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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

CATALINA PARRA LOPEZ,
Petitioner/Appellee,

v.

MANUEL ANTONIO ZAVAL HERNANDEZ,
Respondent/Appellant.

No. 1 CA-CV 21-0637 FC
FILED 9-20-2022

Appeal from the Superior Court in Yuma County
No. S1400DO202000479
The Honorable Levi Gunderson, Judge

AFFIRMED IN PART; VACATED IN PART; REMANDED

COUNSEL

Powell Law Firm, Yuma
By Jay Powell
Counsel for Respondent/Appellant

Law Office of Sonia Monique Ramirez, PLLC, Yuma
By Sonia M. Ramirez Sardinas
Counsel for Petitioner/Appellee

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MEMORANDUM DECISION

Judge James B. Morse Jr. delivered the decision of the Court, in which Presiding Judge Jennifer M. Perkins and Judge Michael J. Brown joined.

M O R S E, Judge:

¶1 Manuel Antonio Zavala Hernandez ("Father") appeals from the family court's dissolution decree ("Decree"). For the following reasons, we affirm in part, vacate in part, and remand.

FACTS AND PROCEDURAL BACKGROUND

¶2 Father and Catalina Parra Lopez ("Mother") married in 2002, and had three children together. Mother petitioned for divorce in 2020.

¶3 After a trial, the court entered the Decree in August 2021. The Decree ordered, in part, Father to pay Mother \$557 per month in child support, and \$500 per month for 80 months in spousal maintenance. The parenting plan made Mother the primary residential parent and gave Father parenting time on Wednesdays and alternating weekends.

¶4 Father timely appealed and we have jurisdiction under A.R.S. § 12-2101(A)(1).

DISCUSSION

¶5 On appeal, Father challenges the spousal maintenance award and argues that the court provided insufficient explanation for the parenting plan. Father's statement of the issues also questions whether the court erred in admitting exhibits and distributing community and separate property. We find these last issues waived because Father presents no further argument. *See In re Aubuchon*, 233 Ariz. 62, 64-65, ¶ 6 (2013) (considering "arguments not supported by adequate explanation, citations to the record, or authority" waived). Father also failed to provide required "references to the record." ARCAP 13.

I. Spousal Maintenance Award.

¶6 Spousal maintenance awards are reviewed for an abuse of discretion. *Leathers v. Leathers*, 216 Ariz. 374, 376, ¶ 9 (App. 2007). We view

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the evidence "in the light most favorable to upholding the trial court's decision" and will affirm unless the record is "devoid of competent evidence to support" the decision." *Little v. Little*, 193 Ariz. 518, 520, ¶ 5 (1999) (quoting *Fought v. Fought*, 94 Ariz. 187, 188 (1963)). When, as here, neither party requested findings of fact or conclusions of law before trial, *see* Ariz. R. Fam. Law P. 82(a), we presume that the family court "found every fact necessary to support the judgment" and will affirm if any reasonable construction of the evidence justifies the decision, *Neal v. Neal*, 116 Ariz. 590, 592 (1977) (citation omitted).

¶7 In setting the amount and duration of spousal maintenance, the family court must consider thirteen factors, including the paying spouse's ability to meet their needs and the "comparative financial resources of the spouses." A.R.S. § 25-319(B)(4), (5); *see also Rainwater v. Rainwater*, 177 Ariz. 500, 502 (App. 1993). Here, the court identified the factors it considered and made findings regarding Father's "ability to meet his own financial needs while also meeting Mother's maintenance needs" and his "greater financial resources than Mother."

¶8 Mother is a seasonal agricultural worker who makes \$14 per hour while employed and receives unemployment benefits for the remainder of the year. The court imputed a minimum wage of \$12.15 per hour (\$2,106/month) to Mother when determining her gross income. Father works in a warehouse and claimed his work is "unstable." The court found Father's income was \$15.70 per hour (\$2,721/month). Both parties testified, and their affidavits of financial information show, that their expenses exceed their income. Each also asserted that the other party lives and shares expenses with another adult.

¶9 Although Father received a greater share of community property, the court issued a judgment for \$20,903.50 plus interest to make the parties equal and ordered Father to make equalization payments of \$200 per month. *See Deatherage v. Deatherage*, 140 Ariz. 317, 320 (App. 1984) (noting courts must consider income-producing property in determining amount of spousal maintenance). The community property primarily consisted of the equity in Father's truck and real property, with a trailer, in Mexico. Mother requested that the truck and property go to Father in exchange for the equalization amount. The court found the marital home in Yuma was Father's separate property, but, pursuant to the parties' agreement, ordered it sold and the proceeds divided equally.

¶10 The record does not provide sufficient evidence that "Father has greater financial resources than Mother" to justify the amount of

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spousal maintenance awarded. Indeed, as reflected in the superior court's child-support worksheet, it appears that the spousal maintenance award in this case results in Mother being the party with the superior income. *Cf. In re Marriage of Downing*, 228 Ariz. 298, 299, 301, ¶¶ 3, 13 (App. 2011) (affirming when court ordered husband to pay half the difference in income as spousal maintenance). After accounting for the other payments ordered in the Decree—including back-due child support, spousal maintenance, and equalization payments—Father's income is reduced to approximately 66% of Arizona's minimum wage. This is less than the amount generally deemed necessary to maintain a minimum standard of living under the "self support reserve test" set forth in Arizona's child support guidelines. *See* A.R.S. § 25-320 app. § 15.

¶11 We have previously enforced a spousal maintenance and child support order that required a husband to pay fifty percent of his net income. *See, e.g., Lopez v. Lopez*, 125 Ariz. 309, 310-11 (App. 1980) (ordering that husband's obligation be offset by wife's social security payments). But in *Lopez*, the father did not challenge the amount of the award and only contested whether non-payroll amounts should have been included. *Id.* In contrast, Father argues here he does not have "greater financial resources" and "does not have the ability to meet his own financial needs and that of the maintenance awarded."

¶12 The court ordered an equalized distribution of community assets, the record does not disclose other separate property, the parties' incomes are not significantly different, and the spousal maintenance order results in Mother receiving superior income. Thus, the record does not show that Father had greater financial resources. And, the superior court did not explain what greater financial resources Father possesses or how Father has the ability to meet his own financial needs while also meeting Mother's maintenance needs. In such a situation, we cannot affirm a spousal maintenance award that results in the paying spouse having less income than the receiving spouse. *See Hughes v. Hughes*, 177 Ariz. 522, 525 (App. 1993) ("In the absence of such an explanation, the trial court's exercise of discretion is essentially unreviewable; and we have been unable to supply the missing explanation from our independent review."). Accordingly, we vacate the spousal maintenance award and remand for the superior court to make an appropriate award based on the evidence presented.

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II. Parenting Time.

¶13 Father also asserts the superior court "failed to provide any explanation as to why father was not entitled to more parenting time" or "state which factors had influenced its decision." In making a custody determination, the family court is required to consider the factors enumerated in A.R.S. § 25-403(A) regarding the children's best interests. *Owen v. Blackhawk*, 206 Ariz. 418, 421, ¶ 11 (App. 2003); A.R.S. § 25-403.02. In a contested custody case, the court must make specific findings on the record regarding "all relevant factors and the reasons for which the decision is in the best interests of the child." A.R.S. § 25-403(B). Those findings are required not only to "aid an appellant and the reviewing court, but also . . . all parties and the family court in determining the best interests of the child or children both currently and in the future." *Reid v. Reid*, 222 Ariz. 204, 209, ¶ 18 (App. 2009).

¶14 As a matter of public policy, "it is in a child's best interest . . . [t]o have substantial, frequent, meaningful and continuing parenting time with both parents." A.R.S. § 25-103(B)(1). But "Arizona law does not have a presumption of equal parenting time," *Smith v. Smith*, 508 P.3d 793, 797 (Ariz. App. 2022), and the law "does not require equal parenting time or remove the requirement that the court adopt a parenting plan consistent with a child's best interests," *Gonzalez-Gunter v. Gunter*, 249 Ariz. 489, 492, ¶ 12 (App. 2020) (affirming a plan directing father's parenting time to "the first and third weekends of every month, plus vacation time and some holidays").

¶15 Here, the family court made findings for all factors relevant to the children's best interests. See A.R.S. § 25-403(A). It also explained that the temporary parenting plan it previously ordered, which was the same as ordered in the Decree, "has been working out fairly well." The court issued the temporary parenting plan after a hearing in October 2020, but neither party provided a transcript of that hearing. See ARCAP 13(a)(7)(A). At trial, Father requested that the court grant him parenting time every weekend. Mother asked for alternating weekends so that she could spend time with the children when they are not in school.

¶16 The court's findings and conclusions are sufficient to allow this Court to review its parenting time decision. Upon review, we discern no error.

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III. Attorney Fees.

¶17 In the exercise of our discretion, we decline Mother's request for an award of attorney fees under A.R.S. § 25-324.

CONCLUSION

¶18 We vacate the spousal maintenance award and remand for further proceedings consistent with this decision. We affirm the remainder of the Decree but acknowledge that any change to the spousal maintenance award may require amendments to the child support order.



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