

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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:

JOYANN RUDD HARMS,  
*Petitioner/Appellee,*

v.

TIMOTHY LORIN HARMS,  
*Respondent/Appellant.*

No. 1 CA-CV 21-0348 FC  
FILED 7-19-2022

---

Appeal from the Superior Court in Maricopa County  
No. FC2017-095744  
The Honorable Rodrick J. Coffey, Judge

**AFFIRMED**

---

COUNSEL

Davis Miles McGuire Gardner, Tempe  
By Douglas C. Gardner, Michael D. Girgenti  
*Counsel for Respondent/Appellant*

Bryson Law Firm, PLC, Mesa  
By Brent H. Bryson  
*Counsel for Petitioner/Appellee*

HARMS v. HARMS  
Decision of the Court

---

**MEMORANDUM DECISION**

Judge James B. Morse Jr. delivered the decision of the Court, in which Presiding Judge Jennifer B. Campbell and Judge Randall M. Howe joined.

---

**M O R S E**, Judge:

¶1 Timothy Harms ("Husband") appeals the family court's order granting Joyann Harms ("Wife") an award of attorney fees. For the following reasons, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Wife petitioned for divorce in 2017. The case was contentious from the beginning. The family court admonished the parties to act reasonably and warned that their proposed approach to litigation would "substantially diminish their assets." The parties did not heed the warning. During two years of litigation, Husband paid at least \$59,968 in fees while Wife incurred \$77,657.50.

¶3 After a trial in September 2019, the court entered a 27-page dissolution decree. The court found that Husband had greater financial resources and made extensive findings regarding Husband's unreasonable conduct. The court awarded Wife a portion of her attorney fees. Husband objected to Wife's fee application but did not ask for specific findings. *See* A.R.S. § 25-324(A). The court awarded Wife \$50,000 in fees. Husband appealed the award, and we have jurisdiction. *See* A.R.S. § 12-2101(A)(1).

**DISCUSSION**

¶4 We will affirm an attorney fees award unless "clearly erroneous," *Hefner v. Hefner*, 248 Ariz. 54, 57, ¶ 6 (App. 2019) (citation omitted), "review[ing] the facts in the light most favorable to sustaining the trial court's rulings," *In re Marriage of Gibbs*, 227 Ariz. 403, 405, ¶ 2 (App. 2011).

¶5 Husband contests the court's finding that he has greater financial resources and asserts the parties' financial discrepancy was "relatively minor." Husband admitted he earned \$115,000 per year at the time of trial, but claimed it reflected only a temporary increase from his historic pay of approximately \$67,000 per year. Wife receives \$20,000 a year

HARMS v. HARMS  
Decision of the Court

in child support and spousal maintenance, and planned to start a new job after the trial earning \$6,000 a year. For purposes of calculating child support, the family court found Wife capable of earning \$35,000 per year. On this record, the evidence is sufficient to show Husband's greater financial resources. See *Magee v. Magee*, 206 Ariz. 589, 591, ¶ 12 (App. 2004) ("To qualify for consideration, a spouse must establish only some level of financial disparity; *i.e.*, that he or she is financially *poorer* than the other spouse, not that he or she is actually *poor*.").

¶6 Husband also asserts that the court's reasonableness findings are "not supported by the outcomes of trial and the relative success of the parties." But an award of fees under A.R.S. § 25-324 does not "turn upon a party's success or failure." *Quijada v. Quijada*, 246 Ariz. 217, 222, ¶ 15 (App. 2019). Husband identifies motions Wife filed that the court denied. But Wife filed those motions in response to Husband's actions – actions that the family court found unreasonable, including withholding discovery and refusing to cooperate in enrolling the children in school. The court did not err in finding Husband acted unreasonably.

¶7 Finally, Husband disputes \$28,655.50 of the \$77,657.50 Wife requested in her attorney fee application. But the trial court reduced Wife's request by \$27,657.50 and awarded Wife \$50,000 in fees. We generally "decline to substitute our judgment for that of the trial court by engaging in an item-by-item analysis of each objection." *Solimeno v. Yonan*, 224 Ariz. 74, 82, ¶ 38 (App. 2010). And we note that many of the items Husband disputes appear reasonable. Given that the court reduced Wife's fee request by an amount nearly equal to the amounts Husband challenged, we presume that any unreasonable entries were excluded from the award.<sup>1</sup>

---

<sup>1</sup> Wife concedes that the fees for a separate case seeking an order of protection were not recoverable, but this amounted to only \$2,776.50.

HARMS v. HARMS  
Decision of the Court

**CONCLUSION**

¶8 We affirm the family court's fee award. We find that Husband took unreasonable positions in this appeal and grant Wife's request for a portion of her reasonable attorney fees under A.R.S. § 25-324. We also award Wife her costs upon timely compliance with ARCAP 21.



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