IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Marriage of:

DAVID B. ANDERSON, *Petitioner/Appellant*,

v.

TIFFANY L. LOGUE-ANDERSON, *Respondent/Appellee*.

No. 1 CA-CV 21-0769 FC
FILED 9-29-2022

Appeal from the Superior Court in Maricopa County
No. FN2020-071050
The Honorable Stasy D. Avelar, Judge

AFFIRMED

COUNSEL

The Murray Law Offices PC, Scottsdale
By Stanley D. Murray
Counsel for Petitioner/Appellant

Tiffany L. Logue-Anderson, Buckeye
Respondent/Appellee

MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Maria Elena Cruz and Judge Angela K. Paton joined.

S W A N N, Judge:

¶1 In this dissolution case, David B. Anderson ("Husband") appeals the superior court's characterization of real estate as community property and its order that Husband and Tiffany L. Logue-Anderson ("Wife") sell the property and split the proceeds equally. We detect no error in the superior court's conclusion that Husband gifted the property to the community, nor any abuse of discretion in the equal division of the property. We therefore affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Husband and Wife married in July 2019. Husband filed for divorce in September 2020. The parties disputed, among other things, the characterization and disposition of a house located in Goodyear, Arizona.

¶3 The evidence presented at trial established the following. Husband and Wife lived together in Oregon for many years before marriage, in a house held in Husband's name. In 2018, the parties sold that house and used the proceeds for the down payment on the Goodyear house, which they took title to as a married couple despite not being legally married at that time.

¶4 In July 2018, the parties signed and recorded a special warranty deed that conveyed the Goodyear house from Husband and Wife, "an unmarried man and . . . an unmarried woman who erroneously acquired title as husband and wife," to Husband only. In February 2020, Wife (then married to Husband) signed and recorded a disclaimer deed by which she disclaimed any interest in the Goodyear house, asserting that it was Husband's separate property because it was purchased with his separate funds or gifted to him. The same month, Husband obtained a secured loan in his name only.

¶5 According to Wife, she took the foregoing actions with respect to the Goodyear house solely for refinancing purposes, and Husband made assurances that he did not intend to divest her of any interest. Wife testified

that the month after Husband obtained the secured loan, the couple had a quitclaim deed notarized at a bank. At trial, she provided a copy of the notarized but unrecorded deed, by which Husband quitclaimed his interest in the house to himself and Wife as a married couple. Though Husband testified that he did not recall going to the bank to sign the quitclaim deed, he admitted that it bore his signature and claimed that he signed under duress based on Wife's erratic behavior.

¶6 The superior court concluded that the house was community property because the March 2020 quitclaim deed effected a gift from Husband to the community. The court rejected Husband's claim of duress based on insufficient evidence and an adverse credibility determination. The court ordered the house sold and the net proceeds split equally between Husband and Wife.

¶7 Husband filed a notice of appeal and obtained a stay of the sale order.

DISCUSSION

¶8 Husband contends that the superior court's characterization of the house as community property was error for several reasons. We review the issue de novo. *In re Marriage of Pownall*, 197 Ariz. 577, 581, ¶ 15 (App. 2000).

¶9 First, Husband contends that Wife failed to prove Husband signed the quitclaim deed in the presence of a notary as required by A.R.S. § 33-401(B) because she did not provide the notary's records. We reject that argument. Wife provided a copy of the quitclaim deed authenticated by a notary's seal consistent with A.R.S. § 41-313(D)(2).[1] That was sufficient evidence of notarization. And to the extent that Husband complains Wife disclosed the deed too late to enable to him to discover inconsistencies between the notary's authentication and the notary's journal, that argument fails because Husband acknowledged he signed the deed. Because Husband knew of the deed, the timing of Wife's disclosure in no way impaired his ability to prepare his defense. Indeed, he should have independently disclosed the deed but offered no explanation for his failure to do so.

[1] We note that the notary erroneously wrote the notary's name in place of Husband's in the certification. But Husband does not argue on appeal that the error made the certification defective.

¶10 Second, Husband contends that because he did not record the quitclaim deed as required by A.R.S. § 33-411.01, there was no evidence that he acted with the donative intent required for a valid gift. But though a transferor's failure to record a document evidencing the transfer of real property may put the transferee's rights at issue with respect to subsequent bona fide purchaser for value, *see* A.R.S. § 33-411(A), the failure to record does not impair the transaction as between the original parties. In fact, § 33-411.01 specifically provides that a transferor must indemnify a transferee whose interest is placed at issue by the failure to record. The quitclaim deed and Wife's testimony were sufficient to show that Husband intended to gift the house to the community.

¶11 Third, Husband contends that the evidence established he signed the quitclaim deed under duress. He points to his testimony that Wife had appeared at his workplace early in the morning, had brought a firearm into the house, had repeatedly threatened to kill herself, and had poured gasoline in the house and threatened to ignite it with her children inside. He also points to Wife's testimony admitting her mental health diagnoses, her longstanding mental health struggles, and her criminal history. As an initial matter, we must defer to the superior court's finding that Husband's testimony was not credible. *In re Marriage of Foster*, 240 Ariz. 99, 101, ¶ 5 (App. 2016). Further, the evidence was insufficient to show duress. Duress requires a showing that assent was obtained by a wrongful act or threat precluding the exercise of free will and judgment. *Dunbar v. Dunbar*, 102 Ariz. 352, 355–56 (1967). Though evidence was presented regarding Wife's behavior and mental health generally, no evidence established that Husband was forced to execute the quitclaim deed in response to an act or threat by Wife.

¶12 We affirm the superior court's conclusion that the March 2020 quitclaim deed made the Goodyear house community property.

¶13 Husband finally contends that the superior court's equal division of the house was error. The court must divide community property "equitably, though not necessarily in kind, without regard to marital misconduct." A.R.S. § 25-318(A). The court is "not . . . bound by any per se rule of equality, but rather . . . ha[s] discretion to decide what is equitable in each case" depending on the facts. *Toth v. Toth*, 190 Ariz. 218, 221 (1997).

¶14 Husband argues that an equal division of the house was inequitable in view of the marriage's short duration, the use of the Oregon-house funds to pay the down payment, and his mortgage payments. But

the evidence established that though the parties' marriage was short, their partnership was lengthy—they lived together in the Oregon house for many years, and thereafter lived together in the Goodyear house, even purporting at the outset to have purchased it as a married couple. Wife also testified that her disclaimers were part of a refinancing strategy and that Husband made assurances that he did not intend to deprive her of an interest in the house. On this record, the superior court did not abuse its discretion by determining that an equal division of the house was equitable.

CONCLUSION

¶15 We affirm for the reasons set forth above. We deny Husband's request for attorney's fees on appeal.

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