

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

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 04/28/2011
RUTH A. WILLINGHAM,
CLERK
BY: GH

In re the Marriage of:) No. 1 CA-CV 10-0535
)
JOE STEPHENSON,) DEPARTMENT D
)
Petitioner/Appellant,) **MEMORANDUM DECISION**
)
v.) Not for Publication -
) (Rule 28, Arizona Rules
LILY STEPHENSON,) of Civil Appellate Procedure)
)
Respondent/Appellee.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FN2009-051237

The Honorable Michael D. Gordon, Judge

AFFIRMED

Joe Stephenson
In *Propria Persona* Petitioner/Appellant

Phoenix

M. Wayne Lewis
Attorneys for Respondent/Appellee

Chandler

G E M M I L L, Judge

¶1 The marriage of Joe Stephenson ("Husband") and Lily Stephenson ("Wife") was dissolved by decree entered June 16, 2010. Husband appeals the provisions of the decree involving

the division of marital property. For the following reasons, we affirm.

BACKGROUND

¶2 Husband and Wife were married in June 1966 in Winnemucca, Nevada. In 1986, Husband and Wife separated and have lived apart since that time. Wife is 71 years old, and Husband is 72 years old. They do not have any minor children, although they are parents of four adult children. Husband filed a petition for dissolution of the marriage on May 29, 2009. On June 16, 2009, Wife filed a response to the petition requesting equitable distribution of the property and an award of spousal support.

¶3 Both Wife and Husband are retired and receiving social security benefits. Husband currently resides at the marital residence purchased with community property located in Phoenix, Arizona. Husband has occupied the home since the parties split over 25 years ago. He currently has two sources of income, social security payments and a union pension. He also pays a few hundred dollars a month for debt consolidation. Wife's sole income is a social security payment of \$839 per month. Prior to trial, the court received a series of documents from Husband that it considered indecipherable and inapplicable to his case. Husband also refused to cooperate in allowing an appraisal to be done on the residence. Wife received from the

court an order requiring Husband to allow an appraisal of the marital residence.

¶14 On March 24, 2010 a trial was conducted in Maricopa County Superior Court. The court issued a Decree of Dissolution on June 14, which entitled Wife to spousal maintenance of \$75 a month, one-half of the value of the marital residence, and one-half of the community share of Husband's monthly pension.

¶15 Husband filed a timely notice of appeal. Subsequent to filing of the notice of appeal, the parties settled the division of the residence. A Notice of Partial Settlement has been filed with this court confirming that Husband will pay a share of the proceeds of a reverse mortgage to Wife as payment for her share in the marital residence.

¶16 We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(B) (2003).

ANALYSIS

¶17 Husband argues that he had a "covenant marriage" with Wife which she broke by "abandoning" him. He argues this misconduct prohibits her from entitlement to the equitable distribution of the marital property.

¶18 In apportioning community property, "the superior court has broad discretion to achieve an equitable division, and we will not disturb its allocation absent an abuse of discretion." *Boncoskey v. Boncoskey*, 216 Ariz. 448, 451, ¶ 13,

167 P.3d 705, 708 (App. 2007). We consider the evidence in light most favorable to upholding the superior court's ruling and will sustain the ruling if it is reasonably supported by the evidence. *Kohler v. Kohler*, 211 Ariz. 106, 107, ¶ 2, 118 P.3d 621, 622 (App. 2005).

¶19 As an initial matter, we note that Husband's opening brief fails to comply with Arizona Rule of Civil Procedure 13(a) because it does not contain a table of contents, a table of citations, a statement of the case, references to the record, a standard of review, or arguments with citations to authorities. Even though Husband is appearing before our court pro per, he is held to the same standards as a qualified attorney. See *Copper State Bank v. Saggio*, 139 Ariz. 438, 441, 679 P.2d 84, 87 (App. 1983) ("It is well established that where a party conducts his case in propria persona he is entitled to no more consideration than if he had been represented by counsel, and he is held to the same familiarity with required procedures and the same notice of statutes and local rules as would be attributed to a qualified member of the bar."). While we could dismiss Husband's appeal based on his lack of compliance, we instead choose to resolve the case on the merits. See *Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, 93, ¶ 50, 977 P.2d 807, 815 (App. 1998) (rejecting appellant's assertion because it was devoid of supporting argument or citation of authority); see

also *Clemens v. Clark*, 101 Ariz. 413, 414, 420 P.2d 284, 285 (1966) (noting that the court is inclined to decide cases on the merits instead of dismissing the case based on counsel's failure to comply with a procedural rule).

**Covenant Marriage Does Not Affect
Division of Marital Property**

¶10 We initially consider Husband's argument that his marriage with Wife was a "Covenant Marriage." He characterizes his marriage as a religious covenant created through his constitutionally protected right to exercise his religion.

¶11 Husband and Wife were married in Nevada in 1966, and there is no evidence in the record to indicate that Nevada state law provided for covenant marriage. Husband concedes that, at the time he and Wife applied for a marriage license, there was no option for a covenant marriage in Nevada, but he asserts that he and Wife married "with the belief that we could make a covenant marriage (as the First Amendment states) because our forefathers stated this as to be the most important issue to our religious heritage." While this court does not question the sincerity of Husband's beliefs, his marriage is not a "covenant marriage" under Arizona law.

¶12 More importantly, even if Husband's marriage qualified as a covenant marriage under A.R.S. § 25-901 (2007), it would not affect the division of marital property. The marriage would

still be dissolved under covenant marriage standards because Husband and Wife have been separated for 24 years. See A.R.S. § 25-903(5) (2007) (authorizing dissolution when “[t]he spouses have been living separate and apart continuously without reconciliation for at least two years before the petitioner filed for dissolution of marriage.”)

¶13 We find no evidence to prove that Husband and Wife had a covenant marriage, and, regardless, the status of the marriage does not alter the trial court’s discretion in dividing the community property or awarding spousal maintenance.

**Separation Does Not Directly Impact
Division of Marital Property**

¶14 Husband claims that Wife “abandoned” him and the children, and in doing so, gave up her rights to any marital property.

¶15 The division of marital property is governed by A.R.S. § 25-318(A) (Supp. 2010), which provides that each spouse will retain their separate property and all community property should be divided equitably. The general principle is the property should be divided substantially equally unless sound reason exists to divide the property otherwise. *Toth v. Toth*, 190 Ariz. 218, 221, 946 P.2d 900, 903 (1997).

¶16 The trial court did not err in dividing the marital property substantially equally between Husband and Wife. The

cause or length of the separation does not end the parties' rights to community property within the marriage. The longstanding principle applies that "[marital] community continues to exist, together with its rights and obligations, even when the parties may be living separate and apart." *Jurek v. Jurek*, 124 Ariz. 596, 597, 606 P.2d 812, 813 (1980). The court did not abuse its discretion in its equitable division of the marital property.

**The Court Did Not Abuse Its Discretion
By Awarding Spousal Maintenance**

¶17 Husband challenges the family court's award of spousal maintenance.

¶18 Under A.R.S. § 25-319 (2007), the trial court is given discretion to grant a maintenance order to either spouse if the statutory factors apply, and the trial court is also given discretion to set the amount and the duration of the maintenance after considering relevant factors. A.R.S. § 24-319(A),(B) (2007).

¶19 In ordering a spousal award to Wife the court found:

Pursuant to A.R.S. §25-319, that Wife is entitled to maintenance because she: (1) lacks sufficient property, including property apportioned to her, to provide for her reasonable needs; (2) is unable to be self-sufficient through appropriate employment and lacks earning ability in the labor market adequate to be self-sufficient; (3) had a marriage of long duration and is of an age that may preclude the possibility

of gaining employment adequate to be self-sufficient. She is of retirement age and should not be expected to seek employment.

In addition, in setting spousal maintenance at \$75 per month, to continue until death or remarriage, the court found:

Considering the standard of living established during the marriage, the duration of the marriage; the contribution of the Wife to the earning ability of the Husband, the extent to which the spouse seeking maintenance has reduced that spouse's income or career opportunities for the benefit of the other spouse, the comparative financial resources of the parties; the financial resources of the Wife, including marital property apportioned to her, and her ability to meet her own needs independently; and other factors set forth in the statute, the Court finds that Wife is entitled to an award of spousal support of \$75.00 per month.

¶20 The record contains substantial evidence to support the trial court's award. Wife is 71 years old and has an income that consists solely of her social security benefits in the amount of \$831.00 per month plus half the community share of Husband's pension as ordered by the court in the decree of dissolution. She is at retirement age and is not likely to be able or expected to gain employment. Post-dissolution Husband will still have more disposable income than Wife, given his higher social security payment and half of his pension. Given the length of the marriage and the financial situations of the

parties, the spousal maintenance award is supported by the record.¹

Attorneys' Fees at Trial

¶21 Husband challenges the trial court's award of attorneys' fees to Wife pursuant to A.R.S. § 25-324 (Supp. 2010). The trial court may order one party to pay the other's attorneys' fees and costs after the court "consider[s] the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings." A.R.S. § 25-324. An award of attorneys' fees will not be disturbed on appeal absent an abuse of discretion. *In re Marriage of Berger*, 140 Ariz. 156, 167, 680 P.2d 1217, 1228 (App. 1983).

¶22 The trial court found that Husband's position was unreasonable and Wife was entitled to 100% of her fees and costs. Specifically, the court cited Husband's arguments -- that he was religiously and constitutionally entitled to spank his wife and that her fleeing from him ended their community -- to be objectively unreasonable. On this record, we find no

¹ Additionally, Husband did not provide a transcript of the trial, and we must assume the evidence at trial supports the court's rulings. *Old Republic Nat. Title Ins. Co. v. New Falls Corp.*, 224 Ariz. 526, 531 n.4, ¶ 23, 233 P.3d 639, 644 n.4 (App. 2010).

abuse of discretion in the court's findings that Husband took unreasonable positions during the proceedings.

Attorneys' Fees on Appeal

¶23 Wife requests attorneys' fees and costs on appeal pursuant to A.R.S. § 25-324. Wife argues that Husband's position, taken in the trial court and on appeal has been unreasonable considering his arguments are not supported by the record of the trial, and he has failed to cite any applicable statute or case law in support of his positions. In our discretion, we will grant Wife an award of reasonable attorneys' fees following her compliance with ARCAP 21(c).

CONCLUSION

¶24 For the foregoing reasons, we affirm the trial court's decree of dissolution. We grant Wife's request for an award of attorneys' fees on appeal.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
PATRICIA K. NORRIS, Presiding Judge

_____/s/_____
PATRICIA A. OROZCO, Judge