

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: 11/15/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

In re the Marriage of:) 1 CA-CV 10-0822
)
DONALD ALLIE BELLINGS,) DEPARTMENT C
)
Petitioner/Appellant,) **MEMORANDUM DECISION**
)
v.) (Not for Publication -
) Rule 28, Arizona Rules of
RAMONA LOUISE PALMA,) Civil Appellate Procedure)
)
Respondent/Appellee.)
)

Appeal from the Superior Court in La Paz County

Cause No. D02010-00017

The Honorable Michael J. Burke

AFFIRMED

The Murray Law Offices, P.C.
By Stanley David Murray
Attorneys for Petitioner/Appellant

Scottsdale

Law Offices of John C. Churchill
By John C. Churchill
Attorneys for Respondent/Appellee

Parker

N O R R I S, Judge

¶1 This appeal arises from a decree of dissolution ordering petitioner/appellant, Donald Allie Bellings, and his

former wife, respondent/appellee, Ramona Louise Palma, to sell a house they shared during their marriage which Bellings asserted he owned separately and Palma asserted she owned jointly with him. The superior court directed the sale pursuant to an agreement reached by the parties in open court at a resolution management conference.

¶12 Relying on Arizona Rule of Family Law Procedure ("Rule") 67(D)(5), Bellings first argues the superior court should not have accepted the agreement and determined the disposition of the house was fair and equitable because the parties failed to make the acknowledgments specified by that rule. We disagree.

¶13 First, Bellings failed to raise this argument in objecting to the proposed decree lodged by Palma and ultimately signed by the court. Accordingly, he may not raise this argument on appeal. See *Van Loan v. Van Loan*, 116 Ariz. 272, 274, 569 P.2d 214, 216 (1977).

¶14 Second, even if the argument was not waived, the transcript of the resolution management conference reflects Bellings and Palma entered into the agreement voluntarily and not because of any threats or undue influence. Further, the resolution management conference transcript reflects the parties had full knowledge of all relevant facts and information

regarding the house. Specifically, they presented and fully aired their differences regarding ownership of the house, with Bellings acknowledging he had conveyed the house, before marriage, to Palma in joint tenancy, and Palma asserting that after they married and were "happy," Bellings had given her back a deed she had signed before the marriage conveying the house back to him. Further, after the parties agreed to sell the house and split the proceeds, the superior court placed Bellings under oath, summarized the parties' agreement, confirmed Bellings' willingness to enter the agreement, and, with no objection from him, found the division of the community property "fair and equitable, as well as the division of the Joint Tenancy Property." When viewed as a whole, the transcript reflects Bellings understood what he was doing and agreed the agreement was fair, equitable, final, and binding. Under these circumstances, the superior court was entitled to accept the agreement reached by the parties at the resolution management conference. *See generally* Ariz. R. Fam. L.P. 69 (agreements between the parties shall be binding if made or confirmed on the record before a judge).

¶15 Next, Bellings asserts that when he objected to the decree of dissolution lodged by Palma and asserted the division of the house was not fair and equitable, the superior court

should have conducted an evidentiary hearing pursuant to *Sharp v. Sharp*, 179 Ariz. 205, 877 P.2d 304 (App. 1994). *Sharp* is distinguishable from the facts here and we, therefore, disagree with Bellings' argument.

¶16 In *Sharp*, the wife signed a property settlement agreement proffered by her husband. Eventually, the husband moved to enforce the agreement. The wife opposed the motion asserting the agreement was invalid because it was unfair and the result of undue influence and overbearing tactics by the husband. The wife also asserted her husband had been secretive about his financial affairs and she was unaware of the nature and extent of their assets. *Id.* at 207-08, 877 P.2d 306-07. Although we agreed with the superior court's rejection of the wife's duress argument, we held that material questions of fact existed as to whether the agreement was fair and equitable. We then explained:

While it is possible for the trial court to decide by summary judgment whether an agreement is equitable, in this case there were plainly disputed facts on the question of the fairness of the agreement, and the court was presented no evidence as to the extent of the community assets. Although the dissolution decree states that the parties' agreements are not unfair, neither the decree nor the court's minute entry granting summary judgment contains any basis on which the court could have made such a determination and, indeed, there is

no evidence in the record on which such a conclusion could be based.

Id. at 210, 877 P.2d at 309.

¶7 Unlike the situation in *Sharp*, here, the parties discussed their shared history concerning the house and their competing claims to its ownership at length with the court during the resolution management conference. And, as discussed above, after the parties agreed to sell the house, the court placed Bellings under oath, and he confirmed the agreement and raised no objection when the court found the division of the community property "fair and equitable, as well as the division of the Joint Tenancy Property." Under these circumstances, the court did not need to conduct an evidentiary hearing before rejecting Bellings' objections to the decree lodged by Palma. Further, we note that in objecting to the decree, Bellings failed to present any factual information the parties' agreement concerning the house was unfair or inequitable.

¶8 Bellings also argues the decree lodged by Palma failed to comply with Rule 45. Rule 45 allows parties to agree to the terms of dissolution and to jointly submit a consent decree to the court for entry. In this case, the parties did not resolve their differences concerning the house as part of a Rule 45 consent decree. Instead, as discussed, they agreed to resolve

their differences at a resolution management conference, conducted under Rule 67, and entered into a binding agreement on the record pursuant to Rule 69.

¶19 Finally, citing Arizona Rule of Evidence 408(a), Bellings argues the statements made by the parties before they were placed under oath at the resolution management conference were "inadmissible to show [the] agreement was fair and equitable." Bellings did not raise this argument, however, in objecting to the decree lodged by Palma and, thus, this issue is not properly before us. But, if the issue had been preserved, evidence of a settlement agreement otherwise precluded by Arizona Rule of Evidence 408 may be offered for a purpose other than to prove or disprove liability or the validity of a claim or its amount. Here, the settlement discussions and negotiations between the parties at the resolution management conference were not offered to prove or disprove liability or the validity of a claim, but rather were used to show Bellings voluntarily entered into the agreement to sell the house with full knowledge of all relevant facts. See generally *John C. Lincoln Hosp. & Health Corp. v. Maricopa Cnty.*, 208 Ariz. 532, 538 n.3, ¶ 13, 96 P.3d 530, 536 n.3 (App. 2004) (evidence of settlement agreement admissible to prove estoppel).

Attorneys' Fees and Costs on Appeal

¶10 Bellings and Palma have each requested an award of attorneys' fees on appeal pursuant to Arizona Revised Statutes ("A.R.S.") section 25-324 (Supp. 2010). In the exercise of our discretion, we deny each party's request for an award of fees under that statute and order each party to pay his or her own attorneys' fees on appeal. However, as the successful party on appeal, we award Palma her costs on appeal contingent upon her compliance with Arizona Rule of Civil Appellate Procedure 21. See A.R.S. § 12-341 (2003).

CONCLUSION

¶11 For the foregoing reasons, we affirm the decree of dissolution.

_____/s/_____
PATRICIA K. NORRIS, Judge

CONCURRING:

_____/s/_____
MICHAEL J. BROWN, Presiding Judge

_____/s/_____
PHILIP HALL, Judge