

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: 07/28/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

In re the Marriage of:) 1 CA-CV 10-0655
)
CHRISTOS MARINAKOS,) DEPARTMENT E
)
Petitioner/Appellant,) MEMORANDUM DECISION
)
v.) (Not for Publication -
) Rule 28, Arizona Rules of
LAURIE CUTLIP,) Civil Appellate Procedure)
)
Respondent/Appellee.)
)

Appeal from the Superior Court in Maricopa County

Cause No. FN2008-004506

The Honorable Pamela S. Gates, Judge

AFFIRMED

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P O R T L E Y, Judge

¶1 Christos Marinakos ("Husband") challenges the ruling within the decree of dissolution which awarded Laurie Cutlip ("Wife") \$135,000 pursuant to the parties' prenuptial agreement and ordered him to place his Arizona home in a trust in which Wife has a ten percent interest. For the reasons that follow, we affirm the decree.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Before the parties married in October 2007, they entered into a prenuptial agreement. One provision provided that Husband would pay Wife \$5,000 per month beginning six months after the marriage (April 2008), and that the payments would continue for three years. Another provision required Husband to create a trust after they were married, and quit claim title to his Arizona home to the trust. He would then own a ninety percent beneficial interest in the trust while Wife would have a ten percent interest.

¶3 At trial, Husband insisted that he had satisfied the monthly monetary obligation when he purchased Wife an \$80,000 car. He also argued that the provision did not apply after the parties separated. The family court found, however, that the provision was not dependent on the parties remaining married and could be enforced separately.

¶4 During the trial, the court learned that Husband had not created the trust contemplated by the prenuptial agreement and had not transferred his Arizona home to the trust. As a result, the family court ordered Husband to quit claim the property to a trust pursuant to the agreement, and that each party's interest in the trust would be their sole and separate property.

¶5 We have jurisdiction over Husband's notice of appeal.

DISCUSSION

I. Prenuptial Agreement Monthly Payments

¶6 Husband contends the family court erred by concluding that the prenuptial agreement obligated him to continue paying Wife \$5,000 per month after the parties separated.¹ We review the court's interpretation of the prenuptial agreement de novo.

See Rand v. Porsche Fin. Servs., 216 Ariz. 424, 434, ¶ 37, 167 P.3d 111, 121 (App. 2007) (holding that interpretation of a contract is a question of law reviewed de novo). "The purpose of contract interpretation is to determine the parties' intent and enforce that intent. . . . [W]hether a contract is susceptible to more than one interpretation is a question of

¹ Husband has not argued that the parties orally modified the provision when he gave Wife a new car as he did at trial. As a result, we consider the argument abandoned.

law, which we review de novo." *Grosvenor Holdings, L.C. v. Figueroa*, 222 Ariz. 588, ¶ 9, 218 P.3d 1045, 1050 (App. 2009) (citations omitted). The parties' intent is a question of fact for the fact finder, and we will not reverse the fact finder's determination unless it is clearly erroneous. See *Chopin v. Chopin*, 224 Ariz. 425, 428, ¶ 7, 232 P.3d 99, 102 (App. 2010); *In re Marriage of Berger*, 140 Ariz. 156, 161, 680 P.2d 1217, 1222 (App. 1983).

¶7 Here, the monthly payment provision in their prenuptial agreement stated:

Chris agrees to make additional funds available to Laurie. Once Laurie has received the payments, Laurie may utilize the monies, as her separate property, in any lawful manner she sees fit - for savings, for education, for her pre-marital or post-marital family, or just for pleasure. Laurie has no obligation to tell or report to Chris what she has done, is doing, or intends to do with the funds.

. . . .

The amount Chris will make available to Laurie for her own personal use (as her own separate income or property) is \$60,000 annually, commencing six months after the marriage is consummated (the date of the marriage is the effective date of this Agreement). On the first Wednesday that is six months after the effective date . . . Chris will deposit from his separate property \$5,000 into Laurie's separate account.

A month later, Chris will make another \$5,000 payment and will continue to make monthly deposits of \$5,000 for the next 34 months (three years total).

After three years, the parties will revisit the situation. The parties may agree to continue as had been done in accordance with this subparagraph (a) for the prior three years. Chris may decide to stop all payments. Chris may decide to increase the amount of the payments. The decision will be made by Chris, in his sole discretion. . . .

¶8 Husband makes numerous arguments why the family court erred. He starts by arguing that the provision is ambiguous because it does not clearly address whether the monthly payment would continue if the parties separated during the three-year period. He concludes by arguing that the family court's interpretation of the provision rendered much of the language meaningless, which is contrary to the rules of contract interpretation. See *Kintner v. Wolfe*, 102 Ariz. 164, 168, 426 P.2d 798, 802 (1967). He also argues that the language in the agreement suggests that his obligation to make the payments lasted only so long as there was a marriage.

¶9 The arguments, however, overlook the fact that the prenuptial agreement has a provision which addresses the duration and termination of the agreement. Provision 13 clearly states that: "After the end of the marriage, the provisions

herein established as to the PARTIES' property rights will continue, unless otherwise modified by agreement." (Emphasis added.) Because the monthly stipend to Wife for three years is a property right, she is entitled to continue to receive payment unless the agreement was modified in writing.

¶10 Husband contends that it is unclear whether paragraph 13 applies to the monthly stipend payment because the paragraph does not expressly refer to it. He argues that the monthly payment is not a property right governed by this paragraph, but if it is, then paragraph 8(b), the provision regarding family living expenses, would also constitute a property right that would continue post-separation. We disagree.

¶11 Paragraph 8(b) gave Husband complete discretion to contribute to family living expenses.² Husband could, as a result, determine whether he would contribute for "normal and reasonable living expenses" as well as how much, if any, he would contribute. He was under no contractual obligation to make any family expense payment during the marriage, and the agreement did not mandate payment for any family expenses after the parties separated. On the other hand, the monthly stipend

² The relevant part of paragraph 8(b) states that Husband "may make funds available, in his sole discretion, for what he determines are the normal and reasonable living expenses of the PARTIES."

provision is not discretionary - once the parties had been married for six months and Husband had to pay Wife the first payment, the provisions required him to pay the monthly stipend each month thereafter for the next three years. Moreover, because the monthly stipend provision is a defined property right, the agreement provides that the stipend continues after separation or dissolution.

¶12 Husband also contends that paragraph 13, as a general contract provision, is qualified by the specific provisions in paragraph 8(a). "[W]here there is an inconsistency in a contract, the specific provisions qualify the meaning of the general provisions." *Brisco v. Meritplan Ins. Co.*, 132 Ariz. 72, 75, 643 P.2d 1042, 1045 (App. 1982); see also *Technical Equities Corp. v. Coachmen Real Estate Inv. Corp.*, 145 Ariz. 305, 306, 701 P.2d 13, 14 (App. 1985). Although we agree with the legal proposition, there is no inconsistency or contradiction in the agreement. Paragraph 8(b) specifically states that the monthly stipend shall be paid for three years. There is no qualification or limitation expressed or implied, and the provision was never modified.

¶13 Moreover, paragraph 20 provides that "[e]ach and every covenant and agreement herein contained will inure to the benefit of and be binding upon [Husband] and [Wife] and his or

her respective heirs, devisees, assigns" The provision clearly provides that the terms of their binding contract would survive everything, including their deaths. See ¶ 20. Consequently, the family court did not err in enforcing paragraph 8(a) in the decree.

II. Creation of a Trust

¶14 Paragraph 8(c) of the agreement states:

IMMEDIATELY after the parties marry and this Agreement becomes effective, and providing the Parties are legally married to each other (married with no divorce or annulment), are not legally or physically separated from each other, and neither of them has filed any court paper to achieve any of the foregoing, Chris will quit-claim a 100 percent interest in the Arizona home . . . to an entity that has been or will be established as "The Christos and Laurie Marinakos Family Trust" ("the Trust"). Under the terms of the Trust, Chris will have a 90% beneficial interest and Laurie will have a 10% beneficial interest.

. . . .

. . . As the value of the Arizona home increases or decreases, so will the value of Laurie's 10 percent beneficial interest in the Trust.

Once Laurie has received her interest in the Trust, Laurie may consider her interest as her separate property. . . .

. . . .

Notwithstanding any implication or inference to the contrary, Chris will have no obligation to Laurie to provide funds to the Trust for the mortgage, taxes, assessments, maintenance, repair, and upkeep on the Arizona home.

The family court ordered Husband to comply with this provision within thirty days.

¶15 Husband now argues that the family court's disposition was inconsistent with the prenuptial agreement. We disagree.

¶16 The agreement, as noted above, specifically states that the property rights created by the prenuptial agreement will continue unless modified by agreement of the parties. The prenuptial agreement has no provision for one party to buy out the other's interest or for a sale of the property upon divorce. The intent expressed in the agreement is that the parties will indefinitely continue to hold their respective interests in the Trust. Thus, Wife is entitled to maintain her ten percent interest unless the parties agree to terminate or otherwise modify the Trust.

¶17 The family court did not abuse its discretion by enforcing the terms of the agreement. Neither party argued that the agreement was unenforceable. Although Husband claims that Wife's ten percent interest had no value at trial, her interest may increase in the future. The agreement, as noted, creates

and protects Wife's property rights under the agreement beyond any separation or dissolution, absent an agreement of the parties to the contrary, including their death. Consequently, Husband's argument that Wife's current interest in the Trust is worthless and that, as a result, she should get nothing in the divorce ignores the other relevant provisions that protect her property rights beyond the divorce.

¶18 Husband argues that the transfer provision of the agreement is no longer binding because he was only required to transfer the property to the Trust if "the parties are legally married to each other . . . are not legally or physically separated from each other, and neither of them has filed any court paper to achieve any of the foregoing." Although the quoted language originally set a six-month period after the marriage before the transfer had to occur, the parties modified the language and agreed in writing to make the transfer provision effective "IMMEDIATELY" after they were married and the agreement became effective.³ Because the agreement was effective immediately after they were married, the language Husband quoted was only relevant and operative if the parties had to wait for six months after they were married before

³ The term "six months" was crossed out and the word "immediately" was written above it and both parties initialed this change.

Husband was required to transfer the house into the Trust. Because the transfer was to occur immediately after the marriage, we conclude that the language Husband quoted was modified once the parties agreed the transfer was to occur immediately and has no legal effect.

¶19 The parties chose to enter into the agreement which united certain of their financial interests indefinitely, and the family court merely gave effect to that intent. Although this is not an ideal result for parties who are no longer married, the parties are bound by the terms that they agreed upon, however inconvenient. Consequently, we find no abuse of discretion.

ATTORNEYS' FEES ON APPEAL

¶20 Wife requests an award of attorneys' fees on appeal pursuant to Arizona Revised Statutes section 25-324 (Supp. 2010). Husband did not object or dispute that he has superior financial resources. We do not find Wife's positions were unreasonable, therefore, we grant her reasonable attorneys' fees upon compliance with ARCAP 21.

CONCLUSION

¶21 We affirm the family court's determination that Husband has to pay Wife \$5,000 per month for three years, as well as the order requiring Husband to transfer his Arizona real property into a trust in which Wife holds a ten percent beneficial interest.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Judge

/s/

ANN A. SCOTT TIMMER, Chief Judge