IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

KARL L. ALBRIGHT, *Petitioner/Appellant*,

v.

ELIZABETH M. ALBRIGHT, *Respondent/Appellee*.

No. 1 CA-CV 19-0841 FC
FILED 11-19-2020

Appeal from the Superior Court in Mohave County
No. S8015DO201800593
The Honorable Steven C. Moss, Judge

AFFIRMED

APPEARANCES

Horne Slaton, PLLC, Scottsdale
By Sandra Slaton, Kristin Roebuck Bethell
Counsel for Petitioner/Appellant

Elizabeth M. Albright, Norton, KS
Respondent/Appellee

MEMORANDUM DECISION

Presiding Judge Jennifer B. Campbell delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Chief Judge Peter B. Swann joined.

C A M P B E L L, Judge:

¶1 Karl Albright ("Husband") appeals the superior court's ruling rejecting his contention that Elizabeth Albright ("Wife") committed marital waste and the court's characterization of certain household items and artwork as community property. We affirm these rulings and the superior court's order of dissolution.

BACKGROUND

¶2 The couple married in 2003. Shortly thereafter, Wife began managing the couple's finances and continued to do so until they separated in 2018. Even though both had access to all their financial accounts, Husband ceded financial management responsibility to Wife.

¶3 During their marriage, Husband and Wife went on expensive vacations, stayed in expensive hotels, ate at expensive restaurants, and collected expensive paintings and pottery. Husband retired in 2014, and the couple began taking four to six vacations each year, in addition to weekend getaways to nearby cities. Husband never questioned their lavish expenditures or asked how the couple could afford such extravagant indulgences.

¶4 Between 2014 and 2018, the couple exhausted their various bank, retirement, and investment accounts. By June 2018, most of their bills were delinquent, their credit lines were maxed out, and they owed $16,000 in taxes. According to Husband, he learned that their accounts were depleted when his bank cards were all declined at a gas station. When he found out the money was gone, he filed for dissolution of their marriage.

¶5 At trial, Husband testified Wife wasted hundreds of thousands of dollars of community resources and that a number of household furnishings, appliances, and some artwork were his sole and separate property. The superior court found there was "no credible evidence establishing that [Wife] committed waste of a separate or

community asset," and that "[Husband] participated in the spending and his allegations that [Wife] either stole or concealed problems from him are not credible." The court also found that Husband failed to establish the separate nature of various items of personal property by clear and convincing evidence. Husband now appeals.

DISCUSSION

I. The court did not err in rejecting Husband's assertion that Wife committed marital waste

¶6 The equitable division of property during the dissolution of a marriage requires a court to consider any "excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common." A.R.S. § 25–318(C). The party alleging marital waste "has the burden of making a prima facie showing of waste. It is then the burden of the spending spouse to go forward with evidence to rebut the showing of waste because all of the evidence relative to the expenditures is generally within the knowledge, possession, and control of the spending spouse." *Gutierrez v. Gutierrez*, 193 Ariz. 343, 346–47, ¶ 7 (App. 1998). We view the evidence in the light most favorable to upholding the superior court's findings. *See Cullum v. Cullum*, 215 Ariz. 352, 354, ¶ 9 (App. 2007).

¶7 "The appropriate burden of proof is a question of law, which this court reviews de novo." *Am. Pepper Supply Co. v. Fed. Ins. Co.*, 208 Ariz. 307, 309, ¶ 8 (2004). We review a court's determination of marital waste for an abuse of discretion. *See Kline v. Kline*, 221 Ariz. 564, 573, ¶ 35 (App. 2009) (citing *Cavanagh v. Ohio Farmers Ins. Co.*, 20 Ariz. App. 38, 44 (1973)). "An abuse of discretion exists when the record, viewed in the light most favorable to upholding the trial court's decision, is devoid of competent evidence to support the decision." *State ex rel. Dep't of Econ. Sec. v. Burton*, 205 Ariz. 27, 30, ¶ 14 (App. 2003) (citation omitted).

¶8 To establish a prima facie case, a party must offer credible evidence to support a rational inference that the allegation is true. *See Kline*, 221 Ariz. at 573, ¶ 35. Husband argues he made a prima facie showing that Wife committed waste and that the superior court erred by failing to shift the burden of proof to her to rebut his allegation. As support, Husband points to the court's explanation that, related to "the claim of stealing, waste, secreting of funds, the Court finds the [Husband] has failed to prove that case by the preponderance of the evidence."

¶9 The record does not support Husband's contention. The superior court found he offered "no credible evidence" that Wife committed waste. Although Husband argued Wife withdrew money from various accounts, he did not offer evidence to show what she did with it, much less that she did not spend it for the benefit of the community. Husband presented evidence that Wife withdrew hundreds of thousands of dollars from their accounts. It is undisputed that the withdrawals occurred. What is disputed is what happened to that money.

¶10 Wife testified the couple spent the money on home improvement projects, frequent lavish vacations, and art collecting. Husband failed to produce any evidence to dispute Wife's testimony that the spending was not on behalf of the community.[1]

¶11 In sum, the record supports the superior court's finding that Husband participated in and enjoyed the benefits of the expenditures he challenges, though he claims he was unaware of the rate at which the funds were being spent. Because the court found Husband offered "no credible evidence" to establish marital waste, he failed to meet his burden of proof to establish a prima facie case of waste. As the court determined, because both parties benefitted from the spending, no marital waste occurred. *See Helland v. Helland*, 236 Ariz. 197, 201, ¶ 17 (App. 2014) (marital waste occurs when only "one spouse has wasted or dissipated marital assets," justifying compensation for the other spouse for the waste). Both parties received the benefits from the excessive spending, both enjoying a lifestyle well beyond their means. Husband's claim that Wife either stole or concealed her spending is simply not supported by any evidence in the record.

¶12 Husband contended throughout trial that he was not involved in the withdrawals from the parties' accounts or how those funds were spent. This contention is belied by the record. Wife may have managed the parties' finances, but Husband also had access to the accounts—even if he chose not to use that access to determine the couple's financial position over the duration of the marriage. As the superior court found, "[t]o the extent [Husband] was unaware of any problems that is due to his willful blindness." Reasonable evidence supports the superior court's finding that no marital waste occurred.

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[1] In reviewing the exhibit Husband relied on to show waste, the vast majority of the payments he challenged were for living expenses, including charges at Walmart, Costco, grocery stores, gas stations, and credit card bills.

II. The court did not err by characterizing Husband's sole and separate property as community property

¶13 Husband next argues that the superior court erred as a matter of law by characterizing certain items he contends are his sole and separate property as community property. We review the court's classification of property as separate or community de novo as a question of law. *Bell-Kilbourn v. Bell-Kilbourn*, 216 Ariz. 521, 523, ¶ 4 (App. 2007) (citing *In re Marriage of Pownall*, 197 Ariz. 577, 581, ¶ 15 (App. 2000)). However, "this Court must view the evidence and all reasonable conclusions drawn therefrom in a light most favorable to sustaining the trial court's determination unless there is clear and convincing evidence that the trial court abused its discretion in determining the nature of property as community or separate." *Bender v. Bender*, 123 Ariz. 90, 92 (App. 1979) (citations omitted); *see also Gutierrez*, 193 Ariz. at 347, ¶ 13 (we defer to the trial court's determination of witness credibility and the weight of conflicting evidence).

¶14 "Property takes on its character as separate or community at the time of its acquisition." *Everson v. Everson*, 24 Ariz. App. 239, 243 (1975). Property a spouse owns before marriage is presumed to be the separate property of that spouse, A.R.S. § 25-213(A), while property acquired during marriage is generally presumed to be community property, A.R.S. § 25-211(A); *see also King v. Uhlmann*, 103 Ariz. 136, 151 (1968) ("[P]roperty acquired by either or both of the spouses during coverture is presumed to be community property."). "[O]nce its status is fixed, the property retains said status unless it is changed by agreement or by operation of law." *Schock v. Schock*, 11 Ariz. App. 53, 56 (1969).

¶15 Husband challenges the superior court's characterization of various household furnishings, appliances, and artwork (collectively, the "Items"), as community property. He asserts he acquired the Items before marriage, there is no evidence that he ever intended to make them community property, and that Wife never disputed the Items were his sole and separate property. Wife however explicitly denied Husband's separate property claim to the Items in her post-trial memorandum.

¶16 Husband had the burden to show he purchased the Items before the marriage. Husband not only failed to offer evidence to substantiate his testimony of when he acquired the Items, but when pressed, he conceded that some of the Items were acquired during the marriage and were in fact community property. The court was free to accept or reject his testimony in whole or in part. *See, e.g.. Premier Fin. Servs. v.*

Citibank (Ariz.), 185 Ariz. 80, 85 (App. 1995) (stating it is the prerogative of the superior court to weigh evidence and determine the credibility of witnesses); *State v. Fritz*, 157 Ariz. 139, 141 (App. 1988) ("The trial court is the sole arbitrator of the credibility of witnesses."); *Wean Water, Inc. v. Sta-Rite Indus., Inc.*, 141 Ariz. 315, 316 (App. 1984) (explaining we will accept the superior court's findings of fact "unless they are clearly erroneous or unsupported by any credible evidence").

¶17 Ultimately, the superior court found "that additional separate property as requested by [Husband] is not supported by clear and convincing credible evidence." Our review of the record supports the court's determination that the Items were community property. *See Bender*, 123 Ariz. at 92 (citations omitted).

CONCLUSION

¶18 We affirm the order of dissolution and the court's rulings on marital waste and the division of property. As the successful party on appeal, Wife is entitled to her taxable costs incurred on appeal, conditioned upon compliance with ARCAP 21.

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