IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

FRANCISCO VIDAL LOPEZ, *Petitioner/Appellant*,

v.

SILVIA LORENA LOPEZ, *Respondent/Appellee*.

No. 1 CA-CV 17-0640 FC
FILED 10-30-2018

Appeal from the Superior Court in Maricopa County
No. FN2016-002090
The Honorable Pamela Hearn Svoboda, Judge

AFFIRMED

COUNSEL

McCulloch Law Offices, Tempe
By Diana McCulloch
Counsel for Petitioner/Appellant

Bert L. Roos, PC, Phoenix
By Bert L. Roos
Counsel for Respondent/Appellee

MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Kenton D. Jones and Judge David D. Weinzweig joined.

S W A N N, Judge:

¶1 This is an appeal from a dissolution decree. The appellant challenges several aspects of the superior court's division of proceeds from a plot of community real property and its award of spousal support for the appellee. For reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In March 2016, Francisco Vidal Lopez ("Husband") filed a petition for dissolution of his marriage to Silvia Lorena Lopez ("Wife"). The couple had been married since 2001.

¶3 In her response to Husband's petition, Wife listed community property she believed should be divided, including a plot of land in Tonopah, Arizona, and she requested an unspecified amount in spousal support. A few months later, both parties filed statements in anticipation of a resolution management conference. Wife again requested division of the Tonopah property and spousal support, whereas Husband made no reference to the Tonopah property and contended that Wife was not entitled to support.

¶4 The parties were unable to reach a settlement, and the matter was set for trial in May 2017. In the months before trial, Wife's attorney withdrew and, acting *in propria persona*, Wife failed to file a pre-trial statement as directed by the court.

¶5 At trial, Husband testified that he and Wife operated a landscaping business together during the marriage, generating approximately $75,000 in income each year, and that he now earns approximately $3,200 per month working odd jobs. He also testified that he only completed junior high school and that his employment prospects are limited.

¶6 Regarding the Tonopah property, Husband testified that he purchased the land for $10,000 through an oral agreement in 2008, but that by 2015, he was no longer able to make payments, so the land was "taken

away" from him "[f]or nonpayment." Husband offered two quitclaim deeds reflecting the alleged purchase and loss of the property, both of which listed him as "an unmarried man." When it was Wife's turn to present her case, she testified that Husband was lying about the property and she offered a notarized document showing that Husband had received the property (and $4,000 in cash) in repayment of a $37,000 debt owed to him. This "Cancellation of Debt" document was signed on the same day as the quitclaim deed from 2008, when Husband claimed to have purchased the land. Wife had not disclosed the document before trial, but, recognizing its potential importance, the court continued trial instead of precluding it, with the express purpose of giving Husband time to prepare an explanation.

¶7 At the continued trial in August 2017, the court admitted Wife's document into evidence without objection. Wife testified that the $37,000 loan originated during the marriage, that Husband did not have the property "taken away" but instead sold it in 2015, and that she did not receive any share of the proceeds from that sale.

¶8 Regarding her current employment, Wife testified that, without overtime pay, she earns approximately $1,400 per month, which does not cover all of her expenses. She testified that she had taken out title loans to help cover her bills after she and Husband separated.

¶9 In the dissolution decree, the court found that Husband had not testified truthfully about the Tonopah property and that his credibility had been "placed at issue." The court found that Husband had improperly sold the Tonopah property, valued the property at $33,000 (the difference between the total loan debt and the cash paid to Husband), and divided the proceeds equally between the parties. The court also awarded Wife $500 in monthly spousal support for three years. Husband appeals.

DISCUSSION

I. THE SUPERIOR COURT DID NOT ERR BY DIVIDING THE VALUE OF THE TONOPAH PROPERTY.

A. The Court Had Authority to Divide the Proceeds of the Tonopah Property's Sale.

¶10 Husband first contends that the superior court did not have authority under A.R.S. § 25-318 to divide the value of the Tonopah property because it was not owned by the community at the time of the dissolution. He further contends that the court erred by dividing the value of the

property without evidence that Husband actually received any proceeds or that Husband did not utilize the "alleged" proceeds for community purposes.

¶11 Section 25-318(A) provides that the court must "divide the community, joint tenancy and other property held in common equitably, though not necessarily in kind, without regard to marital misconduct." "In apportioning community property between the parties at dissolution, the superior court has broad discretion to achieve an equitable division, and we will not disturb its allocation absent an abuse of discretion." *Boncoskey v. Boncoskey*, 216 Ariz. 448, 451, ¶ 13 (App. 2007). "[W]e consider the evidence in the light most favorable to upholding the superior court's ruling and will sustain the ruling if it is reasonably supported by the evidence." *Id.* We perceive no abuse of discretion here.

¶12 Husband's jurisdictional argument fails to recognize the court's authority to consider a party's waste—including the fraudulent disposition of community property—when apportioning community property. *See* A.R.S. § 25-318(C); *see also Gutierrez v. Gutierrez*, 193 Ariz. 343, 346, ¶ 6 (App. 1998). Once the spouse alleging waste has presented a prima facie case, the burden shifts to the other spouse to rebut the showing of waste by proving that the property was properly disposed of and that the expenditures benefitted the community. *Helland v. Helland*, 236 Ariz. 197, 201, ¶ 17 (App. 2014); *see Gutierrez*, 193 Ariz. at 346–47, ¶ 7. If the prima facie case of waste is not rebutted, the court should add the value of the wasted property to the value of the existing marital property for purposes of the allocation. *Martin v. Martin*, 156 Ariz. 452, 458 (1988). Allegations of wasted community assets necessarily require a court to consider the value of property no longer held by the community. *See id.*

¶13 Here, Wife made a prima facie showing that Husband fraudulently disposed of community property. The evidence established that Husband received the Tonopah property by quitclaim deed—free of any lien—in 2008 and sold the property in 2015. The parties were married throughout that entire period, yet Husband listed himself on the deeds as "an unmarried man." Wife was not aware of the sale in 2015, nor did she receive any money from it. Husband testified that the property was "taken away" from him and that he did not receive any proceeds, but in asserting his position relied only on his testimony, offering no additional evidence to rebut Wife's prima facie showing. Any issues of credibility between Husband and Wife were for the court to decide. *See Gutierrez*, 193 Ariz. at 347, ¶ 13.

B. The Court Did Not Deny Husband Due Process.

¶14 Husband argues that the court deprived him of due process by considering Wife's waste argument despite her failure to file a pre-trial statement notifying him that she would argue that theory at trial. We review due process claims de novo. *Jeff D. v. Dep't of Child Safety*, 239 Ariz. 205, 207, ¶ 6 (App. 2016). Due process requires a trial court to give a party notice and a meaningful opportunity to be heard. *Cook v. Losnegard*, 228 Ariz. 202, 206, ¶ 18 (App. 2011). Generally, on matters of disclosure, the trial court has broad discretion. *Marquez v. Ortega*, 231 Ariz. 437, 441, ¶ 14 (App. 2013); *see* ARFLP 76(C)(4) (giving court discretion on how—or whether—to penalize parties who do not submit pre-trial statements).

¶15 Even though Wife did not file a pre-trial statement explaining the issues she would argue at trial, Husband had sufficient notice that she would seek equal division of the Tonopah property. Wife requested division of the property in her response to the dissolution petition and in her resolution management statement. Additionally, the court provided Husband with three additional months to defend against Wife's theory after she argued and presented evidence at trial that Husband lied about having the property "taken away" from him. Wife's arguments and evidence consistently indicated that she believed either that the community still owned the property or that Husband sold the property without telling her or giving her any share of the proceeds. Accordingly, Husband had sufficient notice to be able to defend against such a theory.

C. The Court's Valuation of the Tonopah Property was Supported by Reasonable Evidence.

¶16 Husband also contends that there was insufficient evidence to support the court's determination that the Tonopah property was worth $33,000. Because a valuation of community property involves determinations of credibility and the resolution of conflicting evidence—matters squarely within the charge of the trial court—we review it for abuse of discretion. *See Schickner v. Schickner*, 237 Ariz. 194, 197, ¶ 13 (App. 2015); *Lee v. Lee*, 133 Ariz. 118, 122–23 (App. 1982). "A family court abuses its discretion by making an error of law in reaching a discretionary conclusion, or making a discretionary ruling that the record does not support." *Boyle v. Boyle*, 231 Ariz. 63, 65, ¶ 8 (App. 2012). We find no abuse of discretion here.

¶17 The court considered two conflicting items of evidence regarding property value, one from Husband (a county assessor's valuation of between $8,600 and $11,200) and the other from Wife (a notarized

document stating that in 2008, Husband forgave a $37,000 debt in exchange for $4,000 cash and a quitclaim deed to the property). Additionally, Wife testified that she believed the property was worth $33,000. *See Town of Paradise Valley v. Laughlin*, 174 Ariz. 484, 486 (App. 1992) ("An owner may *always* testify as to the value of his property."). The court did not accept Husband's proposed valuation from the county assessor's office, reasoning that it only represented the property's "tax value," not its "actual value." The court then found that the "only known value" of the property was its inferred value when Husband received it in 2008—$33,000. Wife's evidence provided a sufficient basis for the court's valuation.

II. THE SUPERIOR COURT'S SPOUSAL SUPPORT AWARD WAS SUPPORTED BY REASONABLE EVIDENCE.

¶18 A.R.S. § 25-319(A)(1) provides that the court may award spousal support if the spouse seeking support lacks sufficient property, including property apportioned to him or her, to provide for his or her reasonable needs. Once the court determines that an award of spousal support is appropriate, § 25-319(B) provides that the court must consider all relevant factors, including those set forth in the statute, to determine the appropriate amount and duration of the award. We review an award of spousal support for an abuse of discretion, viewing the evidence in the light most favorable to upholding the award. *Gutierrez*, 193 Ariz. at 348, ¶ 14. We will affirm the award if there is any reasonable evidence to support it. *Id.*

¶19 Husband first contends that Wife is not entitled to support under § 25-319(A)(1) because her right to run the family landscaping business provides her a means to meet her reasonable needs. But the *right* to operate the business is worth little to Wife because, as she testified, Husband historically operated the business and she does not have the equipment or skills to do the necessary manual labor or bookkeeping. Because other evidence, including that she earns approximately $1,400 per month, indicates that Wife could not provide for her reasonable needs, the court did not err by finding that she was entitled to spousal support.

¶20 Husband next contends that the court's analysis of the factors under § 25-319(B) did not provide an adequate basis for the amount or duration of the award. But the court made detailed, factually supported findings regarding the applicable factors, including that the parties were married for 15 years and their combined income before divorce was approximately $75,000, that Wife now rides the bus to work and had to take out title loans because her current income is insufficient to cover her

monthly expenses, and that Husband now earns at least $3,200 per month. In view of those findings, we cannot say that the court abused its discretion by awarding Wife spousal support of $500 per month for three years.

CONCLUSION

¶21 For the foregoing reasons, we affirm. In the exercise of our discretion, we hold that Wife may recover reasonable attorney's fees and costs on appeal upon compliance with ARCAP 21. We deny Husband's request for fees and costs on appeal.

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