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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ANDREW MCBROOM, *Petitioner/Appellant*,

v.

MOIRA MCBROOM, *Respondent/Appellee*.

No. 1 CA-CV 17-0221 FC
FILED 3-29-2018

Appeal from the Superior Court in Maricopa County
No. FC2016-003580
The Honorable Michael J. Herrod, Judge

REVERSED AND REMANDED

COUNSEL

Reppucci & Roeder PLLC, Phoenix
By Ryan M. Reppucci
Counsel for Petitioner/Appellant

MEMORANDUM DECISION

Presiding Judge Jon W. Thompson delivered the decision of the Court, in which Judge Peter B. Swann and Judge James P. Beene joined.

T H O M P S O N, Presiding Judge:

¶1 Andrew McBroom (husband) appeals from a decree of dissolution characterizing a debt as his separate obligation and from the amount of childcare costs attributed to both parents in the child support worksheet. For the reasons stated below, we reverse the debt allocation and child support calculation and remand for further consideration.

BACKGROUND

¶2 The parties married in 2006 and have one child. Husband filed a petition for dissolution in March 2016, and Moira McBroom (wife) was served on April 2, 2016. At trial, husband argued the First Credit Union Line of Credit (Line of Credit) was a community obligation, and wife took the position that this debt existed prior to the marriage and, therefore, was husband's separate obligation. Husband testified the Line of Credit originated in 2011 and was different than a pre-marital line of credit he used to satisfy a debt to his first wife. In allocating debts, the trial court concluded the Line of Credit was husband's separate debt "because husband could not identify what community obligations or assets were purchased using this debt."

¶3 Regarding child support, husband testified that he paid an annualized $424.80 per month for childcare during the school year. Husband proposed that each party pay for the childcare he or she needed during summer and school breaks but that he get credit for paying childcare during the school year. Wife did not pay any childcare expenses at the time of trial but estimated she would spend either $550 per month or $175 a week if she paid for childcare.

¶4 The decree awarded spousal maintenance to wife for twelve months, during which time husband's child support was determined to be $84.37. However, the trial court found a downward deviation during this period was appropriate and ordered husband to pay nothing in child support during the time he paid spousal maintenance. When his spousal

maintenance obligation ends, husband is obligated to pay $208.25 per month in child support based on the child support worksheet prepared by the court. This child support worksheet attributed a monthly childcare cost of $424.80 to both parties.

¶5 Husband filed a timely notice of appeal from the decree. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101(A)(1) (2018).

DISCUSSION

¶6 At the outset, we note the general rule "that when an appellant raises a debatable issue, the court, in its discretion, may find that an appellee's failure to file an answering brief constitutes a confession of error." *State ex rel. McDougall v. Superior Court (Blendu),* 174 Ariz. 450, 452 (App. 1993). As discussed below, husband raised debatable errors, and based on the record, which includes wife's confession of error, a remand is warranted.

I. Debt Allocation

¶7 The decree allocated the Line of Credit debt to husband as his separate obligation "because husband could not identify what community obligations or assets were purchased using this debt." Husband argues the trial court erred in placing the burden on him to prove this was a community debt because debts incurred during the marriage are presumed to be community obligations. We review the trial court's allocation of property for an abuse of discretion; however, the classification of property as separate or community is a question of law we review de novo. *Bell-Kilbourn v. Bell-Kilbourn,* 216 Ariz. 521, 523, ¶ 4 (App. 2007).

¶8 "A debt incurred by a spouse during the marriage is presumed to be a community obligation; a party contesting the community nature of a debt bears the burden of overcoming that presumption by clear and convincing evidence." *Hrudka v. Hrudka,* 186 Ariz. 84, 91–92 (App. 1995) (citing additional cases), *superseded by statute on other grounds as recognized in Myrick v. Maloney,* 235 Ariz. 491, 494, ¶ 8 (App. 2014); *see also In re Marriage of Flower,* 223 Ariz. 531, 535, ¶ 12 (App. 2010). Husband testified that this Line of Credit originated in 2011, during the marriage. There was also testimony about another line of credit husband established before the marriage that was used to pay an obligation to his first wife. Whether or not the Line of Credit account was established before marriage is not dispositive. It was undisputed that the Line of Credit had a zero balance as of August 19, 2011, which was during the marriage. The first

entry on the Line of Credit bank records showed a $137.59 balance as of July 18, 2011 and a fluctuating balance until it was paid down to a zero balance on August 19, 2011. Thus, even if there was pre-marital debt on this account, it was paid off by August 19, 2011. The balance subsequently fluctuated and reached $10,312.52 on April 15, 2016, which is the statement date closest to the date of service. Therefore, any charges between August 19, 2011 and April 2, 2016 (the date of service) were incurred during the marriage and are presumed to be a community obligation. *Flower*, *id.*; *Hrudka*, *id.*

¶9 Wife bore the burden of establishing by clear and convincing evidence that the charges incurred during marriage were husband's separate obligation. *Hrudka, id.* Wife did not introduce any evidence to rebut the community presumption; she did not know what the charges were for and could not show they were excessive or abnormal. Therefore, we conclude the trial court erred in finding the Line of Credit was husband's separate obligation. We reverse and remand for an equitable allocation of this community obligation.

II. Child Support Worksheet

¶10 Husband contends the trial court erred in attributing $424.80 per month in childcare costs to both parties. We review child support awards for an abuse of discretion and accept the trial court's findings of fact unless clearly erroneous. *Engel v. Landman,* 221 Ariz. 504, 510, ¶ 21 (App. 2009). However, "[w]e review de novo the trial court's interpretation of the [Child Support] Guidelines." *Id.*

¶11 According to the Arizona Child Support Guidelines, *see* A.R.S. § 25-320 app. § 9(B)(1) (2018), the trial court may add "[c]hildcare expenses that would be appropriate to the parents' financial abilities." Husband paid the childcare costs during the school year at an annualized rate of $424.80 per month. However, the parties had not determined how to allocate childcare costs during the summer or over school breaks now that wife would be sharing equal parenting time. Wife estimated she would pay either $550 a month or $175 per week for childcare during her parenting time, but that she would pay a different, presumably lesser, amount if husband continued to pay for childcare during the school year.

¶12 The trial court's child support worksheets attributed annualized monthly childcare costs of $424.80 to *both* parents, for a total of $849.60. This is not supported by the evidence. Even if wife pays for childcare during her parenting time over school breaks and husband

continues to pay for childcare during the school year, the cost does not amount to $424.80 per month. Alternatively, if the trial court determined that each parent would pay for childcare during his or her parenting time, the amount husband had been paying for all childcare costs ($424.80) would be split equally between the parties, not doubled. Even with the additional expense for childcare during school breaks, wife would not pay $424.80 a month if husband is paying for childcare during the school year. Under either scenario, the amount of childcare costs included in the child support worksheets is not supported by the evidence. We reverse the child support orders and remand for reconsideration based on correct childcare costs.

CONCLUSION

¶13 We reverse the allocation of the Federal Credit Union Line of Credit and the child support orders and remand for reconsideration consistent with this decision. As the successful party, husband is entitled to an award of taxable costs on appeal upon compliance with Arizona Rule of Civil Appellate Procedure 21. *See* A.R.S. § 12-342 (2018).

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