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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 06-22-010
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

IN RE THE MARRIAGE OF:) No. 1 CA-CV09-0528
)
IRMA PAPPAS,) DEPARTMENT C
)
Petitioner/Appellant,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules
) of Civil Appellate
JAMES JOSEPH PAPPAS,) Procedure)
)
Respondent/Appellee.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FC 2005-090617
FC 2005-091709

The Honorable David B. Gass, Judge

AFFIRMED

Harry P. Friedlander,
Attorney for Appellant

Mesa

Wilson-Goodman & Fong, P.C.
By Angela M. Wilson-Goodman
Attorneys for Appellee

Gilbert

D O W N I E, Judge

¶1 Irma Pappas ("Mother") appeals certain post-decree orders of the family court. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY¹

¶2 The parties divorced in 2006. The decree awarded Mother \$619 per month in child support and \$800 in spousal maintenance for a period of twenty-four months. In August 2006, the parties agreed to reduce spousal maintenance payments to \$396 per month to offset roughly \$9900 that Mother owed Father as an equalization payment ordered in the decree.

¶3 In June 2008, Father sought to modify the existing order of assignment so that spousal maintenance would no longer be deducted from his wages. Mother petitioned for modification of custody, child support, and spousal maintenance. The family court dismissed Mother's custody modification request, but held an evidentiary hearing in May 2009 regarding the remaining issues.

¶4 By ruling entered on May 15, 2009, the court reduced Father's child support obligation to \$526.93 per month and denied Mother's request to extend spousal maintenance. The court also found that Mother had taken unreasonable positions in

¹ We view the evidence and inferences therefrom in the light most favorable to sustaining the trial court's rulings. *Gutierrez v. Gutierrez*, 193 Ariz. 343, 348, ¶ 14, 972 P.2d 676, 681 (App. 1998) (citation omitted).

the litigation and that Father was entitled to an award of attorneys' fees. Father's counsel submitted an application for \$17,569.73 in fees and costs.

¶15 Mother filed a motion for new trial. She also objected to Father's fee application. The family court denied the motion for new trial. It found that, "with the exception of one, \$26.35 prescription medical bill, [Mother]'s Motion for New Trial, which was eighteen pages long, was unreasonable." It awarded Father \$1500 in fees incurred in responding to the motion for new trial. It subsequently awarded Father an additional \$7500 in attorneys' fees.

¶16 Mother timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") Sections 12-120.21(A) (2003) and -2101(B), (F)(1) (2003).

DISCUSSION

¶17 Mother contends the family court erred by: (1) not applying the "law of the case" doctrine; (2) refusing to extend spousal maintenance; (3) not requiring Father to reimburse her for HOA fees; and (4) awarding attorneys' fees to Father. We briefly address each claim.

1. Law of the Case

¶18 Mother believes the family court erred in finding that Father no longer earns income from "side jobs." She argues that the June 2006 ruling, which imputed \$1500 in monthly income to

Father from side jobs, constitutes "law of the case." We disagree.

¶9 The law of the case doctrine "describes the judicial policy of refusing to reopen questions previously decided in the same case by the same court or a higher appellate court." *Powell-Cerkoney v. TCR-Mont. Ranch Joint Venture, II*, 176 Ariz. 275, 278, 860 P.2d 1328, 1331 (App. 1993) (citations omitted). "At the trial court level, the doctrine of the law of the case is 'merely a practice that protects the ability of the court to build to its final judgment by cumulative rulings, with reconsideration or review postponed until after the judgment is entered.'" *State v. King*, 180 Ariz. 268, 279, 883 P.2d 1024, 1035 (1994) (citation omitted). Law of the case is "a procedural doctrine rather than as a substantive limitation on the court's power." *Powell-Cerkoney*, 176 Ariz. at 278, 860 P.2d at 1331 (citations omitted). We may decline to apply the doctrine when a substantial change has occurred in the essential facts, issues, evidence, or applicable law. *Id.* at 279, 860 P.2d at 1332 (citation omitted).

¶10 Father testified that he last worked side jobs four years previously. Although Mother stated that Father's situation had not in fact changed, the family court ruled that her testimony lacked foundation and that she "offered no credible evidence" supporting her claim of continued income from

side jobs. Under these circumstances, the law of the case doctrine is inapplicable.

2. Modification of Spousal Maintenance

¶11 Mother next argues the court erred in refusing to extend spousal maintenance beyond its initial term. She claims the 2006 maintenance award was based on an expectation that she would become a permanent employee of the U.S. Postal Service within two years. Because that did not occur, Mother contends, her circumstances changed substantially and continuously, warranting extension of spousal maintenance.

¶12 An initial award of spousal maintenance may be modified "only on a showing of changed circumstances that are substantial and continuing." A.R.S. § 25-327(A) (2007). In deciding whether to modify a maintenance award, a court considers the same factors taken into account when initially awarding maintenance. *Scott v. Scott*, 121 Ariz. 492, 495 n.5, 591 P.2d 980, 983 n.5 (1979). These factors include the financial resources of the party receiving maintenance, ability of the party receiving maintenance to produce sufficient income, and the financial resources of the party paying maintenance. *Id.*; *Nace v. Nace*, 107 Ariz. 411, 413, 489 P.2d 48, 50 (1971) (citation omitted). See also A.R.S. § 25-319(B) (2007).

¶13 We review the family court's decision for an abuse of discretion. *Linton v. Linton*, 17 Ariz. App. 560, 563, 499 P.2d

174, 177 (1972). "For an abuse of discretion to exist, the record must be devoid of competent evidence to support the decision." *Platt v. Platt*, 17 Ariz. App. 458, 459, 498 P.2d 532, 533 (1972) (citation omitted). The party seeking modification bears the burden of proving a change in circumstances. *Scott*, 121 Ariz. at 494, 591 P.2d at 982 (citation omitted); *Van Dyke v. Steinle*, 183 Ariz. 268, 278, 902 P.2d 1372, 1382 (citation omitted) (App. 1995).

¶14 We find no error here. At the time of the evidentiary hearing in 2009, Mother's income was substantially higher than when the decree was issued.² In contrast, Father's income had significantly decreased.³ See, e.g., *Chaney v. Chaney*, 145 Ariz. 23, 25, 699 P.2d 398, 400 (App. 1995) (allowing the court to consider substantial changes in the financial circumstances of either spouse) (citations omitted). The family court found that "Mother is earning more now than she earned at the time of the decree and is earning nearly as much as Father earns."

¶15 Mother's opening brief incorrectly cites *Lindsay v. Lindsay*, 115 Ariz. 322, 565 P.2d 199 (App. 1977), for the proposition that an inability to meet her employment expectations constitutes a change in circumstances warranting modification. In *Lindsay*, we found that the inability of a

² At the time of the decree, Mother's monthly income was \$2851. In 2009, she earned \$3,863.

³ Although Father's base salary rose from \$3898 to \$4224.66, he no longer earned income from side jobs.

spouse to become self-sufficient within a fixed period of spousal maintenance constituted "changed circumstances," where there was a prolonged absence from the job market due to a long-term marriage that affected the wife's ability to find work, despite good-faith efforts and the parties' expectations. *Id.* at 328-29, 565 P.2d at 205-06 (disapproved in part by *Schroeder v. Schroeder*, 161 Ariz. 316, 323, 778 P.2d 1212, 1219, (1989)). Here, on the other hand, the record supports the family court's conclusion that Mother can be self-sufficient at her current level of income. The court did not err in refusing to modify spousal maintenance.

3. HOA Fees

¶16 The family court did not issue any orders regarding HOA fees, stating:

[Father] acknowledged his obligation to pay past HOA fees under the dissolution decree. [Father] said that he thought the HOA fees were in the neighborhood of \$400.00 to \$500.00 and stated that [Mother] had not provided him with the coupon book to pay the HOA fees and provided him with no accounting of HOA fees that [Mother] had paid. Nothing more was established. [Mother] offered no evidence of the actual amount owed for HOA fees or evidence that she had submitted the fees to Father for reimbursement. No exhibits that were entered into evidence establish the actual amount. The Pretrial Statement does not indicate an actual amount. And Petitioner's counsel made no mention of the HOA fees in his closing argument.

Our review of the record confirms the family court's findings and, thus, its determination that Mother failed to carry her burden of proof as to this reimbursement claim.

4. Attorneys' Fees

¶17 Finally, Mother contends the court abused its discretion in awarding attorneys' fees to Father. She argues the claimed fees and costs were excessive; that they included litigation initiated or prolonged by Father because he insisted on strict compliance with the rules of evidence and on mediation; that her maintenance modification request was not unreasonable; that counsel's affidavit failed to comply with minimum requirements; and that the court failed to consider the parties' financial resources. See *Schweiger v. China Doll Rest., Inc.*, 138 Ariz. 183, 188, 673 P.2d 927, 932 (App. 1983). The record does not support these claims.

¶18 We review an award of attorneys' fees under A.R.S. § 25-324 (2007) for an abuse of discretion. *Breitbart-Napp v. Napp*, 216 Ariz. 74, 83, ¶ 35, 163 P.3d 1024, 1033 (App. 2007) (citation omitted). Pursuant to A.R.S. § 25-324(A), reasonable fees may be awarded after the court considers the parties' financial resources and the reasonableness of positions taken throughout the proceedings.

¶19 The family court had sufficient information about the parties' financial circumstances before it in the form of

financial affidavits and trial testimony. The record also supports the court's finding that Mother took unreasonable positions in the litigation. Her claims were often unsupported by the evidence, unfounded in fact or law, not covered by the decree, or "in direct contravention of the decree." Mother continued to raise child custody issues after the court repeatedly advised her that that matter was not properly before it. The record supports the finding that Mother's reimbursement requests for "spending money," "out-of-pocket" expenses, and items "that were not related to uniforms, passports and travel tickets" were unreasonable.⁴

¶20 Finally, we find no merit to Mother's claim that counsel's affidavit failed to comply with *China Doll* requirements 138 Ariz. at 188, 673 P.2d at 932. The affidavit establishes an agreement, the billing rate, and a detailed description of each charge. We also reject Mother's claim that the award improperly included fees arising from any *unreasonable* insistence on strict compliance with the rules of evidence or on mediation.

⁴ Moreover, at trial, Mother admitted her hours had not in fact been reduced, nearly a year after claiming she was entitled to extend spousal maintenance because her hours had been reduced to twenty-five hours per week.

