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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: 04/10/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:) 1 CA-CV 11-0010
)
THOMAS G. HAYMAN,) DEPARTMENT A
)
Petitioner/Appellant/) **MEMORANDUM DECISION**
Cross-Appellee,) (Not for Publication -
) Rule 28, Arizona Rules of
v.) Civil Appellate Procedure)
)
ALICIA M. LAWLER,)
)
Respondent/Appellee/)
Cross-Appellant.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. DR2000-016242

The Honorable Patricia Arnold, Judge Pro Tempore

AFFIRMED IN PART, APPEAL SUSPENDED IN PART AND REMANDED

Franks Sheldon & Houser, P.C. Phoenix
by Todd Franks
Robert C. Houser, Jr.
Attorneys for Petitioner/Appellant/Cross-Appellee

Burch & Cracchiolo, P.A. Phoenix
by Daryl Manhart
Jessica Conaway
Attorneys for Respondent/Appellee/Cross-Appellant

P O R T L E Y, Judge

¶1 Thomas G. Hayman ("Father") appeals the order modifying his child support obligation and the denial of his motion for new trial. Alicia M. Lawler ("Mother") cross-appeals the denial of her request for an award of attorneys' fees.

¶2 For the following reasons, we suspend the appeal of the issue presented by Father. We remand the case to the family court to expeditiously enter findings and transmit them to this court pursuant to paragraph 22 of the Arizona Child Support Guidelines ("Guidelines") in Arizona Revised Statutes ("A.R.S.") section 25-320 (West 2012).¹ Upon receipt of the family court's findings, we will lift the suspension and decide the child support issue and whether the court abused its discretion in denying Father's motion for new trial. We, however, affirm, the court's denial of Mother's request for attorneys' fees in connection with the modification proceeding.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 The parties are the parents of one child, and were divorced in October 2002. Initially, and pursuant to the consent decree, Father was not obligated to pay child support because Mother was anticipating that Father's parental rights

¹ We cite the current version of the applicable statute because no revisions material to this decision have since occurred.

would be severed and the child would be adopted. Father's rights were, however, never severed, whether by consent or a formal termination action, and there was no adoption.

¶14 Mother filed a petition to modify child support in November 2009. Father opposed the petition and unsuccessfully moved for summary judgment on the grounds that Mother could not show the required change of circumstances.

¶15 At the subsequent evidentiary hearing,² in addition to testifying about the child's expenses, Mother asked the court to attribute to Father an annual income of \$150,000 based on the following: (1) his avowal in a 2007 loan application that his monthly income as a horse trainer was \$8,333; (2) the appraised value of his home in excess of \$1,000,000; and (3) his education and twenty years of experience as an attorney.

¶16 Father testified that he was self-employed as a horse trainer and farrier and that his income did not exceed his expenses. He asked the court to attribute income to him based upon the minimum wage. He also asserted that he did not want their child to attend private school, but if the child went to private school, his income could not support the tuition and Mother should solely bear that expense.

² Mother's request for a three-hour hearing was denied. Father also asserts that he had requested additional time to present evidence. His assertion, however, is unsupported by the record.

¶17 The family court granted the motion. The court attributed income to Father of \$12,500 per month and ordered him to pay child support. The court also ordered the parents to pay their own attorneys' fees. Father's motion for new trial was denied, as was Mother's motion for clarification/reconsideration of the attorneys' fees ruling.

DISCUSSION

I.

¶18 Although Mother asserted that the family court did not abuse its discretion in imputing income to Father, we are unable to discern from the record or the ruling how the family court attributed a monthly income of \$12,500 to Father for child support calculation purposes. The record notes that the court found that "the testimony and exhibits show [that Father] has been able to acquire 5 acres of land; a house costing over \$400,000; a luxury Country Coach Motor home costing \$435,000.00; has been able to pay down his debts and is presently living a very comfortable lifestyle." There is, however, no explanation linking those findings to the monthly attributed income. Did, as Mother argued on appeal, the court accept her testimony that Father was capable of earning \$150,000 based on his 2007 loan application, the value of certain assets, and his former occupation as a lawyer? Did the court use the evidence of his

hourly rate of \$69.71, impute a forty hour work week each month, and consider other evidence to reach the attributed figure? Or, did the court consider that if Father had continued to practice law he would be earning \$12,500 monthly?

¶9 The Guidelines require the court to provide an explanation whenever it attributes income greater than minimum wage. A.R.S. § 25-320(22). Specifically, paragraph 22 states that "the court shall explain the reason for its decision." *Id.* Although it is clear that the court determined it was appropriate to attribute more than minimum wage to Father, we do not discern how the court decided to attribute \$12,500 as the imputed monthly income. Consequently, we suspend the appeal and remand the matter for an explanation as to how the court arrived at the monthly figure of \$12,500.

II.

¶10 Mother argues on cross-appeal that the family court abused its discretion when it denied her request for reasonable attorneys' fees in connection with her petition to modify.

¶11 As an initial matter, we consider Father's argument that we lack jurisdiction over the cross-appeal from the November 22, 2010 unsigned minute entry. *See also Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997) (citation omitted) (Appellate "court has an

independent duty to determine whether it has jurisdiction to consider an appeal."). The court had granted the modification petition in a signed minute entry on August 20, 2010, which directed each party to pay his or her own attorneys' fees. Father subsequently moved for a new trial, a time-extending motion that the court denied in a signed order on November 5, 2010. Mother's motion for clarification/reconsideration regarding the denial of her attorneys' fees request was denied in an unsigned minute entry dated November 22, 2010. Mother timely filed her cross-appeal from the August 20, 2010 order and the denial of her motion for clarification/reconsideration.

¶12 The family court's order denying Mother's motion for clarification/reconsideration is not appealable. See Ariz. R. Civ. P. 54(a); *Spradling v. Rural Fire Prot. Co.*, 23 Ariz. App. 549, 551, 534 P.2d 763, 765 (1975) (citation omitted) (ruling on a motion for reconsideration is not an appealable order). The minute entry is unsigned and not substantively appealable. *Id.* Therefore, we lack jurisdiction to address the denial of her motion for clarification/reconsideration.

¶13 We, however, have jurisdiction to address the denial of her request for fees in the signed minute entry of August 2010. Mother argues that the family court erred by denying her request for an award of attorneys' fees because she had fewer

financial resources than Father and he took an unreasonable position by opposing her petition to modify. "We will not disturb the family court's decision regarding attorneys' fees absent an abuse of discretion." *Engel v. Landman*, 221 Ariz. 504, 514, ¶ 45, 212 P.3d 842, 852 (App. 2009) (citation omitted).

¶14 The family court stated that it had "consider[ed] the financial resources of both parties and the reasonableness of the positions each party [took] throughout the proceedings," and ruled that each party would pay their own attorneys' fees.³ Both parties testified at the hearing and presented other evidence regarding their relative financial resources, their negotiations prior to the filing of the petition to modify, and the reasons underlying their positions regarding the petition. Based upon this record, we find no abuse of discretion in the court's denial of Mother's request for attorneys' fees. See *MacMillan v. Schwartz*, 226 Ariz. 584, 592, ¶ 38, 250 P.3d 1213, 1221 (App. 2011) (citation omitted) (affirming husband's partial attorneys' fees award under A.R.S. § 25-324 because the trial court was "in

³ Mother writes, "[i]t is not enough for a trial judge merely to recite that she has considered the financial resources. The evidence submitted must actually be considered." She offers no evidence or argument, however, that the court did not actually consider the parties' evidence.

the best position to observe and assess the conduct of the parties”).

CONCLUSION

¶15 Based on the foregoing, we suspend Father’s appeal, and remand this case to the family court to “explain the reason” for attributing income to Father above the minimum wage. We, however, affirm the court’s denial of Mother’s request for an award of attorneys’ fees.

¶16 Both parties have requested fees and costs on appeal. In our discretion, we decline to award attorneys’ fees on appeal of this issue, and will resolve the issue of appellate fees and costs when we resolve Father’s appeal.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

ANN A. SCOTT TIMMER, Judge

/s/

ANDREW W. GOULD, Judge