IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Marriage of:

JOSE FRANCISCO VALENCIA, *Petitioner/Appellant*,

v.

AMBER T. VALENCIA, *Respondent/Appellee*.

No. 1 CA-CV 19-0224 FC
FILED 3-31-2020

Appeal from the Superior Court in Maricopa County
No. FC2014-090199
The Honorable Kristin Culbertson, Judge

AFFIRMED IN PART; REVERSED AND REMANDED IN PART

COUNSEL

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By Bert L. Roos
Counsel for Petitioner/Appellant

Amber T. Valencia, Mesa
Respondent/Appellee

MEMORANDUM DECISION

Judge D. Steven Williams delivered the decision of the Court, in which Presiding Judge Michael J. Brown and Judge Kenton D. Jones joined.

W I L L I A M S, Judge:

¶1 Jose Francisco Valencia ("Father") appeals from the superior court's judgments in favor of Amber T. Valencia ("Mother") for child support and spousal maintenance arrearages and for Father's wrongful use of tax exemptions. The judgments erroneously included temporary spousal maintenance and child support arrearages that were not part of the final decree, as well as compound interest on the arrearages. The superior court did not abuse its discretion by sanctioning Father for his wrongful use of tax exemptions.

FACTUAL AND PROCEDURAL HISTORY

¶2 Father petitioned the superior court for the dissolution of his marriage to Mother in January 2014. In July 2014, the court issued a temporary order directing Father to pay Mother $950 per month in child support for the parties' five minor children and $500 per month for spousal maintenance retroactively beginning January 1, 2014. The final decree ordered Father to pay $861 per month in child support, and $500 per month in spousal maintenance for 36 months, both beginning February 1, 2015. Despite Mother's allegation that Father failed to pay temporary child support or spousal maintenance, the decree did not address any temporary support arrearages.

¶3 The decree also provided that each parent would claim tax exemptions for two of the five children every year.[1] The parties were to alternate the tax exemption for the youngest child, with Father claiming two out of every three years, starting in 2015. As a penalty for Father claiming tax exemptions in any year he was not current on his child support obligation, the decree ordered that "Father shall pay directly to the [Clearinghouse] 100 percent of any and all tax refunds that Father receives,

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[1] The decree refers to tax "deductions." The Child Support Guidelines use the term tax "exemptions." *See* Ariz. Rev. Stat. § 25-320 app. § 27 (2018) ("Guidelines"). For consistency, we will follow the Guidelines.

which shall be applied first towards Father's current child support obligation, Father's current spousal maintenance obligation, and then towards any arrearage."

¶4 In May 2018, Mother petitioned to enforce the child support and spousal maintenance obligations as well as the tax exemption provision in the decree. Mother alleged that Father failed to comply with the temporary support orders and the support orders in the final decree. Father admitted that he owed "some" arrearages.

¶5 The superior court ordered the Family Court Conference Center ("FCCC") to calculate Father's arrearages. The FCCC's September 2018 report found that, as of February 1, 2015, Father owed $16,133.45 in child support arrearages plus $3,069.79 in interest, and $16,299.83 in spousal maintenance arrearages plus $3,210.09 in interest. This report did not include any support owed under the temporary order. Following an evidentiary hearing, the court ordered the FCCC to recalculate the arrearages to include the unpaid temporary support.

¶6 The second FCCC arrears report, which included the unpaid temporary support, stated Father owed child support arrearages of $28,427.45 plus $8,604.16 in interest, and spousal maintenance arrearages of $22,799.83 plus $6,624.10 in interest. Apparently by way of explanation for its initial report, the FCCC stated it includes temporary support order arrearages only when they are affirmed or reduced to a final judgment in the decree. Father objected to the inclusion of temporary support arrearages in the second report, arguing the temporary support order was no longer enforceable. The superior court overruled Father's objection and entered a child support arrearage judgment of $37,031.61 (principal plus interest) and a spousal maintenance arrearage judgment of $29,423.93 (principal plus interest).

¶7 The superior court also found that because Father was in arrears, he wrongfully claimed three children as tax exemptions in 2015, 2016, and 2017. The court rejected Father's testimony that he paid his tax returns to Mother in 2015 and 2016. As a result, the court ordered Father to pay Mother $1,500 for each tax exemption he wrongfully claimed, for a total judgment of $9,000 plus interest. Father timely appealed, and we have jurisdiction under Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(2).

DISCUSSION

I. The Superior Court Erred by Including Temporary Support Order Arrearages in the Judgments.

¶8 Father argues the superior court erroneously included temporary child support and spousal maintenance arrearages in the total arrearage judgment. This is a question of law we review *de novo*. *Alley v. Stevens*, 209 Ariz. 426, 428, ¶ 6 (App. 2004).

¶9 Mother suggests Father waived this argument by not raising it at the evidentiary hearing on her petition to enforce. At that hearing, Mother noted the first FCCC report did not include temporary support arrearages. According to the superior court, Father did not object at that time, but after receiving the second FCCC report he did object. Because the court specifically allowed the parties to file objections to the updated report, no waiver occurred.

¶10 Father argues that under A.R.S. § 25-315(F) the temporary orders terminated upon entry of the decree. Specifically, Father contends the orders were unenforceable because the temporary support arrearages were not affirmed or reduced to a judgment in the final decree. The superior court rejected Father's argument, concluding that although the temporary order terminated upon entry of a decree, the obligation to pay temporary support remained. The court reasoned that to conclude otherwise would allow obligors to simply "run out the clock" and not pay temporary support knowing the obligation would terminate upon entry of the decree.

¶11 Under Arizona Rule of Family Law Procedure 47(j)(1),[2] temporary orders "are enforceable as final orders but terminate and are unenforceable upon dismissal of the action, or following entry of a final decree, judgment, or order, unless that final decree, judgment, or order provides otherwise." Thus, when a final decree does not include a judgment for the arrearages owed under temporary orders, those arrearages are no longer enforceable. *See Moncur v. Moncur*, 1 CA-CV 14-0320, 2015 WL 1395296, at *2, ¶ 10 (Ariz. App. Mar. 24, 2015) (mem. decision).[3] Although *Moncur* relied on former Rule 47(M), now Rule 47(j)(1),

[2] We cite the current version of the Rule; however, the Rule in effect at the time of the superior court's order is identical.

[3] *See* Ariz. R. Sup. Ct. 111(c)(1)(C) (providing that memorandum decisions issued after January 1, 2015 may be cited for persuasive value).

the language in both rules is substantially similar. The rule is also consistent with A.R.S. § 25-315(F)(4), which states a temporary order "[t]erminates when the final decree is entered or when the petition for dissolution, legal separation or annulment is dismissed." To prevent a debtor-parent from simply not paying and "running out the clock" on the temporary support order, as the superior court cautioned, the court need only include any temporary support arrearages in the final decree. The creditor-parent can also object to or otherwise seek relief from a decree that fails to include the arrearages.

¶12 The decree did not address the temporary support arrearages, and Mother did not appeal from or otherwise seek relief from the final decree. Accordingly, the superior court abused its discretion by entering a judgment that included the arrearages owed under the temporary orders.

II. The Superior Court Erred by Ordering Compound Interest.

¶13 The superior court determined that Father owed $28,427.45 for child support arrearages plus $8,604.16 in interest and $22,799.83 for spousal maintenance arrearages plus $6,624.10 in interest. The court, however, included both the principal and interest in the total arrearage judgments and ordered Father to pay interest on the *total* judgment. As a result, the court improperly ordered compound interest.

¶14 Arizona Revised Statutes § 25-510(E) states that in calculating arrearages, interest accrues "only on the principal and not on interest." Our case law has similarly held that simple, not compound, interest accrues on judgments under A.R.S. § 44-1201. *See Alley,* 209 Ariz. at 428, ¶ 7; *see also Westberry v. Reynolds,* 134 Ariz. 29, 34 (App. 1982). Accordingly, we reverse the arrearage judgments and remand for recalculation of the appropriate principal and interest amounts.

III. The Superior Court Did Not Abuse Its Discretion by Entering a Judgment for Father's Improper Use of Tax Exemptions.

¶15 The superior court ordered Father to pay $1,500 for each child he claimed as a tax exemption during the years he was in arrears, resulting in a $9,000 judgment in favor of Mother. Father contends there is no evidence or legal basis to support this unduly "[o]norous [sic], burdensome, and punitive" order. Father also contends the court should have determined the "actual benefit" Mother lost by not being able to claim the children.

¶16 The superior court has inherent authority to sanction a party for failing to comply with court orders. *Green v. Lisa Frank, Inc.*, 221 Ariz. 138, 152, ¶ 37 (App. 2009). "We review the imposition of sanctions for an abuse of discretion." *Id.* at 153, ¶ 40. Sanctions should be limited to achieve their desired result. *Id.* Compensatory contempt sanctions, like the sanction imposed here, "are intended to benefit the complainant, and are therefore paid to the complainant." *Trombi v. Donahoe*, 223 Ariz. 261, 267, ¶ 26 (App. 2009) (citing *United States v. United Mine Workers of Am.*, 330 U.S. 258, 303-04 (1947)). Such sanctions "must be based upon evidence of the complainant's actual loss." *Id.*

¶17 Father contends the evidence does not support this ruling, yet he failed to provide the transcript of the evidentiary hearing. In the absence of a transcript, we generally presume the missing portions of the record would support the court's ruling. *See State ex rel. Dep't of Econ. Sec. v. Burton*, 205 Ariz. 27, 30, ¶ 16 (App. 2003). Without a transcript, we cannot say the evidence did not support the superior court's discretionary sanction for Father's admitted wrongful use of the tax exemptions. Therefore, we affirm the judgment.

IV. The Superior Court Did Not Err by Ordering Ten Percent Interest to Accrue on the Judgment.

¶18 Finally, Father contends the superior court erred by ordering ten percent interest to accrue on this judgment because it is not a child support obligation. *Compare* A.R.S. § 25-510(E) (applying ten percent interest rate to support arrearages), *with* A.R.S. § 44-1201(B) (providing that the interest rate on any judgment shall be the lesser of ten percent, or prime plus one percent, unless a statute calls for a different rate).

¶19 The Guidelines provide detailed instructions for allocating federal tax exemptions. *See* Guidelines § 27. Courts must allocate the tax exemptions according to the Guidelines. *McNutt v. McNutt*, 203 Ariz. 28, 34, ¶ 26 (App. 2002). The sanction resulted from Father's failure to comply with the child support order. Father denied Mother both the previously ordered child support *and* the benefit of claiming the exemptions for those years. For these reasons, the judgment regarding the tax exemptions is properly characterized as an order relating to child support.

¶20 By its nature, the tax exemption benefit does not fit precisely within the statutory definition of "support" found in A.R.S. § 25-500(9), which includes "the provision of maintenance or subsistence and includes medical insurance coverage, or cash medical support, and uncovered

medical costs for the child, arrearages, interest on arrearage, past support, interest on past support and reimbursement for expended public assistance." An arrearage includes unpaid child support. A.R.S. § 25-510(A)(1). However, these definitions shall govern "unless the context otherwise requires." A.R.S. § 25-500. We conclude that, in this context, the judgment resulting from Father's wrongful use of tax exemptions constitutes a support arrearage order.

¶21 This characterization is consistent with the holding in a previous memorandum decision of this court, *Martinez v. Martinez*, 1 CA-CV 15-0452 FC, 2016 WL 1696600, at *2-3, ¶¶ 6-7, 13-14 (Ariz. App. Apr. 28, 2016), and that of several other jurisdictions, *see, e.g.*, *Fontenot v. Fontenot,* 898 S.W.2d 55, 56 (Ark. Ct. App. 1995) ("[T]he right to claim the parties' children as tax exemptions is accurately characterized as a matter of child support."); *Niederkorn v. Niederkorn,* 616 S.W.2d 529, 533 (Mo. Ct. App. 1981) ("The federal exemption bears directly on the financial positions of the parties. An award of the tax exemption to one party is nearly identical in nature to an order that the other party pay as child support a sum equal to the value of the exemption."); *Hall v. Hall,* 472 N.W.2d 217, 221 (Neb. 1991) (holding "a tax dependency exemption is nearly identical in nature to an award of child support or alimony" and citing similar conclusions from other jurisdictions).

¶22 The superior court properly ordered interest to accrue at ten percent per annum. *See* A.R.S. § 25-510(E).

CONCLUSION

¶23 We reverse the arrearage judgments and remand for reconsideration. We affirm the judgment against Father for wrongful use of tax exemptions.

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