion that Wife's position regarding school choice was unreasonable.

C. Community Lien

¶15 Wife contends it was reasonable to reject Husband's offer to settle the community lien because he did not provide evidence to support his offer.

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¶16 Husband's initial offer included the figures he used to arrive at his valuation of the community lien. Husband noted that Wife had control over some of the documents supporting those figures, such as tax returns and joint bank statements. And the record does not support Wife's claim that she accepted Husband's offer to settle for \$38,265 at the first mediation. Thus, the community lien issue proceeded to trial.

¶17 Husband made multiple offers to settle the community lien before calling his expert to testify. The evidence was conflicting as to when Wife had information necessary to determine that Husband's community lien offer was reasonable without Husband having to call his expert. Based on the record before us, we cannot say the court abused its considerable discretion by concluding that Wife's refusal of the offer was unreasonable.

D. Rule 49 Disclosures

¶18 The court found that both parties acted unreasonably by not providing timely disclosures under Rule 49. Although Wife contends the court did not cite evidence supporting its finding as to her, she admits failing to disclose her bonus in a timely manner. It is true that the court referred to specific exhibits in finding that Husband failed to comply with disclosure requirements, but the lack of a similar reference pertaining to Wife does not arise to an abuse of discretion – especially because the record supports at least one disclosure violation by Wife.

III. The Record Supports the Denial of Wife's Fee Request.

¶19 Wife contends the court erred in denying her request for attorneys' fees based on unreasonable positions Husband took throughout the litigation. Specifically, she argues Husband took unreasonable positions by: (1) seeking reimbursement for her share of the mortgage from the time of the marriage; (2) hiring an expert to determine the community lien amount; and (3) filing a supplemental fee application after the court issued conflicting orders.²

¶20 The family court expressly stated that it reduced the fee award to Husband based on his failure to comply with disclosure requirements. Thus, the court implicitly rejected Wife's contention that

² We note that under Wife's novel definition of a legal position, discussed *supra*, none of these alleged acts would qualify.

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Husband otherwise took unreasonable positions. Husband's supplemental fee application was not unreasonable based on the court's conflicting orders regarding attorneys' fees.³ Viewing the evidence in the light most favorable to sustaining the family court's judgment, we find no abuse of discretion.

CONCLUSION

¶21 We affirm the family court's award of attorneys' fees to Husband. Both parties request an award of fees and costs on appeal pursuant to A.R.S. § 25-324(A). Husband also relies on A.R.S. § 25-324(B)(2), arguing Wife's opening brief was baseless and without merit. After considering the parties' financial resources and the reasonableness of their positions on appeal, we will award Husband a reasonable sum of fees, as well as his taxable costs on appeal, upon compliance with Arizona Rule of Civil Appellate Procedure 21.



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

³ On June 10, 2016, the court ordered Wife to pay Husband attorneys' fees and costs in the amount of \$25,000. However, the court entered a second, inconsistent order on June 14, 2016, instructing Husband to submit a fee affidavit addressing the specific areas in which the court found Wife was unreasonable. In response to Wife's motion to clarify the conflicting orders, the court denied Husband's request for fees in excess of \$25,000.