IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

PATRICK RAYBURN,
Petitioner/Appellant,

and

ARI RAYBURN,
Respondent/Appellee.

No. 2 CA-CV 2015-0027
Filed May 13, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Gila County
No. DO201300280
The Honorable Robert Duber II, Judge

AFFIRMED

COUNSEL

David Alan Dick and Associates, Chandler
By David Alan Dick
Counsel for Petitioner/Appellant

Steven E. Sufrin, Phoenix
Counsel for Respondent/Appellee

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Howard and Judge Staring concurred.

E S P I N O S A, Judge:

¶1 Patrick Rayburn appeals the trial court's orders awarding Ari Rayburn greater parenting time with the couple's children, spousal maintenance, and attorney fees. He additionally challenges the trial court's division of debt and its decision to allow certain testimony from late-disclosed witnesses. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the trial court's rulings. *Bell-Kilbourn v. Bell-Kilbourn*, 216 Ariz. 521, n.1, 169 P.3d 111, 112 n.1 (App. 2007). Patrick and Ari Rayburn were married in 2008 and have three children together. Patrick filed for dissolution of marriage in August 2013, and the Gila County Superior Court entered temporary orders awarding parenting time and legal decision-making to both parents. At the trial in July, the court heard evidence from Patrick, his girlfriend, and his father; as well as Ari, her parents, a former boyfriend, and a Payson police department officer who had responded to a domestic abuse incident between Ari and an ex-boyfriend. After Patrick objected to late-disclosed witnesses and their testimony, he was afforded an opportunity to offer additional witnesses at a hearing in October 2014. In the final ruling from which Patrick appeals, the court awarded Ari weekday parenting time and sole legal decision-making power, while Patrick was granted weekend parenting time and was ordered to pay all outstanding debts. The court also ordered Patrick to pay spousal maintenance and child support totaling $1,744 per month, and awarded reasonable attorney fees to Ari.

¶3 Patrick's appeal challenges each of these rulings as unsupported by the evidence, and additionally argues the court erred in admitting certain evidence at trial. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A) and 12-2101(A)(1).

Late-Disclosed Evidence

¶4 Patrick first argues the trial court erred by allowing Ari's untimely disclosed witnesses to testify at trial. A trial court has broad discretion in discovery and disclosure matters, and we will not disturb its rulings absent an abuse of discretion. *Reid v. Reid*, 222 Ariz. 204, ¶ 8, 213 P.3d 353, 355 (App. 2009). Under the family law rules of procedure, each party is required to disclose any witness to be called at trial, along with a statement fairly describing the substance of each witness's expected testimony. *See* Ariz. R. Fam. Law P. 49(G). Witnesses not disclosed at least sixty days before trial are prohibited from testifying. *Id.* Nevertheless, when legal decision-making and parenting-time decisions are to be made, the trial court has a "duty to hear all competent evidence offered in determining a child's best interests." *Reid*, 222 Ariz. 204, ¶¶ 7, 9-10, 213 P.3d at 355-56 (allowing expert witness testimony disclosed eight days before evidentiary hearing); *see also* A.R.S. § 25-403 ("The court shall determine legal decision-making and parenting time . . . in accordance with the best interests of the child."). Thus, in *Hays v. Gama*, our supreme court recognized that any sanction excluding evidence necessarily conflicts with overriding principles of determining the best interest of the children. 205 Ariz. 99, ¶ 21, 67 P.3d 695, 699 (2003).

¶5 Patrick objected to late-disclosed testimony from Ari's parents, first revealed only nine days before trial, about Ari's parenting. The trial court acknowledged the disclosure violation, but stated that because it was "mak[ing] a decision about children" it was not "going to keep people from [providing] information." The court assured Patrick it would not let any nondisclosed witness "surprise" him, and allowed Patrick to present rebuttal evidence at the October hearing over three months later.

¶6 The trial court's decision to allow relevant testimony from Ari's parents was consistent with its duty to "hear all competent evidence offered" in determining the best interests of the children. *Reid*, 222 Ariz. 204, ¶ 9, 213 P.3d at 355; *Johnson v. Johnson*, 64 Ariz. 368, 370, 172 P.2d 848, 849 (1949) (trial court has duty to hear all competent evidence which may be offered "when custody of children is involved"). By giving the best interest of the children primary consideration, and by crafting a remedy which did not unnecessarily interfere with that duty, the trial court did not abuse its discretion in allowing the untimely disclosed witnesses to testify. *See Reid*, 222 Ariz. 204, ¶ 10, 213 P.3d at 356.

Sufficiency of the Evidence

¶7 Patrick next argues the trial court's rulings were not supported by sufficient evidence, specifically challenging its awards of sole legal decision-making and primary care to Ari, spousal support, division of debt, and award of attorney fees. Ari, in contrast, acknowledges the parties presented conflicting evidence at trial, but contends the court's determinations were supported by substantial evidence.

¶8 We view the evidence in the light most favorable to upholding the trial court's findings, *O'Hair v. O'Hair*, 109 Ariz. 236, 240, 508 P.2d 66, 70 (1973), and will sustain its factual findings unless clearly erroneous or unsupported by any credible evidence, *Federoff v. Pioneer Title & Tr. Co. of Ariz.*, 166 Ariz. 383, 388, 803 P.2d 104, 109 (1990). Although we examine the record to determine whether substantial evidence supports those findings, we will not reweigh the evidence on disputed questions of fact. *Pugh v. Cook*, 153 Ariz. 246, 247, 735 P.2d 856, 857 (App. 1987). Nor do we judge the credibility of witnesses, which is a matter solely in the province of the trier of fact. *Id.* Substantial evidence is any relevant evidence from which a reasonable mind might draw a conclusion, *Mealey v. Arndt*, 206 Ariz. 218, ¶ 12, 76 P.3d 892, 895 (App. 2003), but does not include purely speculative inferences or conclusions, *Dodd v. Boies*, 88 Ariz. 401, 404, 357 P.2d 144, 146 (1960).

Legal Decision-Making

¶9 Patrick argues the trial court lacked substantial evidence to award sole legal decision-making and primary care to Ari. Citing evidence she had violated court orders, engaged in domestic abuse, and was mentally unstable, he contends that placement with their mother was not in the children's best interest. In response, Ari points out she has at all times been the primary caregiver for the children, one of whom is severely disabled.

¶10 In determining how parents should exercise or share legal decision-making, the trial court is required to consider the factors enumerated in A.R.S. § 25-403(A), and to make specific findings on the record regarding all relevant factors pursuant to § 25-403(B). In this case, Patrick and Ari presented conflicting evidence on the issues of legal decision-making and parenting time, and the trial court found that some of the statutory factors weighed in favor of Patrick, and some favored Ari. The court ultimately decided it was in the children's best interest for both parents to have parenting time, but for Ari to retain sole legal decision-making authority, citing Patrick's lack of participation "in any meaningful way with medical, school or religious decisions concerning the children," and the parents' "significant verbal disagreements in the past."

¶11 Patrick asserts the trial court ignored "overwhelming evidence" and points to specific facts in the record to support his claim. But, as Ari correctly observes, Patrick's disagreement with the court's assessment of the conflicting evidence and its analysis does not establish that the evidence was insufficient. *See, e.g.*, *Hurd v. Hurd*, 223 Ariz. 48, ¶¶ 16-17, 219 P.3d 258, 262 (App. 2009).

¶12 The court particularly noted Ari's involvement with the disabled child's physical, occupational, and speech therapies, while Patrick provided "no meaningful answers" to the court's inquiries regarding the child's services and providers, and at one point even called the court's questioning "ridiculous." Moreover, although there was evidence that the extended families of both parties have assisted with childcare, the maternal grandmother was involved in

providing physical, occupational, and speech therapy for the child with special needs. The court did acknowledge Ari's difficulty appropriately coping with stress, but it was unpersuaded by Patrick's unsupported allegations of substance abuse and mental health problems. In sum, each of the trial court's conclusions on the statutory factors was supported by substantial evidence, and we decline Patrick's invitation to reweigh conflicting evidence. *See id.*

Spousal Maintenance

¶13 Patrick similarly challenges the spousal maintenance award as unsupported by substantial evidence. "When the sufficiency of evidence to support a judgment is questioned . . . an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the court below." *Whittemore v. Amator*, 148 Ariz. 173, 175, 713 P.2d 1231, 1233 (1986). We will affirm the award if there is any reasonable evidence to support it, *Leathers v. Leathers*, 216 Ariz. 374, ¶ 9, 166 P.3d 929, 931 (App. 2007), and will not disturb factual findings unless clearly erroneous, *Hrudka v. Hrudka*, 186 Ariz. 84, 92, 919 P.2d 179, 187 (App. 1995). When the evidence conflicts regarding earning potential, the trier of fact is in the best position to weigh that evidence, and we will not substitute our judgment for that of the trial court. *See Hurd*, 223 Ariz. 48, ¶¶ 16-17, 219 P.3d at 262; *cf. Engel v. Landman*, 221 Ariz. 504, ¶¶ 21-24, 212 P.3d 842, 848-49 (App. 2009).

¶14 Eligibility for spousal maintenance is determined by applying the factors set forth in A.R.S. § 25-319(A). The trial court found Ari eligible under § 25-319(A)(1), as lacking sufficient property to provide for her reasonable needs, and under § 25-319(A)(2), as unable to be self-sufficient through appropriate employment as the custodian of children whose age and condition is such that she should not be required to seek employment outside the home. The court then applied the statutory factors in § 25-319(B) to determine the amount and duration of spousal maintenance.

¶15 Patrick testified he had annual earnings of up to $70,000 a year, and objected to Ari's request for maintenance because she had failed to search for employment. He further testified Ari had

substantial work history, including past employment as a secretary, and should be found responsible for supporting herself. Ari, however, explained she was unable to secure employment outside the home because her children require constant care and supervision, and she was attempting to start a business from her home making and selling home décor items. She further stated she had looked into daycare for her children and had concluded that if she obtained a minimum wage job, she would be "working just to pay someone to watch my kids."

¶16 Patrick additionally argues the trial court erred in finding Ari lacked sufficient property to provide for her reasonable needs and contends the expenses she presented are unreasonable. He fails, however, to indicate what her reasonable expenses would be or what property Ari has to meet those needs. The trial court found Ari's requested amount of $500 per month reasonable, specifically citing the need for fulltime supervision of the disabled child. The court also retained jurisdiction to modify the maintenance award. We conclude substantial evidence in the record supports the award as ordered.

Division of Debt

¶17 Patrick next challenges the trial court's division of debt among the parties. In preparation for trial, Ari had obtained a current credit report to determine outstanding debts, which she listed on her Affidavit of Financial Information. At trial, Patrick initially testified he was unaware of those obligations, but later changed his mind and agreed they had been incurred during the course of the marriage and should be split between the parties. Finding no evidence that the listed obligations were not community debts, the court ordered that Patrick be responsible for their payment.

¶18 In reviewing the apportionment of community property and debts, we consider the evidence presented in the light most favorable to upholding the trial court's determinations and will not disturb an equitable apportionment absent an abuse of discretion. *Kohler v. Kohler*, 211 Ariz. 106, ¶ 2, 118 P.3d 621, 622 (App. 2005). In

determining equitable division, the trial court has broad discretion in the specific allocation of individual assets and liabilities. *See Boncoskey v. Boncoskey*, 216 Ariz. 448, ¶ 13, 167 P.3d 705, 708 (App. 2007). And its determination is not limited by the statutory factors of A.R.S. § 25-318; instead, the court may consider other factors that bear on the equities of a particular case. *Toth v. Toth*, 190 Ariz. 218, 221, 946 P.2d 900, 903 (1997). Division of debt and property must be equitable, but not necessarily equal. *See id.*

¶19 Here, nothing suggests the trial court abused its discretion in apportioning community debt to Patrick. As previously discussed, Ari was awarded spousal maintenance because she was unable to work due to the young age of the children and the fact that one child requires full-time supervision. Patrick was the only party earning substantial income, and in recognition of his financial burdens, Patrick was awarded the full amount in his 401K account. There is substantial evidence supporting the court's decision, and we see no abuse of discretion in its assignment of debt obligations.

Attorney Fees

¶20 Patrick lastly challenges the trial court's order awarding attorney fees to Ari. We again decline his invitation to reweigh the evidence. *Hurd*, 223 Ariz. 48, ¶¶ 16-17, 219 P.3d at 262 ("Our duty on review does not include re-weighing conflicting evidence."). For the reasons previously discussed regarding the respective financial situations of the parties, we conclude the court did not abuse its discretion in awarding Ari reasonable attorney fees in accordance with A.R.S. § 25-324, notwithstanding Patrick's allegations of Ari's mental instability and drug abuse, which the court found unsubstantiated.

¶21 Ari additionally requests attorney fees on appeal, requiring us to examine the financial resources of the parties and the reasonableness of their positions. *See* § 25-324(A); *Leathers*, 216 Ariz.

374, ¶ 22, 166 P.3d at 934. Having done so, each party shall bear their own attorney fees and costs on appeal.[1]

Disposition

¶22 For the foregoing reasons, we conclude the trial court did not abuse its discretion in allowing relevant testimony from late-disclosed witnesses and that its determinations and rulings are supported by substantial evidence. Accordingly, its orders are affirmed.

[1] We note that Patrick has taken a reasonable position on appeal, and that the record suggests changed financial circumstances of the parties, with Ari having been awarded substantial maintenance and child support, and subsequently moving in with and being supported by her boyfriend.