IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Marriage of:

RAYMOND C. DECOSTA, *Petitioner/Appellee*,

v.

GLADYS A. ALTEN DECOSTA, *Respondent/Appellant*.

No. 1 CA-CV 21-0547 FC
FILED 9-20-2022

Appeal from the Superior Court in Yavapai County
No. P1300DO201900056
The Honorable Joseph P. Goldstein, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Brown Hanna & Mull PLLC, Prescott
By John G. Mull
Counsel for Petitioner/Appellee

Tiffany & Bosco PA, Phoenix
By Alexander Poulos, Christopher W. Dan
Counsel for Respondent/Appellant

MEMORANDUM DECISION

Judge Randall M. Howe delivered the decision of the court, in which Presiding Judge David D. Weinzweig and Judge D. Steven Williams joined.

H O W E, Judge:

¶1 Gladys A. Alten DeCosta ("Wife") challenges the family court's denial of her objections to the parties' consent decree. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Raymond C. DeCosta ("Husband") petitioned for dissolution of the parties' marriage in 2019. Shortly before trial, the parties entered into an agreement under Arizona Rule of Family Law Procedure ("Rule") 69(a)(2) to later incorporate into a consent decree. The parties agreed that Husband would pay $6,000 in monthly spousal maintenance starting February 1, 2021, for the remainder of Wife's life. The parties also agreed to impress a lien to secure Husband's spousal maintenance obligation. Husband's counsel would "draft the document that will be a lien." They agreed that Husband would check with the trustee bank, JP Morgan Chase Bank ("Chase"), "as to the one . . . trust that allows a judgment against it to lien an amount of money of $1 million." Those monies could not be "dissipated, transferred, moved in any[]way without first obtaining an agreement of the parties or a court order."

¶3 At a later status conference, the parties gave updates on the progression of the consent decree. Wife's counsel told the court that the parties were working on identifying a suitable asset to lien. Wife's counsel said that the Rule 69 Agreement placed the lien on the million-dollar account. He reminded the court that originally, the Rule 69 Agreement provided that "the lien would go against his beneficiary interest in a Trust of [Husband's] father's that held about 14 million dollars," but that if Chase would not honor the lien and informed the parties, then Husband would provide alternatives to that security and the parties would look to the court for resolution of any disagreement. He added that this process "was built into the Rule 69 Agreement" and "hoped to resolve that aspect of the agreement" that day. At the close of the hearing, the court directed the parties to submit a proposed consent decree. Husband did so the next day.

¶4 Wife objected to the proposed decree, stating that a Chase representative told both parties that it would not honor the lien if impressed on either of Husband's trusts. She noted that the proposed decree substituted in a new Chase account ("X7007 Account") that Husband agreed to fund with $1 million. Wife argued that this account would not suffice unless Husband (1) funded it, (2) "file[d] proof of the funded account with the Court in the form of an actual Chase account statement," and (3) "obtain[ed] a written statement from Chase's legal department . . . that Chase ha[d] reviewed the proposed lien language . . . and [would] comply with its terms as to the . . . [X]7007 Account."

¶5 Husband filed a revised proposed decree that he contended "include[d] all changes requested by Wife . . . excepting the language requiring [Chase] to issue written confirmation it will comply with the terms of the Judgment Lien." Husband noted that he did not include that language because Chase said that it would not honor the lien. Wife again objected and requested an evidentiary hearing, arguing that "[i]f Chase will not approve any sort of lien, the X7007 Account cannot be used to secure the spousal maintenance obligation."

¶6 The family court determined that Husband's revisions were sufficient and denied Wife's hearing request. Husband filed another revised proposed decree, and Wife again objected, contending that the lien was ineffective because Chase said that it would not honor it. She conceded, however, that "Chase's participation is not mandated by the [Rule 69] Agreement." The court overruled her objections and signed a final decree ("Decree"), which provided as follows:

> [A] lien is hereby impressed in the total amount of One Million Dollars ($1,000,000) against the . . . X7007 Account to secure Petitioner's maintenance obligation to Respondent. Absent the express written consent of Respondent or court order, no ownership interest or portion of the . . . X7007 Account and the $1,000,000 balance shall be withdrawn, pledged, transferred or otherwise disposed of for any reason other than for the purpose of the . . . X7007 Account set forth in this Decree. Neither Petitioner, nor his representatives, heirs, trustees, guardians, conservators, successors and assigns may withdraw, pledge as security, merge, or transfer the funds in the . . . X7007 Account for any reason other than set forth in this Decree.

¶7 The Decree also acknowledged that Husband had requested that Chase "issue written confirmation to [Husband] and [Wife] that it has received the Judgment Lien and Judgment terms of this Decree." Wife timely appealed.

DISCUSSION

¶8 Wife contends that a lien impressed in the consent decree to secure future spousal maintenance payments from Husband is invalid because Chase said that it would not honor the lien. "To promote amicable settlement of disputes between parties to a marriage attendant on their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for . . . maintenance of either of them . . . ." A.R.S. § 25–317(A). "If the court finds that the separation agreement is not unfair as to disposition of property or maintenance . . . , the separation agreement shall be set forth or incorporated by reference in the decree of dissolution . . . and the parties shall be ordered to perform them." A.R.S. § 25–317(D). The court may impress a lien on the separate property of either party to secure spousal maintenance payments. A.R.S. § 25–318(E)(3). A spousal maintenance agreement merged into the dissolution decree, as it was in this case, becomes part of the decree. *Chopin v. Chopin*, 224 Ariz. 425, 427 ¶ 6 (App. 2010). We review the court's interpretation of the decree de novo. *Cohen v. Frey*, 215 Ariz. 62, 66 ¶ 10 (App. 2007). In doing so, we apply the general rules of construction for any written instrument, but we do not consider parol or extrinsic evidence. *In re Marriage of Johnson and Gravino*, 231 Ariz. 228, 233 ¶ 16 (App. 2012) (internal quotation marks omitted).

¶9 The court did not err in approving the Rule 69 Agreement and impressing the lien in the Decree. The Decree provides that Husband and his successors and heirs cannot "withdraw, pledge as security, merge, or transfer the funds in the . . . X7007 Account for any reason other than set forth in this Decree." The funds in the X7007 Account are not Chase's to withdraw, pledge, or otherwise distribute. *See Lien*, Black's Law Dictionary (11th ed. 2019) (defining a "lien" as "[a] legal right or interest that a creditor has in another's property, lasting usually until a debt or duty that it secures is satisfied"). Further, Wife does not show that Chase's consent was necessary to impress an effective lien. She cites out-of-state decisions for the proposition that a lien is intended to "prevent the debtor from disposing of his property to defeat the satisfaction of the debt." *In re Arrow Gen. Contractors of Roselle, Ill., Inc.*, 41 B.R. 481, 483 (N.D. Ill. 1984). But the lien accomplishes this by the provision preventing Husband and his successors and heirs from withdrawing, pledging as security, merging, or transferring

the funds without her consent or court order. Wife also cites *Lewis v. DeBord*, 238 Ariz. 28, 33 ¶ 20 (2015), for the proposition that liens convey notice to "those who manage, hold, have, or seek an interest in the subject property." *Lewis* involved a judgment lien, which triggered constructive notice under A.R.S. § 33–961(A) when it was recorded. *Id*. In any event, the Decree indicates that Chase had notice of the lien because it provides that Husband had requested that Chase "issue written confirmation to [Husband] and [Wife] that it has received the Judgment Lien and Judgment terms of this Decree." The lien was thus valid.

¶10 Wife also contends that the lien as expressed in the Decree does not conform to the parties' original Rule 69 agreement. She conceded during the proceedings, however, that "Chase's participation is not mandated by the [Rule 69] Agreement." The parties instead agreed that Husband would "check with [Chase] . . . as to the one . . . trust that allows a judgment against it to lien an amount of money." Husband did so. The parties then negotiated towards identifying "an alternative asset of Husband's to lien" should Chase not honor the lien.

¶11 While Wife now says that she did not specifically agree to placing a lien on the X7007 Account, the record shows that her revisions to the proposed decree, which the court largely included in the final decree, contemplated impressing the lien on the X7007 Account. In any event, she cites no authority beyond *Lewis*, discussed *supra*, to support her primary argument: that no lien on any Chase-held asset would be valid without Chase's consent. *Cf. Spector v. Spector*, 94 Ariz. 175, 185 (1963) (finding that lien on company stock to secure husband's payment obligation to wife did not interfere with the parties' contract with "the third parties who bought into the [company]"). Certainly, A.R.S. § 25–318(E) contains no such language.

¶12 Wife also contends that without Chase's consent she is "exposed to chasing her security if [Husband] violates the Decree by not paying maintenance" and that she would "have to go back to court to enforce the obligation." Lienholders do not recover "simply by possessing a lien; rather, the lienholder must go to court and obtain a judgment against the debtor in order to be able to execute on its lien." 51 Am. Jur. 2d Liens § 79 (West 2022). Should Husband fail to meet his spousal maintenance obligations in the future, Wife could petition to enforce them. *See* A.R.S. § 25–317(E) ("Terms of the agreement set forth . . . in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt."); *see also* Rule 91(b) (An applicant who seeks to modify or enforce all or a portion of a judgment after the entry of the

judgment must file a petition with the court."). Therefore, the lien was valid, and the court did not err.

CONCLUSION

¶13 For the reasons stated, we affirm. Both parties request their attorney's fees on appeal under A.R.S. § 25–324(A). Before awarding fees, we must consider the parties' financial resources and the reasonableness of their positions throughout the proceedings. *Keefer v. Keefer*, 225 Ariz. 437, 441 ¶ 16 (App. 2010). Wife did not file an affidavit of financial information, and neither party has taken an unreasonable position in this appeal. We therefore decline to award attorney's fees. As the prevailing party, Husband may recover taxable costs upon compliance with Arizona Rule of Civil Appellate Procedure 21.

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