

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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In re the Matter of:

MARIA LUISA AGUINIGA, *Petitioner/Appellee*,

*v.*

MIGUEL AGUINIGA, *Respondent/Appellant*.

No. 1 CA-CV 17-0299 FC  
FILED 7-31-2018

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Appeal from the Superior Court in Maricopa County  
No. FC2014-071832  
The Honorable Jeanne M. Garcia, Judge

**AFFIRMED**

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APPEARANCES

Maria Luisa Aguiniga, Goodyear  
*Petitioner/Appellee*

Law Offices of Pedro A. Simpson, PLLC, Gilbert  
By Pedro A. Simpson  
*Counsel for Respondent/Appellant*

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**MEMORANDUM DECISION**

Judge James B. Morse Jr. delivered the decision of the Court, in which Chief Judge Samuel A. Thumma and Judge James P. Beene joined.

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**M O R S E**, Judge:

¶1 Miguel Aguiniga ("Husband") appeals from the decree of dissolution ending his marriage to Maria Luisa Aguiniga ("Wife"). For the following reasons, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Wife petitioned to dissolve the parties' twenty-two year marriage. Following a two-day trial, the superior court entered a decree. As relevant to this appeal, the superior court: (1) ordered the parties to divide Husband's PepsiCo 401(k) account equally; (2) awarded Husband six vehicles and directed him to make an equalization payment to Wife of one-half the combined value of the vehicles; (3) ordered the parties to sell a recreational vehicle ("RV") and divide the proceeds evenly; (4) awarded Wife spousal maintenance of \$500 per month for eight months; and (5) awarded Wife \$5,500 in attorneys' fees.

¶3 Husband timely appealed from the decree, and this court has jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1).

**DISCUSSION**

**I. Property Division**

¶4 In a dissolution proceeding, the superior court is charged with dividing the community property equitably. A.R.S. § 25-318(A); *Neal v. Neal*, 116 Ariz. 590, 594 (1977). This court will not disturb the apportionment absent a clear abuse of discretion. *In re Marriage of Inboden*, 223 Ariz. 542, 544, ¶ 7 (App. 2010).

**A. PepsiCo 401(k) Account**

¶5 At the time of dissolution, Husband had a 401(k) retirement account through his employer, PepsiCo, which contained community

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property. After learning that Wife was filing for divorce, Husband withdrew \$50,000 from the 401(k) account. He deposited the amount remaining after taxes and penalties into his personal checking account and, thereafter, transferred \$40,000 to a bank account belonging to his friend, J.H. Husband testified that the transfer was repayment of a community debt to J.H. However, Husband presented no documentation of the loan; J.H. did not testify at trial, and Wife testified that there was no loan from J.H.

¶6 Without expressly finding that the Husband did not establish the existence of a loan from J.H., the superior court ordered Husband to deposit sufficient funds in the account to return its balance to \$62,119.86, which was the account balance before the \$50,000 withdrawal. After the balance was restored, the court ordered the parties to divide the account equally by means of a Qualified Domestic Relations Order.

¶7 On appeal, Husband contends the superior court erred by ordering him to return \$50,000 to the account. He argues the court made no express findings supporting its order, and absent a finding of "marital financial or property misconduct," it did not "have jurisdiction to distribute assets prior to the service of the petition for dissolution." Neither party requested findings of fact or conclusions of law. *See* Ariz. R. Fam. Law P. 82(A) ("In all family law proceedings tried upon the facts, the court, if requested before trial, shall find the facts specially and state separately its conclusions of law thereon."). Therefore, this court presumes the superior court found every fact necessary to support its ruling. *See Stevenson v. Stevenson*, 132 Ariz. 44, 46 (1982).

¶8 In apportioning property in a dissolution proceeding, the superior court may consider any "destruction, concealment, or fraudulent disposition" of community property. A.R.S. § 25-318(C); *Martin v. Martin*, 156 Ariz. 452, 458 (1988) ("[T]he superior court, in a dissolution proceeding, is authorized to award a spouse a sum of money representing the value of his or her interest in community or commonly held assets which are not available for division due to the excessive or abnormal expenditures, destruction, concealment or fraudulent dissipation of such assets by the other spouse."). Here, the record contains evidence from which the court could conclude no such community debt existed and that Husband fraudulently dissipated \$50,000 of community funds contained in his 401(k) account.

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¶9 Because the court did not abuse its discretion in considering Husband's actions in apportioning the community account, we affirm the superior court's ruling regarding the PepsiCo 401(k) account.

**B. Vehicles**

¶10 At the time of service of the petition for dissolution, the parties owned seven vehicles as community property. The superior court awarded Husband six of the vehicles, having an aggregate stipulated value of \$18,600. The superior court also ordered Husband to make a corresponding equalization payment to Wife of one-half the value of those vehicles, or \$9,300. The court indicated that it made this ruling "pursuant to stipulation." The court also ordered the parties to sell the seventh vehicle, an RV that had been gifted to them during the marriage, and split the proceeds equally after Husband paid the \$9,300 equalization payment to Wife.

¶11 On appeal, Husband contends that, although he stipulated to the value of the vehicles, he did not agree to keep the vehicles and pay one-half their value to Wife. According to Husband, "the evidence and *equitable distribution*" required the superior court to order the parties to sell the vehicles and divide the proceeds.

¶12 By statute, the superior court is required to divide community property "equitably, though not necessarily in kind." A.R.S. § 25-318(A). Regardless of whether Husband stipulated to keep the vehicles, the court was required to divide the value of the community property in an equitable fashion only; it was not required to divide the property in kind. *See Lee v. Lee*, 133 Ariz. 118, 121 (App. 1982) (rejecting the contention that the "first appropriate course of action" is to partition community property in kind). The court acted within its discretion in awarding the vehicles to Husband and directing an equalization payment to Wife. *See Neal*, 116 Ariz. at 594 ("So long as the trial court acts equitably, it is allowed great discretion in the apportionment of the community assets and obligations."). The court also acted within its discretion in directing the parties to sell the RV and split the sale proceeds after first paying Wife's equalization payment.

¶13 Because the superior court did not abuse its discretion in fashioning an equitable division of the community vehicles, we affirm.

**II. Spousal Maintenance**

¶14 The superior court has substantial discretion to establish the amount and duration of spousal maintenance, although it must do so

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within the framework of A.R.S. § 25-319. *Rainwater v. Rainwater*, 177 Ariz. 500, 502 (App. 1993). This court reviews an award of spousal maintenance for an abuse of discretion and will affirm if there is reasonable evidence to support it. *Helland v. Helland*, 236 Ariz. 197, 202, ¶ 22 (App. 2014).

¶15 Following trial, the superior court directed Husband to pay Wife spousal maintenance of \$500 per month for eight months. On appeal, Husband argues that "the court made no findings of fact whatsoever regarding any of the factors" in A.R.S. § 25-319 and that its lack of findings "is consistent with [the court's] pattern of prejudicing Husband and favoring Wife without substantial justification."

¶16 The superior court must consider all relevant factors before awarding spousal maintenance. A.R.S. § 25-319; *Elliott v. Elliot*, 165 Ariz. 128, 131 n.1 (App. 1990). However, the court is not required to make written findings unless requested by the parties. Ariz. R. Fam. Law P. 82(A). Even though neither party requested such findings, the superior court made written findings regarding spousal maintenance in its ruling.

¶17 In reviewing the superior court's award of spousal maintenance, this court first considers whether the requesting spouse meets one of the statutory requirements for maintenance set forth in A.R.S. § 25-319(A). *Gutierrez v. Gutierrez*, 193 Ariz. 343, 348, ¶ 15 (App. 1998). Those requirements are that the spouse:

1. Lacks sufficient property, including property apportioned to the spouse, to provide for that spouse's reasonable needs.
2. Is unable to be self-sufficient through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home or lacks earning ability in the labor market adequate to be self-sufficient.
3. Contributed to the educational opportunities of the other spouse.
4. Had a marriage of long duration and is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.

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A.R.S. § 25-319(A).<sup>1</sup>

¶18 The evidence here reflects that Wife satisfies the first requirement. She works as a shipping clerk earning \$2,461 per month. Her Affidavit of Financial Information ("AFI") reflects that her expenses exceed her income by more than \$1,000. She did not receive significant property in the dissolution. Accordingly, the record supports a finding that Wife lacks sufficient property to provide for her reasonable needs and is eligible for spousal maintenance.

¶19 Husband argues, however, that "Wife has a habit of falsifying evidence" and that her earnings "actually surpassed Husband's when the spousal maintenance award was added on." Wife's 2014 W-2 reflected earnings of \$27,609. Husband's 2014 W-2 reflected earnings of \$53,949. Even after adding the awarded spousal maintenance to Wife's income, her earnings do not surpass Husband's. Further, Husband has not shown that the superior court abused its discretion in assessing credibility in making its spousal maintenance determination.

¶20 Having determined that Wife is eligible for spousal maintenance, this court next reviews "the amount and duration of the award to determine whether the [superior] court properly considered the factors listed in A.R.S. § 25-319(B)." *Gutierrez*, 193 Ariz. at 348, ¶ 15. The relevant factors here include the "duration of the marriage" and the "comparative financial resources of the spouses, including their comparative earning abilities in the labor market." A.R.S. § 25-319(B)(2) and (5).

¶21 The parties were married for twenty-two years. Husband's monthly income for 2015 was approximately \$5,600 per month in comparison to Wife's monthly income of \$2,461.<sup>2</sup> Based on this evidence, the superior court did not abuse its discretion in awarding Wife spousal maintenance of \$500 per month for eight months.

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<sup>1</sup> Section 25-319 was recently amended to include an additional factor. See H.B. 2031, 53rd Leg., 2d Reg. Sess. (Ariz. 2018). This decision relies on the former version of § 25-318 in effect at the time of the parties' dissolution.

<sup>2</sup> Husband does not report his monthly income on his AFI. Attached records from Husband's employer, however, reflect \$62,217.59 year to date earnings as of December 5, 2015, which equates to approximately \$5,600 monthly.

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¶22 Husband also argues the superior court erred by awarding Wife temporary monthly spousal maintenance of \$750 and failing "to revisit the award at trial as it promised." However, the court revisited the issue of spousal maintenance at trial and lowered the amount to \$500 per month for only eight months.

¶23 Finding no abuse of discretion, we affirm the spousal maintenance award.

**III. Attorneys' Fees**

¶24 In a dissolution proceeding, the superior court may award attorneys' fees after considering the parties' financial resources and the reasonableness of their positions. A.R.S. § 25-324(A). This court reviews the fee award for an abuse of discretion. *Mangan v. Mangan*, 227 Ariz. 346, 352, ¶ 26 (App. 2011).

¶25 The superior court awarded Wife \$5,500 in attorneys' fees after finding that Husband had greater income and unreasonably appealed from a temporary order. Husband argues that the latter finding "was clearly retaliatory and calculated to punish Husband for challenging the court's ruling," and that no harm was caused by his appeal, which he later abandoned.

¶26 The record confirms that Husband's income is greater than Wife's. The record also confirms that Husband appealed from temporary orders, which are not appealable. *See Villares v. Pineda*, 217 Ariz. 623, 625, ¶ 11 (App. 2008). Finding no abuse of discretion, we affirm the superior court's award of attorneys' fees to Wife.

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CONCLUSION

¶27 For the foregoing reasons, we affirm the decree. Both parties request an award of attorneys' fees on appeal. See A.R.S. § 25-342. Wife represented herself on appeal and, therefore, is not entitled to recover fees. See *Munger Chadwick, P.L.C. v. Farwest Dev. & Constr. of the Sw., LLC*, 235 Ariz. 125, 126, ¶ 5 (App. 2014). In the exercise of our discretion, we deny Father's request for fees on appeal. We award costs to Wife upon compliance with Arizona Rules of Civil Appellate Procedure 21.



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