

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
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: 02/10/2011
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:) 1 CA-CV 10-0118
)
RAQUEL HELENA PATTERSON,) DEPARTMENT D
)
Petitioner/Appellant,) **MEMORANDUM DECISION**
) (Not for Publication
v.) - Rule 28, Arizona
) Rules of Civil
SHAWN JAMAAL PATTERSON,) Appellate Procedure)
)
Respondent/Appellee.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FC 2009-070494

The Honorable Jose S. Padilla, Judge

**AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED WITH INSTRUCTIONS**

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Sun City

N O R R I S, Judge

¶1 Raquel Helena Patterson ("Mother") timely appeals from the family court's ruling in its decree of dissolution characterizing Mother's student-loan debt as her separate

obligation.¹ We agree with Mother's argument; the family court should have characterized Mother's student loan as a community obligation because she incurred the loan during marriage, and it should have equitably divided the debt. Accordingly, we remand to the family court for proceedings consistent with this decision.

FACTS AND PROCEDURAL BACKGROUND

¶2 At trial, the court denied Mother's request that it equitably divide a student-loan debt she had incurred during the marriage to attend college. Although Shawn Jamaal Patterson ("Father") presented no evidence disputing Mother's testimony that she had incurred the debt during the marriage and the debt was thus a community obligation, the court characterized the student loan as a separate debt, ruling in its decree, "with the exception of [Mother's] student loan, all debt incurred during the period of the parties' marriage is community debt."

¹In a separate opinion, *Patterson v. Patterson*, 1 CA-CV 10-0118 (Ariz. App. Feb. 10, 2011), filed simultaneously with this memorandum decision, we address the other argument Mother raised on appeal. See Ariz. R. Sup. Ct. 111(h); ARCAP 28(g). For the sake of brevity and because the pertinent facts and procedural background of this matter are set out in our concurrently filed opinion, we need not repeat them except as relevant to this decision.

DISCUSSION²

¶13 A debt incurred during marriage is presumed a community obligation. *Hrudka v. Hrudka*, 186 Ariz. 84, 91-92, 919 P.2d 179, 186-87 (App. 1995). As discussed above, Father presented no evidence contesting the community nature of the debt, although he bore the burden of overcoming the community presumption "by clear and convincing evidence." *Id.* at 92, 919 P.2d at 187. Thus, on this record, the family court should not have characterized the loan as a separate obligation of Mother.³ See *Boncoskey v. Boncoskey*, 216 Ariz. 448, 451, ¶ 13, 167 P.3d 705, 708 (App. 2007) (family court's equitable division of community property reviewed for abuse of discretion). Therefore, we reverse the ruling of the family court characterizing the student-loan debt as Mother's obligation and remand to the court with instructions to characterize the debt as a community obligation. On remand, the court shall then equitably divide the community debt.

²Father did not file an answering brief in this case. Although we could treat his failure to file an answering brief as a confession of reversible error, in the exercise of our discretion, we have chosen to reach the merits of the issue Mother has raised on appeal. See *Nydam v. Crawford*, 181 Ariz. 101, 101, 887 P.2d 631, 631 (App. 1994).

³Further, nothing in the record shows the court adjusted the debt for "equitable" reasons or assigned her other assets to support the unequal division of debt. See *Toth v. Toth*, 190 Ariz. 218, 221-22, 946 P.2d 900, 903-04 (1997).

CONCLUSION

¶4 For the foregoing reasons, we reverse the family court's ruling pertaining to Mother's student-loan debt, and remand to the family court to recharacterize the student loan as a community obligation and to equitably divide it, consistent with this decision. We affirm the family court's decree of dissolution in all other respects except as set forth in our opinion on this matter.

/s/

PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Judge

/s/

PATRICIA A. OROZCO, Judge