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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JOHN GEORGE BECKLER, *Petitioner/Appellant*,

v.

DENISE RAE BECKLER, *Respondent/Appellee*.

No. 1 CA-CV 16-0782 FC
FILED 10-31-2017

Appeal from the Superior Court in Maricopa County
No. FN2015-004925
The Honorable Dewain D. Fox, Judge

AFFIRMED

COUNSEL

Dwane Cates Law Group, PLLC, Phoenix
By Dwane Cates
Counsel for Petitioner/Appellant

Denise Rae Beckler, Windsor, Georgia
Respondent/Appellee

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MEMORANDUM DECISION

Judge Maria Elena Cruz delivered the decision of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Diane M. Johnsen joined.

C R U Z, Judge:

¶1 John Beckler (“Husband”) appeals the amount and duration of the superior court’s award of spousal maintenance and the court’s distribution of property, division of debts, and award of attorneys’ fees in the dissolution of his marriage to Denise Beckler (“Wife”). For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 The parties married in 1996. During most of their nineteen-year marriage, both worked to make ends meet. In 2010, Husband stopped working because he suffered from several physical disabilities and medical conditions, many incurred as a result of his job as a ranch hand. Husband is receiving Social Security disability income, but the superior court determined he is able to supplement his income by making hand-crafted furniture and other wood and leather items. Wife has been a registered nurse since 2007 and is currently unemployed. Beginning in 2010, Wife received significant income from a trust established by her mother that owns mineral rights and distributes oil revenues to its beneficiaries. The trust began to decrease in value in 2015 and will likely soon be exhausted.

¶3 As a result of Wife’s interest in the trust, between 2010 and 2015, the parties enjoyed a comfortable standard of living. During that time Wife deposited her distributions from the trust into accounts she shared with Husband. Wife managed the finances for the community without any involvement by Husband. Although the parties owned various properties during the marriage, at the time of service of the petition for dissolution they owned only two, one in North Dakota and one in Arizona. Both properties were sold during the pendency of this matter.

¶4 Husband petitioned for dissolution of marriage in September 2015. At trial, among other things, Husband requested a monthly spousal maintenance award of \$6000 for his lifetime. In September 2016, the superior court entered the decree dissolving the marriage and later entered

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a judgment for attorneys' fees. Husband timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) and -2101(A)(1).

DISCUSSION

¶5 "[W]e view the evidence in the light most favorable to supporting the decision below." *Cooper v. Cooper*, 167 Ariz. 482, 487 (App. 1990). We do not reweigh evidence on appeal, *Reeck v. Mendoza*, 232 Ariz. 299, 303, ¶ 14 (App. 2013), and will affirm if there is any reasonable evidence to support the superior court's decree, *Gutierrez v. Gutierrez*, 193 Ariz. 343, 348, ¶ 14 (App. 1998).

I. Spousal Maintenance Award

¶6 Husband argues the superior court abused its discretion in awarding him spousal maintenance of only \$1000 per month for two years, because it did not properly weigh the evidence of the factors set forth in A.R.S. § 25-319(B).

¶7 "We review the superior court's award of spousal maintenance for an abuse of discretion." *Cullum v. Cullum*, 215 Ariz. 352, 354, ¶ 9 (App. 2007). The superior court found Husband was entitled to a maintenance award "because he lacks sufficient property to provide for his reasonable needs and is unable to be self-sufficient through appropriate employment." Then the court made detailed findings as to each of the thirteen required statutory factors listed in A.R.S. § 25-319(B). Notably, the court found no credible evidence that Husband contributed during the marriage to Wife's earning ability, and it also found that he "significantly overstate[d]" his current financial needs and is able to generate some income through selling "hand-crafted furniture and other items."

¶8 Additionally, while Wife's financial resources from her trust and earning ability were "significantly higher" than Husband's income, she presented evidence that her trust income had significantly decreased and could soon end. Wife further testified that she had "maybe 10 years to retire," had not always paid into Social Security, and would not have sufficient income to plan for her retirement, or at the very least survive, if the court granted Husband's requested maintenance award. Under these circumstances, the superior court did not abuse its discretion in awarding Husband less in maintenance than he requested.

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II. Division of Property and Debts

¶9 Husband challenges the superior court's allocation of property and debts. In a dissolution proceeding, the court must "assign each spouse's sole and separate property to such spouse" and divide the community property and debt equitably. A.R.S. § 25-318(A). We review the division of property for an abuse of discretion. *Valento v. Valento*, 225 Ariz. 477, 481, ¶ 11 (App. 2010). We will uphold an apportionment of property unless the record is "devoid of competent evidence to support the [superior court's] decision." See *Platt v. Platt*, 17 Ariz. App. 458, 459 (1972).

A. Personal Property

¶10 Husband argues that the superior court failed to assign him all his sole and separate property, arguing Wife sold some property he had left in a shed at the marital home. Wife testified that Husband said, "he didn't want anything else out of the house." According to Wife, Husband took the personal items he wanted, and she sold for "nominal amounts" or gave away any items he left at the residence to facilitate the sale of the residence.

¶11 The record supports the superior court's resolution of the conflicting evidence. See *Gutierrez*, 193 Ariz. at 347, ¶ 13 (deferring to a superior court's determination regarding witnesses' credibility and to the weight given to conflicting evidence). Accordingly, the superior court did not abuse its discretion in allocating what remained of the parties' sole and separate property.

B. Community Property and Debt

¶12 Husband argues the superior court inequitably divided certain community property and debt. "'Equitable' . . . is a concept of fairness dependent upon the facts of particular cases." *Toth v. Toth*, 190 Ariz. 218, 221 (1997). "In apportioning community property between the parties at dissolution, the superior court has broad discretion to achieve an equitable division[.]" *Boncoskey v. Boncoskey*, 216 Ariz. 448, 451, ¶ 13 (App. 2007).

¶13 Husband challenges the superior court's resolution of the parties' credit card debt, arguing that since he was "unaware of significant community debt," he should not be responsible for it. The trial testimony and other evidence identified two credit cards with outstanding balances

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that both parties had access to during the marriage.¹ Granting Wife's request, the court ordered the parties to pay the credit card balances using the proceeds from the sale of community real estate that had yet to be divided. The court then assigned each party responsibility for any respective credit card debt they incurred after Husband filed the petition. Husband has not shown the superior court abused its discretion and reasonable evidence supports the superior court's division of the parties' debt.

¶14 Husband next argues the superior court abused its discretion by awarding him the community timeshare property, asserting the court should have awarded it to Wife. Based on the record before us, the superior court considered the parties' community property and debts in totality while making its equitable division, pursuant to A.R.S. § 25-318(A) and (B). We therefore cannot consider the allocation of an individual community asset or debt in a vacuum. Husband has not demonstrated the superior court abused its discretion in allocating the timeshare property to him.

¶15 Finally, Husband argues the superior court failed to divide his retirement account. We disagree. The parties dispersed and closed Husband's retirement account before he filed for dissolution. At trial, Husband alleged Wife retained his portion of the proceeds of the account and requested Wife reimburse him for that amount. In its determination of spousal maintenance, the court found there was no credible evidence of fraudulent disposition of property held by the parties in common. Additionally, the court also implicitly denied Husband's request without making any further specific factual findings when it denied any affirmative relief sought which was not explicitly granted in its decree. Section 25-318 does not require a court to state its findings on the record and Husband did not request the court make findings. *See* Ariz. R. Fam. Law P. 82(A) (providing "the court, if requested before trial, shall find the facts specially and state separately its conclusions of law thereon"). Thus, viewing the record in the light most favorable to sustaining the superior court's ruling, we may infer that the court denied Husband's request because the funds in the account had already been distributed to the parties and were therefore no longer subject to division. *See Marco C. v. Sean C.*, 218 Ariz. 216, 220 n. 3, ¶ 12 (App. 2008) (holding we "may generally infer findings of fact necessary to sustain a court's order").

¹ Husband testified he had access to their accounts but did not "involve [him]self whatsoever in the finances."

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III. Marital Waste

¶16 Next, Husband argues the superior court erred in denying his claim that Wife committed marital waste by misappropriating community funds.

¶17 Sections 25-318 and -319, governing division of property and spousal maintenance, respectively, require a court to consider any excessive or abnormal expenditures, destruction, concealment, or fraudulent disposition of community property when determining the amount and duration of spousal maintenance and the equitable division of that property. A.R.S. §§ 25-318(C), -319(B)(11). The party alleging marital waste has the burden of making a *prima facie* showing of waste. *Gutierrez*, 193 Ariz. at 346-47, ¶ 7. “It is then the burden of the spending spouse to go forward with evidence to rebut the showing of waste because all of the evidence relative to the expenditures is generally within the knowledge, possession, and control of the spending spouse.” *Id.* We review a court’s determination of marital waste for an abuse of discretion. *See Kline v. Kline*, 221 Ariz. 564, 573, ¶ 35 (App. 2009) (citing *Cavanagh v. Ohio Farmers Ins. Co.*, 20 Ariz. App. 38, 44 (1973)).

¶18 Property that a spouse acquires by gift, devise, or descent is not community property. A.R.S. §§ 25-211(A)(1), -213(A). Even if separate funds are comingled with community funds, separate property remains separate as long as it can be identified. *See Cooper v. Cooper*, 130 Ariz. 257, 259-60 (1981); *see also Nace v. Nace*, 104 Ariz. 20, 23 (1968).

¶19 Here, Husband presented banking statements of the parties’ joint accounts, alleging Wife disposed of hundreds of thousands of dollars without his knowledge. The superior court found the funds Wife allegedly misappropriated came from the trust set up by Wife’s mother, which is Wife’s sole and separate property. Reasonable evidence in the record supports the superior court’s finding. The parties’ joint tax returns from 2012 through 2014, together with testimony that Wife received trust funds since 2010, show the majority of Wife’s income during that period came from the trust. Although the funds were deposited into the parties’ joint accounts, Husband acknowledged the funds came from the trust.

¶20 As to any community funds, the superior court found Husband failed to meet his burden of proving misappropriation by Wife. Wife testified she and Husband spent “a lot of money,” but that money was used as gifts to Wife’s adult children in their times of need, to pay the parties’ bills, and to purchase a new truck for Husband. Husband admitted

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throughout trial that he was not involved in the parties' finances and generally lacked knowledge of their account activity, even though he had access to the accounts and a debit card to withdraw money. Accordingly, we cannot say the court erred in concluding Husband failed to meet his burden.

¶21 Based on the record before us, the superior court did not abuse its discretion in denying Husband's marital waste claim and consequently not weighing waste as a factor in determining spousal maintenance and division of community property.

IV. Preliminary Injunction Violations

¶22 Husband argues the superior court erred in denying his request to sanction Wife for her violation of the preliminary injunction issued at the outset of the dissolution proceeding. We review the superior court's decision whether to impose sanctions for violation of a court order for an abuse of discretion. *Green v. Lisa Frank, Inc.*, 221 Ariz. 138, 153, ¶ 40 (App. 2009); *Woodworth v. Woodworth*, 202 Ariz. 179, 184, ¶ 30 (App. 2002).

¶23 Husband argues Wife violated the injunction by canceling his medical insurance, thereby depriving him of reimbursement for medical expenses he incurred after the cancellation. The superior court found, however, that "some of the medical bills submitted by Husband are for services provided before cancellation of the policy," and that Husband did not present "credible evidence" identifying what portion of his uninsured medical expenses would have been covered by insurance to determine the amount of reimbursement, and on that basis declined to award compensation. Additionally, the superior court found that both parties violated the preliminary injunction; Wife by cancelling Husband's medical insurance, and Husband by assaulting Wife. See A.R.S. § 25-315(A)(1)(b)(i), (c). The superior court found the parties' violations of the preliminary injunction "offset each other, and neither party [was] entitled to an award of additional compensation against the other party." Husband has failed to show the superior court abused its discretion in so ruling.

V. Attorneys' Fees

¶24 Husband challenges the amount of attorneys' fees the superior court awarded him, arguing Wife acted unreasonably throughout the litigation. Section 25-324(A) authorizes that a court "from time to time, after considering the financial resources of both parties and the reasonableness of [their] positions . . . may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or

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defending any proceeding under this chapter.” We review an award of attorneys’ fees under this statute for an abuse of discretion. *Myrick v. Maloney*, 235 Ariz. 491, 494, ¶ 6 (App. 2014).

¶25 After considering Husband’s affidavit of attorneys’ fees and Wife’s objection thereto, the superior court entered a judgment that Wife pay \$5000 of Husband’s attorneys’ fees, plus statutory interest. The superior court awarded Husband a portion of his fees based on the disparity of financial resources, not the parties’ reasonableness. Husband has not shown that Wife took unreasonable positions during the litigation and, in fact, the court ruled more consistently than not with Wife’s requests as to spousal maintenance, distribution of property, and community debt; therefore, we affirm the superior court’s ruling on attorneys’ fees.

¶26 Wife requests an award of attorneys’ fees on appeal pursuant to A.R.S. § 12-349 and Arizona Rule of Civil Appellate Procedure 25 “due to [Husband’s] unreasonable conduct.” Section 12-349(A)(1) allows a court to award attorneys’ fees if the basis of an appeal is “without substantial justification.” “[W]ithout substantial justification” means that the claim or defense is groundless and is not made in good faith.” A.R.S. § 12-349(F). Wife has not proven by a preponderance of the evidence that she is entitled to fees under A.R.S. § 12-349. See *Reynolds v. Reynolds*, 231 Ariz. 313, 318, ¶ 16 (App. 2013) (stating all factors must be proven by a preponderance of the evidence). Nor has Wife argued or demonstrated Husband’s appeal was “frivolous, or . . . filed solely for the purpose of delay.” See ARCAP 25; see also *City of Phoenix v. Bellamy*, 153 Ariz. 363, 367-68 (App. 1987) (finding an award based on frivolousness is not appropriate when a case presents issues “about which reasonable minds could differ”).

¶27 Both Husband and Wife request an award of attorneys’ fees on appeal pursuant to A.R.S. § 25-324. In the exercise of our discretion, we deny both requests. However, as the prevailing party on appeal, Wife is entitled to her taxable costs upon compliance with ARCAP 21.

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CONCLUSION

¶28 For the foregoing reasons, we affirm the superior court's decree of dissolution and award of attorneys' fees.



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