IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

DOREEN K. HODGES, *Petitioner/Appellee*,

v.

PAUL WILLIAM HODGES, *Respondent/Appellant*.

No. 1 CA-CV 22-0091 FC
FILED 9-8-2022

Appeal from the Superior Court in Maricopa County
No. FC2006-090651
The Honorable John L. Blanchard, Judge

AFFIRMED

COUNSEL

Law Office of Louis Lombardo PC, Chandler
By Louis K. Lombardo
Counsel for Petitioner/Appellee

Raymond S. Dietrich PLC, Phoenix
By Raymond S. Dietrich
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 Paul William Hodges ("Husband") appeals the family court's ruling granting Doreen Kay Hodges' ("Wife") petition to enforce orders regarding retirement accounts. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 The parties divorced in 2007. The court entered a consent decree of dissolution of marriage ("Decree") and a separate property settlement agreement ("PSA") that incorporated the Decree. The Decree provided that the PSA would distribute the community property and ordered the parties to comply with the PSA's terms. The PSA acknowledged an equitable division of the assets and provided that the parties could not modify or waive any of the terms unless in writing and formally executed. The PSA also provided that each party would receive a 50% community interest in Husband's retirement, pension, and other employee benefits through his employment with "TRW, McDonnell Douglas, Benson and GKN[.]" Her portion of the community interest in these accounts constituted contributions acquired from August 12, 1983, through March 3, 2006, "plus gains and losses[.]" Husband was awarded the Benson and GKN 401ks and "[a]ny funds accumulated in the above plans from the date of service of the petition shall be Husband's sole and separate property." To distribute these funds, the PSA required the parties to retain a Qualified Domestic Relations Order ("QDRO") attorney, each to pay one-half of the initial retainer, costs, and fees. Wife would also receive 100% of Husband's Wachovia IRA and H&R IRA. Further, the PSA provided that "[n]either any failure nor any delay on the part of either party hereto in exercising any right hereunder shall operate as a waiver thereof[.]"

¶3 Until 2021, neither party acted to hire a QDRO attorney and divide the retirement accounts. In 2021, Wife asked Husband to help identify the community retirement assets and hire a QDRO attorney. When Husband did not comply, Wife petitioned to enforce the orders regarding

the division of the retirement accounts because no QDRO had been entered to divide the accounts. She also filed an affidavit attesting that she did not pursue this earlier because after the dissolution, she enrolled in school full-time, worked weekends, remarried, and took care of her young children. She added that in 2012, she suffered a stroke and developed partial vision loss, among other ailments. Her affidavit also stated that, at 58 years old, she was unable to work; the only income she herself earned was $1,900 of monthly disability. Husband moved to dismiss the petition, arguing that because the PSA was not merged into the Decree, Wife should have proceeded in contract, but A.R.S. § 12–548, which imposes a six-year statute of limitations for an action for debt, time-barred her claim. The court denied the motion and later conducted oral argument on the petition.

¶4 The court granted Wife's petition, finding that in distributing the retirement funds, the PSA gave Wife vested rights in the account; preparing a QDRO does not. Further, the court found that it had authority to enforce the Decree and PSA, that the Decree ordered the parties to comply with the PSA, and that Wife's petition, without particular explanation, was not an action for debt. The court also found that Husband did not have a laches claim because he "did not credibly allege that he ha[d] been injured or changed positions in reliance on Wife's inaction" and that Wife's 2007 award remained the same in 2021. The court added that Husband's position seeking to deny Wife her awarded interest in the retirement account was unreasonable. The court ordered the parties to retain a QDRO attorney within 30 days and comply with division of the retirement assets pursuant to the PSA. Husband timely appealed.

DISCUSSION

¶5 Husband argues that (1) the statute of limitations under A.R.S. § 12–548 barred Wife's petition, (2) the family court lost its "plenary power" to enforce the Decree and PSA because contract law applies, (3) Wife's claim is barred by laches, and (4) no conditions under Arizona Rule of Civil Procedure ("Civil Rule") 60—and corresponding Arizona Rule of Family Law Procedure ("Family Rule") 85—and A.R.S. § 25–327(A) existed to justify reopening or modifying the case. He also argues that the court did not consider the parties' financial resources and reasonableness of his arguments in awarding Wife attorney's fees. We review a family court's ruling on a post-decree petition for an abuse of discretion. *See In re Marriage of Priessman*, 228 Ariz. 336, 338 ¶ 7 (App. 2011). We review questions of law, including the applicability of a statute of limitations, de novo. *See Larue v. Brown*, 235 Ariz. 440, 443 ¶ 14 (App. 2014); *Cook v. Town of Pinetop-Lakeside*, 232 Ariz. 173, 175 ¶ 10 (App. 2013).

I. Retirement Funds

¶6 The court did not err in finding that the statute of limitations under A.R.S. § 12–548 does not apply to this case. The Decree incorporated the PSA, and both parties agree with the family court that the PSA is fair, equitable, and valid. *See Buckholtz v. Buckholtz*, 246 Ariz. 126, 131 ¶ 18 (App. 2019). It expressly stated that the PSA "shall not be merged" into the Decree. The PSA also expressly stated that it "shall be incorporated, but not merged" into the Decree. A PSA is incorporated "to identify the agreement so as to render its validity res judicata in any subsequent action based upon it." *LaPrade v. LaPrade*, 189 Ariz. 243, 247 (1997) (quoting *Ruhsam v. Ruhsam*, 110 Ariz. 426, 426 (1974)) (internal quotations omitted). An incorporated PSA retains "independent contractual status [] subject to the rights and limitations of contract law." *Id.* (internal quotation marks omitted). Contract law generally would apply here. Under contract law, an "action for debt" is subject to a six-year statute of limitations from the time the cause of action accrues. A.R.S. § 12–548(A)(1).

¶7 Here, A.R.S. § 12–548 does not apply because Wife's claim is not an action for debt. "'Debt' under A.R.S. § 12–548 includes an action for 'damages' for breach of contract." *Woodward v. Chirco Constr. Co.*, 141 Ariz. 520, 525 (App. 1984). The court already divided the assets at dissolution, giving Wife "immediate, present, and vested separate property interest" in her community share of Husband's retirement accounts. *See Koelsch v. Koelsch*, 148 Ariz. 176, 181 (1986). As a result, Husband lost his interest and control over Wife's separate property, *see id.*, and does not owe her anything. Seeking to have QDROs prepared is simply seeking compliance of the PSA and Decree. This is not the same as seeking damages for breach of contract. *See Bobrow v. Herrod*, 239 Ariz. 180, 183 ¶ 11 (App. 2016) (stating that "damages" is "compensation for actual injury"). A QDRO merely recognizes a "nonparticipant spouse's" rights to her benefits. Thomas A. Jacobs, *Qualified Domestic Relations Order (QDRO)*, 4 Ariz. Prac. Series, Community Prop. L., § 16.10 (2021). The court properly found that the "QDRO does not give rise to the Wife's vested right in the funds—that came from the Decree and [PSA]." Further, neither the Decree nor the PSA noted a specific date by which the parties needed the QDROs prepared. Thus, A.R.S. § 12–548 does not apply, and Wife's claim is therefore not time barred.[1]

[1] Because we find that Wife's claim is not time-barred under A.R.S. § 12–548, we need not address Husband's other arguments about the statute of limitations.

¶8 Husband argues that the family court lost its "plenary power" to enforce the Decree and PSA because contract law applies, which is under the civil court's jurisdiction. Although contract law applies to an incorporated PSA, the family court's contempt power allows it "to do full and complete justice between the parties," retaining jurisdiction to enforce the Decree "until such justice is achieved." *Jensen v. Beirne*, 241 Ariz. 225, 229 ¶ 14 (App. 2016) (internal citation omitted); *see also Angelica R. v. Popko in & for Cnty. of Maricopa*, 253 Ariz. 84, 96 ¶ 17 (App. 2022) (stating that although the superior court has departments and divisions to manage cases, it is a "single, unified, trial court of general jurisdiction"). Thus, the family court had jurisdiction to enforce the Decree and PSA.

¶9 He also argues that laches bars Wife's claim because she waited 14 years to petition to enforce the PSA. He argues that her delay prejudiced him because he invested the community retirement monies—thinking that he was entitled to the full amount—and Wife would now reap the benefits. But his laches argument fails because the PSA provides that "[n]either any failure nor any delay on the part of either party hereto in exercising any right hereunder shall operate as a waiver thereof," and "[n]o modification or waiver of any of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement." Per the PSA, Wife's 14-year delay did not bar her claim, and evidence does not suggest that she waived her right to her portion of the retirement funds in writing.

¶10 Even if Wife did delay her petition, Husband did not demonstrate his prejudice. He provided no evidence to show the accrual in his investments. Further, Wife is entitled to 50% community interest of his retirement and pension accounts from August 12, 1983, through March 3, 2006, "plus gains and losses[.]" Surely Husband also benefits from any gains in his portion of the investment. The court even specified that "[a]ny funds accumulated in the above plans from the date of service of the petition shall be Husband's sole and separate property." Based on the PSA statements, the QDRO attorney will be able to determine the portion of the account that constitutes community property to be divided equally. *See Sembower v. Sembower*, No. 1 CA–CV 20–0210 FC, 2021 WL 827642, at *3–4 ¶¶ 15–16 (Ariz. App. Mar. 4, 2021) (unpublished). Thus, these funds are traceable, and Wife would receive the proper amount that was awarded to her in the PSA. Further, the court even found that laches did not bar Wife's claim because Husband did not "credibly allege that he ha[d] been injured or changed positions in reliance on Wife's inaction." Because the family court is "in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts," *Richard M. v.*

Patrick M., 248 Ariz. 492, 498 ¶ 23 (App. 2020), we defer to the family court's findings, *Vincent v. Nelson*, 238 Ariz. 150, 155 ¶ 18 (App. 2015).

¶11 He also argues that no evidence of fraud, mistake, or newly discovered evidence exists to justify reopening the case under Civil Rule 60—and corresponding Family Rule 85—and the court made no required findings under A.R.S. § 25–327(A) to justify modifying the property disposition. But no such evidence or finding is required because neither rule applies here. Wife's petition sought to enforce an already-decided award, not reopen or modify the case. For these reasons, the court did not abuse its discretion in granting Wife's petition.

II. Attorney's Fees

¶12 Husband asks us to reverse the award granting Wife her attorney's fees because the court did not consider the parties' financial resources and reasonableness of his arguments. We review an award of attorney's fees and costs for an abuse of discretion. *Clark v. Clark*, 239 Ariz. 281, 282 ¶ 6 (App. 2016). "The court from time to time, after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, *may* order a party to pay a reasonable amount to the other party for the costs and expenses . . . ." A.R.S. § 25–324(A) (emphasis added).

¶13 Reasonable evidence exists to uphold the court's ruling. The court found that Husband's position in denying Wife her vested and awarded retirement funds was unreasonable. And, while the court's order did not specifically mention either party's financial resources, Wife provided evidence that her only source of income is about $1,900 of monthly disability insurance. We presume that the court fully considered the evidence in the record in awarding attorney's fees, even if the order does not detail the relevant evidence considered, *Fuentes v. Fuentes*, 209 Ariz. 51, 55 ¶ 18 (App. 2004), and we do not reweigh the evidence on appeal, *see Lehn v. Al-Thanayyan*, 246 Ariz. 277, 286 ¶ 31 (App. 2019). Based on this provision and the reasonable evidence in the record, the court did not err.

CONCLUSION

¶14 Both parties request attorney's fees and costs on appeal under ARCAP 21 and A.R.S. § 25–324. Wife also requests fees and costs under A.R.S. §§ 12–341, –341.01, and –349. Husband has taken an unreasonable position in denying Wife her community portion of the retirement accounts. After considering the reasonableness of the parties' positions and the parties' financial circumstances, we exercise our discretion and award Wife

her reasonable attorney's fees on appeal. Because Wife is the prevailing party on appeal, we award her costs upon compliance with ARCAP 21. For the following reasons, we affirm.

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