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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

WADE CHRISTIAN HERTER, *Petitioner/Appellant*,

v.

HEIDI MARIE BRIDGES-HERTER, *Respondent/Appellee*.

No. 1 CA-CV 18-0047 FC
FILED 11-29-2018

Appeal from the Superior Court in Maricopa County
No. FC2013-092298
The Honorable Suzanne E. Cohen, Judge

AFFIRMED

COUNSEL

Burt Feldman & Grenier, SBN, Scottsdale
By Mary Kay Grenier
Counsel for Petitioner/Appellant

Scott L. Patterson, Tempe
Counsel for Respondent/Appellee

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MEMORANDUM DECISION

Presiding Judge Jennifer M. Perkins delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge Jon W. Thompson joined.

P E R K I N S, Judge:

¶1 Wade Herter (“Father”) appeals the trial court’s award of attorney’s fees in favor of Heidi Bridges-Herter (“Mother”), awarded in connection with Mother’s May 17, 2017 Petition to Modify Parenting Time, Legal Decision Making, and Child Support. Father additionally appeals the denial of his motion for new trial or amended judgment. For the foregoing reasons, we affirm the trial court’s award and denial of Father’s motion.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 The parties, who share two children, divorced in 2016. In May 2017, Mother filed a petition to modify the decree after continuing disputes with Father about exercising his parenting time. The trial court set a hearing on Mother’s petition for September 11, 2017, but the parties filed a joint pre-hearing statement setting forth stipulations which disposed of many of the issues raised in Mother’s Petition. The parties stipulated to legal decision making, parenting time, Father’s income for child support purposes, and other issues. The parties continued to dispute Mother’s income, the actual amount of child support that should be ordered, attorney’s fees, and the start date of the proposed modification.

¶3 The court held an evidentiary hearing on the outstanding issues on September 11, 2017, and ruled in favor of Mother with respect to an upward deviation of child support. The court additionally awarded Mother her reasonable attorney’s fees and costs on the basis of the parties’ financial disparity. After Mother’s attorney submitted an affidavit of attorney’s fees and costs, the court awarded Mother \$15,224.15 in attorney’s fees and costs. Father filed a motion for amended judgment or, in the alternative, new trial, alleging the court’s award exceeded the “court-defined scope” of attorney’s fees and that the evidence did not support the trial court’s award. The court denied Father’s motion and found that it had not limited permissible attorney’s fees to any single issue. Father timely appeals from this denial.

DISCUSSION

¶4 We review a trial court's award of attorney's fees under Arizona Revised Statutes ("A.R.S.") section 25-324(A) for abuse of discretion. *Mangan v. Mangan*, 227 Ariz. 346, 352, ¶ 26 (App. 2011). Likewise, we review a trial court's denial of a motion for new trial or amended judgment for abuse of discretion. *Styles v. Ceranski*, 185 Ariz. 448, 450 (App. 1996). Here, the trial court did not abuse its discretion in awarding attorney's fees to Mother or in denying Father's motion for new trial or amended judgment.

¶5 Father first argues Mother improperly claimed attorney's fees incurred prior to the underlying Petition. Though Mother's affidavit of attorney's fees includes hours worked before the underlying Petition was filed, and incurred on unrelated matters, the amount awarded by the trial court was less than the fees actually incurred in the Petition litigation. Specifically, the affidavit submitted by Mother's counsel ranges from January 2017 through late September 2017 and totals more than \$24,000 in fees and costs. The affidavit's entries relating to the Petition, which range from May 15, 2017, through the September 11, 2017 hearing, total in excess of \$18,000. The trial court awarded Mother \$15,224.15, less than the approximately \$18,000 incurred in maintaining and defending her Petition. In other words, the record does not support Father's contention that the court awarded fees to Mother that she incurred prior to the inception and filing of her Petition.

¶6 Father next argues any award of fees should be limited to fees incurred related to the remaining issue at trial, rather than the other issues raised in the Petition and ultimately settled shortly before trial. Father cites no authority for this argument and it is without merit. Section 25-324(A) permits the trial court to award "a reasonable amount . . . for the costs and expenses of maintaining or defending" a petition to modify parenting time and legal decision-making. A.R.S. § 25-324(A). Here, Mother incurred attorney's fees in defending her Petition prior to the stipulations, negotiating the stipulations, and ultimately narrowing the scope of the trial. Though the parties resolved these issues before trial, Mother incurred substantial costs in the intervening time. Accordingly, the trial court acted within the confines of § 25-324 when it awarded Mother fees and costs incurred in litigating the Petition.

¶7 Father further argues that the trial court explicitly limited the scope of available fees during the evidentiary hearing. During the hearing, the court had the following exchange with counsel:

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[Mother's Counsel]: But do you still want to hear testimony with regard to reasonableness of positions moving up to this hearing?

The Court: That's . . . valid for attorney's fees.

[Mother's Counsel]: Thank you. All right.

[Father's Counsel]: Just so I'm clear, leading up to this hearing on the issue of deviation?

The Court: That's why we're here.

Father asserts that the court's agreement with his counsel's statement amounts to an affirmative ruling limiting the scope of the available fee award. This exchange does not clearly support such a conclusion and, in any event, in its ruling on Father's motion for new trial or amended judgment, the court found that "the attorney's fees issue was not limited to the issue of deviation." The court went on to explain it had limited the alienation argument only because Father had already stipulated to surrender all parenting time. The trial court did not preemptively limit an award of attorney's fees to a single issue. Here, the award was reasonably based on the financial disparity of the parties and the costs incurred by Mother in maintaining her Petition and we will not disturb the trial court's award. *See In re Marriage of Gibbs*, 227 Ariz. 403, 410, ¶¶ 20-21 (App. 2011).

¶8 Finally, Father argues the trial court abused its discretion in denying his motion for new trial or amended judgment. In support of this argument, Father repeats his incorrect allegation that the trial court limited fees at trial. He also argues the award was not justified by the evidence and there was no way for him to determine how the trial court calculated the fees award. Although Father raised several factual allegations regarding Mother's reasonableness and Mother's income, this argument amounts to nothing more than a request to reweigh evidence, which we will not do on appeal. *Reeck v. Mendoza*, 232 Ariz. 299, 303, ¶ 14 (App. 2013).

¶9 The trial court, in its award of attorney's fees, found that neither party had been more unreasonable than the other and instead relied solely on the significant disparity in incomes based on Father's own stipulated income. Nothing in § 25-324 requires the trial court to explain its calculation of attorney's fees absent a request by one of the parties. *Myrick v. Maloney*, 235 Ariz. 491, 494-95, ¶ 10 (App. 2014); *see also* A.R.S. § 25-324(A). Father made no such request and we will not overturn the trial court's award of attorney's fees on this basis. Accordingly, we affirm the

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trial court's award of attorney's fees and denial of Father's motion for new trial or amended judgment.

CONCLUSION

¶10 For the foregoing reasons, the judgment of the trial court is affirmed. On appeal, Mother has requested an award of attorney's fees and costs pursuant to Arizona Rule of Civil Appellate Procedure ("ARCAP") 21 and A.R.S. § 25-324. In our discretion, we grant Mother's reasonable attorney's fees, in an amount to be determined, and costs on appeal, upon compliance with ARCAP 21.



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