

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

PAULA JEAN PAGE, *Petitioner/Appellee*,

v.

ROGER DALE MOORE, *Respondent/Appellant*.

No. 1 CA-CV 16-0725 FC
FILED 10-31-2017

Appeal from the Superior Court in Maricopa County
No. FN2015-051130
The Honorable Cynthia J. Bailey, Judge

AFFIRMED

APPEARANCES

Walston Law Group, Mesa
By J. Robert Walston, Jennifer L. Walston, Caitlin L. Andrade
Counsel for Petitioner/Appellee

Roger Dale Moore, Chandler
Respondent/Appellant

MEMORANDUM DECISION

Judge Patricia A. Orozco¹ delivered the decision of the Court, in which Presiding Judge Paul J. McMurdie and Vice Chief Judge Peter B. Swann joined.

O R O Z C O, Judge:

¶1 Roger Dale Moore (Husband) appeals from the decree of dissolution ending his marriage to Paula Jean Page (Wife). Finding no abuse of discretion, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Husband and Wife were married for twenty-four years. At the time of dissolution, the parties were in their sixties.

¶3 The parties entered an agreement pursuant to Arizona Rule of Family Law Procedure (Rule) 69 regarding the division of personal property. The superior court held a trial to resolve the remaining contested issues and entered a decree dissolving the marriage, which incorporated the Rule 69 agreement. As relevant to this appeal, the decree (1) awarded Wife spousal maintenance of \$150 per month for an indefinite term, (2) awarded Wife the marital home subject to all mortgages and encumbrances, (3) awarded Wife the first \$25,000 in equity generated from the sale of community land and (4) awarded Husband all existing community businesses.

¶4 Husband timely appealed from the decree, and we have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101(A)(1)(2017).²

¹ The Honorable Patricia A. Orozco, retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article VI, Section 3, of the Arizona Constitution.

² We cite to the current version of applicable statutes absent any change material to this decision.

DISCUSSION

¶5 As a preliminary matter, Husband’s opening brief lacks a table of contents, table of authorities, and statement of facts, all of which are required by Arizona Rule of Civil Appellate Procedure (ARCAP) 13(a). Moreover, Husband’s brief contains no references to the record and cites only one legal authority. *See* ARCAP 13(a)(7). Although we address the main issues raised in Husband’s brief, our review is limited by these deficiencies.³

¶6 In addition, Husband failed to provide transcripts of the superior court proceedings. *See* ARCAP 11(c) (requiring the appellant to order any transcripts that are “necessary for proper consideration of the issues on appeal”). Accordingly, we presume the trial transcript supports the superior court’s rulings. *See Kline v. Kline*, 221 Ariz. 564, 572, ¶ 33 (App. 2009) (citation omitted).

I. Spousal Maintenance

¶7 Husband first argues the superior court erred by awarding Wife “nominal spousal maintenance” of \$150 per month. We review an award of spousal maintenance for an abuse of discretion. *See Leathers v. Leathers*, 216 Ariz. 374, 376, ¶ 9 (App. 2007).

¶8 Section 25-319 governs spousal maintenance and provides that a spouse is eligible for maintenance if he or she meets one of the four criteria set forth in subsection A. *See* A.R.S. § 25-319(A); *Boyle v. Boyle*, 231 Ariz. 63, 65, ¶ 9 (App. 2012). Here, the superior court found that Wife was entitled to spousal maintenance because the parties “had a marriage of long duration and Wife is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.” *See* A.R.S. § 25-319(A)(4). The court then determined the amount and duration of the maintenance after considering the factors set forth in § 25-319(B) and applying them to the evidence presented at trial. The court properly complied with § 25-319.

³ In reference to the division of community debt, Husband includes only one sentence in his brief. Accordingly, we decline to address this issue. *See Ritchie v. Krasner*, 221 Ariz. 288, 305, ¶ 62 (App. 2009) (deeming an issue waived for failure to provide supporting authority); *State v. Moody*, 208 Ariz. 424, 452 n.9, ¶ 101 (2004) (explaining that “[m]erely mentioning an argument is not enough”).

¶9 Husband argues the superior court awarded Wife nominal spousal maintenance “solely to ‘hold the door open’ for the possibility that a meaningful award might later become appropriate.” He relies on *Sherman v. Sherman*, 241 Ariz. 110 (App. 2016), in which this court vacated an award of maintenance based on “speculation that Father might later someday be able to return to work.” *Id.* at 112, ¶ 3. Unlike the *Sherman* case, there is nothing in the court’s ruling here to suggest the court awarded Wife nominal spousal maintenance simply to hold the door open for future modification.

¶10 Accordingly, we affirm the award of spousal maintenance.

II. Division of Community Property

¶11 Husband next argues the superior court erred in dividing the community property. Specifically, he challenges the court’s order to sell community land in Williams, Arizona, and to award the first \$25,000 in equity to Wife, as well as the valuation of the marital home. We review the court’s division of community property for an abuse of discretion. *See Kohler v. Kohler*, 211 Ariz. 106, 107, ¶ 2 (App. 2005).

A. Sale of Land

¶12 Pursuant to A.R.S. § 25-318, the superior court is charged with dividing the community property “equitably, though not necessarily in kind.” A.R.S. § 25-318(A). To facilitate an equitable distribution, the court is authorized to order a sale of community property. *See Lee v. Lee*, 133 Ariz. 118, 121 (App. 1982).

¶13 Here, the superior court ordered the sale of the Williams land and awarded the first \$25,000 in equity to Wife.⁴ The court then awarded other assets, including the community’s interests in multiple limited liability companies, to Husband.⁵ We find no abuse of discretion.

⁴ The court directed the parties to “equally divide any additional equity.”

⁵ Regarding the community businesses, the court noted that “Wife presented evidence that Husband has many LLCs and other companies registered with the Arizona Corporation Commission.” The court found that “Husband provided very little information regarding all of the community businesses during the litigation, despite repeated attempts by Wife and an order compelling this disclosure by the Court.”

B. Valuation of Marital Home

¶14 Husband also challenges the superior court's valuation of the marital home, arguing that Wife secured an appraisal of the home "from a non-objective appraiser selected by a realtor relative."

¶15 Although we have no transcript from the trial, the exhibit list reflects that both parties commissioned appraisals of the marital home. The superior court chose to rely on the valuation set forth in Wife's appraisal. *See Lee*, 133 Ariz. at 122-23 (noting that the resolution of conflicting evidence is "clearly within the province" of the superior court). Because there was competent evidence supporting the court's valuation of the home, we will not disturb that valuation on appeal. *See id.* at 123.

¶16 On this record, we find no abuse of discretion in the superior court's division of the community property.

III. Personal Property

¶17 Husband also challenges the division of personal property. The parties entered a Rule 69 agreement regarding the division of certain personal property. After finding the agreement was "fair and equitable," the superior court incorporated the agreement into the decree. The agreement provided that certain property would be awarded to Husband "if found."

¶18 A Rule 69 agreement is "presumed to be valid and binding," and Husband, as the party challenging the agreement, has the burden of proving "any defect in the agreement." Ariz. R. Fam. Law P. 69(B). The terms of the parties' agreement are binding on the court if the court determines the agreement is fair. *See* A.R.S. § 25-317(B). On this record, we find no abuse of discretion in the court's adoption of the parties' Rule 69 agreement. Accordingly, we affirm the division of personal property.

IV. Post-Decree Rulings

¶19 Husband last argues that "[i]n spite of the automatic stay from the filing of the Notice of Appeal, the Superior Court continues to hear new issues and issue rulings."⁶ Husband appealed from the decree and did

⁶ There was no "automatic stay" that went into effect upon the filing of Husband's notice of appeal.

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not later file an amended notice of appeal. Therefore, we do not have appellate jurisdiction over the post-decree rulings. *See China Doll Rest., Inc. v. Schweiger*, 119 Ariz. 315, 316 (App. 1978) (holding appellate court lacked jurisdiction over action that occurred two months after notice of appeal was filed).

CONCLUSION

¶20 For the foregoing reasons, we affirm the decree of dissolution. Wife requests an award of attorneys' fees on appeal pursuant to A.R.S. § 25-324. This statute authorizes us to award fees and costs "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). The superior court found that Husband acted unreasonably by (1) "failing to disclose his medical records, banking records and other financial documents despite repeated court orders to do so" and (2) selling "a valuable community asset in violation of the preliminary injunction" without reimbursing Wife for her share or presenting "an accounting of the community expenses paid with the proceeds." On appeal, Husband failed to support his arguments with appropriate references to the record or to legal authority, in violation of ARCAP 13(a). *Cf. Jhagroo v. City of Phoenix, Mun. Court*, 143 Ariz. 595, 598 (App. 1984) (ordering a party to pay attorneys' fees for an "unreasonable infraction" of the Rules of Civil Appellate Procedure). In the exercise of our discretion, we award Wife a reasonable amount of attorney fees and the costs incurred on appeal upon compliance with ARCAP 21.



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