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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

MARY ELLEN MAIER, *Petitioner/Appellant*,

v.

DAVID CARR SPELGER, *Respondent/Appellee*.

No. 1 CA-CV 21-0746 FC
FILED 10-06-2022

Appeal from the Superior Court in Maricopa County
No. FC2019-010051
The Honorable Michael Rassas, Judge

AFFIRMED

COUNSEL

Berkshire Law Office, Tempe
By Keith Berkshire, Alexandra Sandlin
Counsel for Petitioner/Appellant

Hoffman Legal LLC, Phoenix
By Amy Wilkins Hoffman
Counsel for Respondent/Appellee

MEMORANDUM DECISION

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

B R O W N, Judge:

¶1 Mary Ellen Maier (“Wife”) appeals from the superior court’s decree dissolving her marriage to David Carr Spelger (“Husband”). She argues the court erred by denying her request for retroactive spousal support and by ordering her to reimburse Husband for credit card charges. For the following reasons, we affirm.

BACKGROUND

¶2 After 24 years of marriage, Wife petitioned for dissolution in November 2019. Husband and Wife have one minor child in common born in 2005. Throughout the marriage, Husband worked as an airline pilot, and Wife primarily stayed home with their children. She obtained two masters-level degrees during the marriage and was a full-time student at the time of the trial, planning to graduate in May 2021.

¶3 At the outset of the proceeding, the parties filed a stipulation in which they agreed “to devote all of their efforts in this matter to reach a negotiated settlement in an efficient, cooperative manner.” They later agreed that Wife would receive \$257,726.86 from selling the marital home, including \$57,923.50 of Husband’s share of the proceeds. Husband received \$140,221.94.

¶4 For about four months after Wife filed the petition for dissolution, Husband paid her living expenses, including the mortgage and credit card bills. Further settlement negotiations broke down when the pandemic created uncertainty about Husband’s income. Soon thereafter, Wife received her share of the proceeds from the sale of the home, and Husband stopped paying for Wife’s living expenses. Wife later amended her petition for dissolution, requesting spousal maintenance for an indefinite duration, but she did not seek a temporary order awarding spousal maintenance.

¶5 In the joint pretrial statement, Husband agreed that Wife was entitled to spousal maintenance and proposed payments over eight years

MAIER v. SPELGER
Decision of the Court

totaling \$246,000. He objected to retroactive spousal maintenance because Wife had received significant additional proceeds from the sale of the marital home, and he paid some of her living expenses before the sale. Husband also requested reimbursement for post-petition charges Wife incurred on his Citi Costco Card (“credit card”), in the amount of \$7,764.40. For her part, Wife requested retroactive spousal maintenance to April 1, 2020, because Husband had not provided interim support after that date. She also argued that Husband was not entitled to reimbursement for the post-petition credit card charges because he was not paying spousal or child support at the time.

¶6 At trial, Wife requested indefinite spousal maintenance of \$5,000 per month. She testified that she had supported Husband during flight school and relocated several times because of his career, and that Husband has 25 years of experience as a pilot, while she will start her career at 52 with no experience due to staying home with her children for 20 years. Wife also explained that if Husband wanted reimbursement for paying the credit card charges, then she should receive retroactive spousal support from the filing of the petition for dissolution (as opposed to April 1, 2020).

¶7 In its decree, the court found that (1) the parties were married for 24 years and had a middle class standard of living; (2) Wife, age 51, is physically and emotionally capable of working and is qualified to work in various fields; (3) Husband should be able to meet his needs while paying spousal maintenance; (4) Husband’s income is likely to remain higher than Wife’s income for the foreseeable future; (5) Wife substantially contributed to Husband’s earning ability during the marriage; (6) Wife’s career and income were hampered by her inability to work consistently throughout the marriage, despite her education; (7) Wife will have financial resources to meet her own needs independently; and (8) Wife does not need additional time to obtain additional education or training.

¶8 The court ordered Husband to pay spousal maintenance for eight years starting on July 1, 2021, in the amount of \$5,000 monthly for the first year; \$3,500 monthly for the next two years; \$2,500 monthly for the two following years; and \$1,500 monthly for the last three years. The court also ordered Wife to reimburse Husband for the credit card charges (as her separate debt), but noted that the amount owed would be deducted from Husband’s “back child support.” The court did not award retroactive spousal maintenance. Addressing attorneys’ fees and costs under A.R.S. § 25-324(A), the court found that both parties took unreasonable positions, but awarded Wife \$83,452.85 based on financial disparity. Wife’s request

MAIER v. SPELGER
Decision of the Court

to alter or amend the decree was unsuccessful, and this timely appeal followed. We have jurisdiction under A.R.S. § 12-2101(A)(1).

DISCUSSION

A. Retroactive Spousal Maintenance

¶9 We review a spousal maintenance award for an abuse of discretion, which may occur if the superior court commits an error of law in making a discretionary conclusion or makes a discretionary ruling that is unsupported by the record. *Boyle v. Boyle*, 231 Ariz. 63, 65, ¶ 8 (App. 2012). The court has “substantial discretion to set the amount and duration of spousal maintenance.” *Rainwater v. Rainwater*, 177 Ariz. 500, 502 (App. 1993); *see also* A.R.S. § 25-319(B) (“The maintenance order shall be in an amount and for a period of time as the court deems just, without regard to marital misconduct, and after considering all relevant factors”). We view the evidence in the light most favorable to upholding the spousal maintenance ruling. *Boyle*, 231 Ariz. at 65, ¶ 8.

¶10 Wife argues the court erred in denying her request for retroactive spousal maintenance because the court’s findings in favor of her spousal maintenance award applied throughout the proceedings. Thus, Wife contends the court’s ruling is “legally inconsistent.” Although the court did not explicitly state why it did not award Wife retroactive spousal maintenance, we will affirm if the court’s ruling was correct for any reason supported by the record. *See In re the Marriage of Gibbs*, 227 Ariz. 403, 409, ¶ 16 (App. 2011). Here, the court made specific findings on the statutory factors under A.R.S. § 25-319(A), including that (1) Wife has sufficient property to provide for her reasonable needs, as she has a house, a car, and a portion of Husband’s retirement, and (2) she is able to be self-sufficient because she has three advanced degrees.

¶11 In considering the amount and duration of the award under § 25-319(B), the court found that Wife’s financial resources included the equity in her current house, which she bought with proceeds from the couple’s marital home, and a debt-free vehicle. The court also heard evidence that Husband’s pay decreased due to the pandemic in March 2020. Wife received significant proceeds from the sale of the marital home. Even though the parties disputed a portion of the proceeds, there is no dispute that she received almost \$200,000. The court also heard testimony that Wife used these proceeds to repay her parents for the down payment on her new home and spent an additional \$68,000 on remodeling costs.

MAIER v. SPELGER
Decision of the Court

¶12 Wife seems to suggest that when the statutory factors favor awarding spousal maintenance, a court must presume the award is also retroactive. But she cites no authority, and we have found none, supporting that proposition. Thus, Wife has not shown that the court made an error of law or established that the court's findings lack evidentiary support. Given this conclusion, we need not address Husband's argument, citing an unpublished decision from this court, that A.R.S. § 25-319 does not allow an award of retroactive spousal maintenance. See *Barroso v. Barroso*, No. 1 CA-CV 17-0347 FC, 2018 WL 4018034, at *2, ¶ 8 (Ariz. App. Aug. 23, 2018) (mem. decision) ("Retroactive maintenance is available only in the context of an order modifying an initial obligation.").

B. Credit Card Reimbursement

¶13 We review the superior court's division of debt for an abuse of discretion. *Hammett v. Hammett*, 247 Ariz. 556, 559, ¶ 13 (App. 2019). Post-petition expenditures paid by one spouse with separate property to service community debt are not presumptively gifts to the community. *Bobrow v. Bobrow*, 241 Ariz. 592, 593, ¶ 1 (App. 2017). While courts must consider these payments in an equitable property distribution, *id.* at 596, ¶ 19, courts "retain discretion to account for such payments in an equitable overall property allocation." *Berg v. Berg*, 1 CA-CV 21-0320 FC, 2022 WL 1498136, at *4, ¶ 20 (Ariz. App. May 12, 2022) (mem. decision). A court may account for these payments in various ways and may retroactively apply such payments as temporary spousal maintenance in appropriate circumstances. *Huey v. Huey*, 1 CA-CV 20-0547 FC, 2022 WL 2951559, at *4, ¶ 18 (Ariz. App. July 26, 2022) (mem. decision).

¶14 Wife asserts the court erred in ordering her to reimburse Husband for the credit card charges she incurred from December 2019 to April 2020. She contends that because she continuously asserted her right to spousal maintenance from the time she filed the petition for dissolution, the payments Husband made "were a form of support." Wife therefore argues the court should have treated the payments as spousal maintenance. Wife relies on *Barron v. Barron*, 246 Ariz. 580, 591 ¶¶ 40-44 (App. 2018) (vacated in part on other grounds by *Barron v. Barron*, 246 Ariz. 449, 452, ¶ 21 (2019)), to support her argument. There, the superior court denied the husband's equalization request for over \$30,000 he paid towards post-petition community expenses. *Barron*, 246 Ariz. at 591, ¶ 40. The court also denied the wife's request for a \$20,000 equalization payment based on savings accounts Husband was awarded under the decree. *Id.* On appeal, we affirmed because the court's ruling was supported by the record; the wife was unable financially to share in the community expenses and more

MAIER v. SPELGER
Decision of the Court

importantly, the overall property distribution was equitable. The analysis in *Barron* confirms the general principle that reimbursement of post-petition community expenses is not required in any given case. But the opposite is also true; an order to reimburse such expenses will be sustained absent an abuse of discretion.

¶15 Here, the superior court exercised its discretion and ordered reimbursement. Unlike the situation in *Barron*, the record supports the court's implicit finding that Wife had the ability to reimburse Husband for the credit card charges. In March 2020, Wife received her portion of the marital home sale proceeds. She was able to use these funds to repay her parents for the down payment on a new home and to remodel it. Consistent with the analysis in *Barron*, the court's decision in this case to order reimbursement is supported by the overall property allocation. Wife has not shown that the court's treatment of the \$7,753.40 was an abuse of discretion.

CONCLUSION

¶16 We affirm the superior court's decree of dissolution. Both parties request an award of attorneys' fees and costs on appeal. After considering the reasonableness of the parties' positions and their respective financial resources, in our discretion we deny Wife's fee request under A.R.S. § 25-324. We summarily deny Husband's request for fees because he only cites ARCAP 21, which is not a proper request. *See* ARCAP 21(a)(2) ("A claim for fees under this Rule must specifically state the statute, rule, decisional law, contract, or other authority for an award of attorneys' fees."). As the successful party on appeal, however, Husband is awarded taxable costs subject to compliance with ARCAP 21.



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