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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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LOURDES SPOONMORE, *Petitioner/Appellee*,

*v.*

PAUL D. SPOONMORE, SR., *Respondent/Appellant*.

No. 1 CA-CV 17-0598 FC  
FILED 5-1-2018

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Appeal from the Superior Court in Maricopa County  
No. FN2016-050136  
The Honorable Jennifer C. Ryan-Touhill, Judge

**AFFIRMED**

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COUNSEL

Thomas A. Morton PLLC, Phoenix  
By Thomas A. Morton  
*Counsel for Petitioner/Appellee*

The Murray Law Offices PC, Scottsdale  
By Stanley D. Murray  
*Counsel for Respondent/Appellant*

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**MEMORANDUM DECISION**

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge Kenton D. Jones and Judge James B. Morse Jr. joined.

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**H O W E**, Judge:

¶1 Paul Spoonmore, Sr. (“Husband”) appeals the family court’s denial of his “Motion for New Trial and/or Motion to Set Aside Default Decree” and the court’s decision to award Lourdes Spoonmore (“Wife”) additional attorneys’ fees based on the post-decree motions. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 The parties married in December 1985, and Wife petitioned for dissolution of marriage in August 2016. In September, Wife moved for temporary orders and to enforce a preliminary injunction, which sought a temporary spousal maintenance award, exclusive use and possession of the marital residence, attorneys’ fees of \$5,000, and Husband’s return of property that he had taken from the marital residence. In October, the family court ordered the parties to appear at a resolution management conference (“RMC”) and warned that if only one party appeared for the RMC, the court may proceed by default. It also stated that failure to obey the order in all respects may subject the offending party to sanctions. The court further ordered each party to file a proposed resolution statement and warned that it would consider each party’s reasonableness, including failure to take a position, in any later requests for attorneys’ fees. Additionally, the court ordered both parties to comply with discovery under Arizona Rule of Family Law Procedure (“ARFLP”) 49. Wife filed her proposed resolution statement but Husband did not.

¶3 Both parties appeared at the RMC and informed the court that they had not reached any agreements. The court ordered the parties to prepare a joint prehearing statement and affidavits of financial information (“AFIs”) for the temporary orders and preliminary injunction hearing and set a status conference for January 2017. The court warned the parties that failure to appear or comply with the court’s orders to file the requested forms could result in sanctions and proceeding by default under ARFLP 76(D). Wife filed her affidavit of financial information (“AFI”) and her own

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prehearing statement because Husband did not cooperate in preparing the statement.

¶4 At the temporary orders and preliminary injunction hearing held in November 2016, the court awarded Wife exclusive use of the residence and ordered Husband to pay Wife's rent, to submit an itemized list of the property that he had taken from their residence, to keep Wife's travel benefits in place, and to make a \$2,000 payment for Wife's attorneys' fees. At the January 2017 status conference, the court noted that Wife was still waiting for Husband to comply with discovery, and it ordered that all discovery must be completed by January 20. The court also informed both parties that it had set a status conference for March.

¶5 Husband did not appear at the March status conference. The court found that Husband had notice of the conference but had failed to appear. The court proceeded without Husband and set a dissolution trial date for May. The court also ordered the parties to complete all disclosures and discovery and to file AFIs. It further ordered them to file a pretrial statement no later than five days before trial. The court again warned the parties that failure to appear or comply with the orders could result in sanctions, including proceeding by default under ARFLP 76(D). Wife filed her pretrial statement about one week before trial, and Husband filed his pretrial statement the day before trial.

¶6 At the May trial, the court stated that it had not seen Husband's pretrial statement. The court noted that Husband had failed to (1) appear at the March status conference, (2) file a timely pretrial statement, and (3) file an AFI. The court then asked Husband why it should allow him to speak at trial and Husband responded that he had submitted the pretrial statement the day before trial. The court asked again why it should hear from him at trial even though he did not follow the court's orders. Husband responded that he did not receive the orders because he had moved to St. Louis, Missouri. The court interrupted Husband—the only time it did so during Husband's explanations—and asked Husband when he moved from his listed address in Las Vegas to St. Louis, and he replied, "two weeks ago." Consequently, the court found that Husband was living at the Las Vegas address as of March and that Husband's explanation why he had not received the minute entry was not credible. The court then asked Husband a third time why it should hear from him at trial. Husband answered that (1) he hoped the court would hear him, (2) he could not afford a lawyer, (3) he was present and honest, and (4) he did not want to give Wife spousal maintenance.

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¶7 When the court addressed Husband's failure to file an AFI, Husband replied that he thought he had already given that information to the court. The court then asked Husband why he did not appear at the March status conference, and he answered that he "got sidetracked on days; and when I knew what time I was supposed to go, it was over. So, it was a lack of my awareness just knowing what day it was."

¶8 After listening to Husband's explanations for his noncompliance, the court asked Wife how she wished to proceed, and she requested that the matter proceed by default. Wife specifically argued that Husband had failed to give a sufficient reason for his failure to comply with the court's orders and had only partially responded to discovery. Husband did not address Wife's assertions, but instead stated that he had been "100 percent fair," the parties were changing their lifestyles, Wife chose her profession and he chose his, and "for [him] to give her money is ridiculous." The court granted Wife's request to proceed by default. The court reasoned that "it would be patently unfair" to Wife to allow Husband to proceed when he had failed to comply with the court's orders while Wife had done so. The court also noted that it had warned Husband about the possibility of proceeding by default if he was noncompliant. The court further noted that it had given Husband an opportunity to explain his noncompliance, but found his reasons were not credible and did not present excusable neglect.

¶9 The trial then proceeded with Wife's testimony. Wife also presented evidence supporting her claims for spousal maintenance, property distribution, and attorneys' fees. She submitted exhibits that included her AFI and Husband's discovery responses, as well as some of the parties' retirement statements, tax returns, W-2s, bank statements, and correspondence between counsel and parties. Despite the court's admonishment to Husband that he could not participate in the trial, he continued to defy the court. For instance, he whispered "Jesus" during Wife's testimony and interrupted her to argue with the court about his income. He eventually left the courtroom, telling Wife as he left that she was no longer welcome to visit her in-laws.

¶10 On May 31, the court entered the "Decree of Dissolution of Marriage." The court found that Husband had not complied with court orders by (1) failing to appear for a hearing, (2) failing to file an AFI, (3) violating the preliminary injunction against disposition of property, (4) failing to negotiate in good faith, and (5) failing to substantially comply with discovery requests. The court also found that Husband received an opportunity to explain his noncompliance and to demonstrate excusable

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neglect but failed to do so. The decree awarded Wife spousal maintenance, divided the property and debts, and awarded Wife an undetermined amount of attorneys' fees. Regarding the attorneys' fees, the court found that a substantial disparity of financial resources between the parties existed: Husband had considerably more resources to contribute. Additionally, it found that Husband had acted unreasonably in the litigation. Notwithstanding the undetermined amount of attorneys' fees, the court expressly determined that the decree was an appealable order under ARFLP 78(B).

¶11 On June 15, Husband timely moved for a new trial and alternatively moved to set aside the default decree. On July 17, the court determined that Husband owed Wife \$7,000 in attorneys' fees but did not include ARFLP 78(B) language in its order. The court also denied Husband's post-decree motions and awarded Wife an undetermined amount of attorneys' fees for responding to those motions. The court did not sign the minute entry denying Husband's post-decree motions or the additional attorneys' fees award. On July 20, Husband requested findings for the second attorneys' fees award.

¶12 On September 5, the court denied Husband's post-decree motions and awarded Wife \$3,000 in attorneys' fees related to those motions. The court found that a substantial disparity of financial resources existed and that Husband had considerably more resources. The court also ruled that Husband had acted unreasonably in claiming that (1) he did not receive notice that the court may proceed by default, (2) the court denied him an opportunity to justify his noncompliance, (3) the court "assigned a substantial majority of community debt" to him, and (4) his noncompliance was excusable because Wife had not moved to compel discovery. Husband timely appealed.

## DISCUSSION

### 1. Husband's Post-Decree Motions

¶13 Husband argues that the decree should have been set aside or a new trial granted because the family court denied him due process of law. A trial court's denial of a motion to set aside a judgment or a motion for a new trial is reviewed for an abuse of discretion. *Pullen v. Pullen*, 223 Ariz. 293, 296 ¶ 10 (App. 2009) (reviewing the denial of a motion to set aside default judgment for an abuse of discretion); *Goglia v. Bodnar*, 156 Ariz. 12, 16 (App. 1987) (reviewing the denial of a motion for a new trial for an abuse of discretion). Due process claims, however, are reviewed de novo. *Savord*

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*v. Morton*, 235 Ariz. 256, 260 ¶ 16 (App. 2014). “Due process entitles a party to notice and an opportunity to be heard at a meaningful time and in a meaningful manner.” *Cook v. Losnegard*, 228 Ariz. 202, 206 ¶ 18 (App. 2011). Because the family court afforded Husband notice and an opportunity to be heard at the dissolution trial before determining to proceed by default, the court did not abuse its discretion by denying Husband’s post-decree motions.

¶14 ARFLP 76(D)(1) provides that if a party fails to comply with a pretrial order or to appear at an RMC, a pretrial conference, an evidentiary hearing, a trial, or any other scheduled hearing, the court may “refus[e] to allow the disobedient party to support or oppose designated claims or defenses or prohibit[] that party from introducing designated matters in evidence[.]” In other words, ARFLP 76(D)(1) allows the court to proceed by default, as the court did in the immediate case, when a party does not comply with the court’s orders or make an appearance at scheduled meetings.

¶15 Here, Husband received multiple notices from the court that if he did not comply with the court’s pretrial orders or appear at the scheduled meetings, the court could proceed by default under ARFLP 76(D). Husband then failed to appear at the March status conference and failed to file an AFI. At trial, the court gave Husband ample opportunity to justify his noncompliance. Husband’s explanations, however, were not credible and insufficient to establish excusable neglect. Although the court interrupted Husband once, the court provided Husband with multiple, uninterrupted opportunities to explain his noncompliance. He failed to do so. As such, the court did not deny Husband due process and did not abuse its discretion by proceeding by default.

¶16 Husband counters that before a sanction is imposed that results in a default judgment, due process requires that the trial court hold an evidentiary hearing to determine whether (1) the party or party’s counsel was at fault for the discovery violation, (2) the violation was committed willfully or in bad faith, and (3) the egregiousness of the violation warranted a sanction of dismissal. To support this assertion, Husband relies on *Seidman v. Seidman*, 222 Ariz. 408 (App. 2009), *Zimmerman v. Shakman*, 204 Ariz. 231 (App. 2003), and *Wayne Cook Enter., Inc. v. Fain Props. Ltd. P’ship*, 196 Ariz. 146 (App. 1999). These cases, however, considered a default judgment based on a discovery sanction. Here, the court proceeded by default not merely because of the discovery violations, but because Husband had also failed to file an AFI, failed to attend the March status conference, failed to negotiate in good faith, and

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violated the preliminary injunction. These cases are therefore inapposite and Husband's argument fails.

**2. Wife's Additional Award of Attorneys' Fees**

¶17 Husband argues that the family court abused its discretion by awarding additional attorneys' fees to Wife because his post-decree motions were justified and reasonable. A trial court's attorneys' fees award under A.R.S. § 25-324 is reviewed for an abuse of discretion. *Mangan v. Mangan*, 227 Ariz. 346, 352 ¶ 26 (App. 2011).

¶18 Under A.R.S. § 25-324(A), a court may award reasonable attorneys' fees "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings[.]" Here, the court found that a substantial disparity of financial resources existed, that Husband had considerably more resources, and that Husband's assertions in his post-decree motions were disingenuous and unreasonable. Husband contends that he was justified in filing his post-decree motions because he was required to do so to preserve the issues for appeal. The family court did not find the act of filing the post-decree motions to be unreasonable, however; it found that Husband's arguments within the motions were disingenuous, which caused Wife to incur additional attorneys' fees. The record supports the court's findings, and thus, Husband's argument fails. Therefore, the court did not abuse its discretion by awarding Wife additional attorneys' fees.

**3. Attorneys' Fees on Appeal**

¶19 Both parties request attorneys' fees on appeal pursuant to A.R.S. § 25-324(A). Wife additionally requests her attorneys' fees under Arizona Rules of Civil Appellate Procedure ("ARCAP") 21 and as a sanction under ARCAP 25. In an exercise of discretion, we award Wife her reasonable attorneys' fees and costs under A.R.S. § 25-324(A) upon her compliance with ARCAP 21.

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**CONCLUSION**

¶20

For the foregoing reasons, we affirm.



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