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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

In re the Marriage of:

ADRIANNA DEFRANCO, *Petitioner/Appellant*,

v.

RONALD JAMES MORAN, *Respondent/Appellee*.

No. 1 CA-CV 21-0126 FC
FILED 12-21-2021

Appeal from the Superior Court in Maricopa County
No. FN2020-094223
The Honorable John L. Blanchard, Judge

AFFIRMED

COUNSEL

The Law Office of Ivan Hannel, PLLC, Chandler
By Gerald Ivan Hannel
Counsel for Petitioner/Appellant

Ronald James Moran, Mesa
Respondent/Appellee

MEMORANDUM DECISION

Chief Judge Kent E. Cattani delivered the decision of the Court, in which Acting Presiding Judge Samuel A. Thumma and Judge Maurice Portley¹ joined.

C A T T A N I, Chief Judge:

¶1 Adrianna Defranco (“Wife”) challenges the superior court’s ruling declining to award her attorney’s fees and costs under A.R.S. § 25-324(B). For reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Wife petitioned to dissolve the parties’ marriage in January 2020. In response, Ronald James Moran (“Husband”) requested temporary orders granting him spousal maintenance and attorney’s fees. After holding an evidentiary hearing, the superior court denied Husband’s request.

¶3 The matter proceeded to trial. As relevant here, in her pretrial statement, Wife requested attorney’s fees under A.R.S. § 25-324(B) but cited the two factors governing fee awards under § 25-324(A)—the parties’ financial resources and the reasonableness of their positions. In the decree of dissolution entered after trial, the court found Husband had acted unreasonably by (1) taking unreasonable positions on his spousal maintenance request, which he later withdrew; (2) failing to produce documents during discovery; and (3) failing to engage in reasonable settlement discussions. Nonetheless, the court declined to award fees under § 25-324(A), finding that there was a “substantial disparity of financial resources” in Wife’s favor and that Husband would be responsible for significant debts under the dissolution decree. The court also declined to award fees under § 25-324(B), concluding that it did not apply.

¶4 Wife moved for reconsideration, contending the superior court should have awarded fees under subsection (B). Two days later, she

¹ The Honorable Maurice Portley, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Section 3 of the Arizona Constitution.

DEFRANCO v. MORAN
Decision of the Court

filed a notice of appeal challenging the court's ruling as to subsection (B). Shortly thereafter, the court denied the motion for reconsideration. We have jurisdiction over Wife's appeal following the entry of final judgment. A.R.S. § 12-2101(A)(1).

DISCUSSION

¶5 Wife challenges only the court's conclusion that § 25-324(B) did not apply.² That subsection provides that the court "shall award" reasonable costs and fees as a sanction when "a petition" (1) was "not filed in good faith," (2) was "not grounded in fact or based on law," or (3) was "filed for an improper purpose." A.R.S. § 25-324(B). An award of fees under § 25-324(B) is mandatory if the statutory criteria are met. *Tanner v. Marwil*, 250 Ariz. 43, 47, ¶ 19 (App. 2020). We review the court's ruling for an abuse of discretion. *Id.* at 47, ¶ 16.

¶6 Wife contends that fees were mandatory under § 25-324(B) because Husband "knowingly misrepresent[ed] the facts" and "knowingly lied" while testifying. But while a fee award under subsection (A) requires the court to consider the reasonableness of the parties' positions "throughout the proceedings," subsection (B) applies only to filing of a "petition." A.R.S. § 25-324(A), (B). And here, Husband did not file a petition; he filed a motion for temporary orders. *See* Ariz. R. Fam. Law P. 47; *see also In re Marriage of Cotter*, 245 Ariz. 82, 88, ¶ 18 n.7 (App. 2018).

¶7 Moreover, even if § 25-324(B) applied to motions, Husband's motion for temporary orders did not meet the required criteria. Wife contends otherwise, arguing that Husband: (1) misrepresented alleged past injuries to argue that he could not work, (2) claimed to not recall owing a significant debt to the Social Security Administration for past overpayments, (3) did not respond to Wife's pretrial settlement offer, and (4) did not submit a pretrial statement or exhibits for trial. But only the first of these issues is relevant to the propriety of Husband's motion. The second issue was resolved when Husband withdrew his spousal maintenance claim and Wife stopped pursuing discovery on it, and Wife's fee request was not limited to expenses incurred before that withdrawal. The third and

² Although Husband did not file an answering brief, in an exercise of our discretion, we decline to treat that failure as a confession of error and instead address the merits of Wife's appeal. *See Savord v. Morton*, 235 Ariz. 256, 259, ¶ 9 (App. 2014).

DEFRANCO v. MORAN
Decision of the Court

fourth issues did not arise until after Husband withdrew his spousal maintenance claim.

¶8 Husband’s motion did allege past injuries limiting his ability to work, implicating the first issue, but the underlying facts were disputed. Wife contended that Husband had no housing expenses and had been able to maintain full-time employment for various periods even after he suffered the alleged injuries. Husband conceded he was living rent-free with his parents (but contended he was caring for his father) and admitted holding employment from time to time, but contended those jobs were not “physically demanding.” He also contended that Wife had previously agreed he could work “seasonally or part-time” and that “even . . . limited physical activity is still difficult for him.” Given these disputed facts, the court could have reasonably concluded that Husband’s temporary orders motion was not groundless or filed in bad faith. *Cf. Goldman v. Sahl*, 248 Ariz. 512, 531, ¶ 68 (App. 2020) (finding claim not groundless even under the assumption that the claimant “believed his claim was a long shot”); *Fund Manager, Pub. Safety Pers. Ret. Sys. v. Dep’t of Pub. Safety Loc. Ret. Bd.*, 157 Ariz. 324, 327 (App. 1988) (“[G]ood faith, where there is honesty of purpose and honesty in fact, encompasses the right to be wrong.”). Although Wife notes the superior court’s finding that Husband took unreasonable positions regarding spousal maintenance, taking unreasonable positions is not the same as filing a groundless or bad faith petition (or motion) as required to justify a fee award under § 25-324(B)(1)-(2). *See SWC Baseline & Crismon Invs., L.L.C. v. Augusta Ranch Ltd. P’ship*, 228 Ariz. 271, 281, ¶ 31 (App. 2011) (generally equating “groundless” to “frivolous”); *cf. Cruz v. Garcia*, 240 Ariz. 233, 238, ¶¶ 19-20 (App. 2016) (treating fee requests under § 25-324(A) and (B) as separate issues).

CONCLUSION

¶9 We affirm. Wife seeks an award of fees and costs on appeal under § 25-324. Having considered the relevant factors, we deny her request under § 25-324(A), and because Husband did not file an answering brief, § 25-324(B) does not apply.



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