

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

BRUCE ROBERT ALARIE,
Petitioner/Appellee,

and

YOUNG LEE HA,
Respondent/Appellant.

No. 2 CA-CV 2019-0074
Filed February 26, 2020

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NOT FOR PUBLICATION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 Cochise County
No. DO201800853
The Honorable David Thorn, Judge

AFFIRMED

COUNSEL

The Law Office of Robert Hicks PLLC, Sierra Vista
By Robert Hicks
Counsel for Petitioner/Appellee

Law Office of Richard Beck PLLC, Sahuarita
By Richard A. Beck
Counsel for Respondent/Appellant

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MEMORANDUM DECISION

Judge Brearcliffe authored the decision of the Court, in which Presiding Judge Staring and Chief Judge Vásquez concurred.

BREARCLIFFE, Judge:

¶1 Young Lee Ha appeals from the decree of dissolution of her marriage to Bruce Robert Alarie. Ha challenges the trial court’s division of property and its denial of her request for spousal maintenance. Alarie contends that the division of property was equitable and that Ha was not entitled to spousal maintenance. We affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to affirming the trial court’s ruling. See *In re Marriage of Downing*, 228 Ariz. 298, ¶ 2 (App. 2011). Ha and Alarie were married in February 2014, and have no children. In November 2018, Alarie filed a “Petition for Dissolution of Marriage (Divorce) without Minor Children.” Ha responded, requesting spousal maintenance of \$1,000 per month for thirty-six months, and “[her] interest in any pension, retirement, checking and savings accounts.”

¶3 Following the bench trial, the trial court awarded Alarie his entire retirement savings through the Arizona State Retirement System (ASRS) and denied Ha’s request for spousal maintenance. We have jurisdiction under A.R.S. § 12-2101(A)(1).

Analysis

Consideration of Third Party Property and ASRS Retirement Benefits

¶4 Ha argues that the trial court abused its discretion in considering property that belonged to a third party, a home purchased by Ha’s mother, when dividing community property, specifically Alarie’s ASRS retirement savings. We will not disturb a court’s division of marital property absent an abuse of discretion. *Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶ 5 (App. 1998).

¶5 “[T]he [trial] court shall assign each spouse’s sole and separate property to such spouse” and divide marital property equitably,

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although “not necessarily in kind.” A.R.S. § 25-318(A). The court may order an unequal division of property in the event of “excessive or abnormal expenditures.” § 25-318(C). As such, equal is not always equitable. See *Toth v. Toth*, 190 Ariz. 218, 221 (1997). Retirement benefits which accrue during marriage are generally considered “deferred compensation” community property, and are thus subject to equitable distribution. *Boncoskey v. Boncoskey*, 216 Ariz. 448, ¶ 14 (App. 2007) (quoting *Johnson v. Johnson*, 131 Ariz. 38, 41 (1981)).

¶6 Neither party requested that the trial court make findings of fact and conclusions of law pursuant to Rule 82(a), Ariz. R. Fam. Law P. And, while in the decree the court made some express findings, it generally merely recounted evidence that had been presented to it at trial, without stating whether it accepted the truth of that evidence. We presume, however, “that the [s]uperior [c]ourt ‘found every fact necessary to support the judgment, and such presumptive findings must be sustained if the evidence on any reasonable construction justified it.’” See *Neal v. Neal*, 116 Ariz. 590, 592 (1977) (quoting *Porter v. Porter*, 67 Ariz. 273, 282 (1948)).

¶7 The trial court here stated that evidence was presented that Ha’s mother had “purchased the [marital] home, allowed [Ha and Alarie] to live in the home, and collected \$750 per month from [Alarie].” And that “[t]he same day [Ha’s mother] recorded the deed to the home she also recorded a Beneficiary Deed to the home as the sole property of [Ha].” The court also acknowledged that Alarie had testified that he believed the home “was to be community property owned at some point by him and [Ha],” and that he had testified “that he spent a considerable sum (\$40,000-\$50,000) on maintenance and improvements to the home during the time he lived there with [Ha].” The court noted that “[t]here was evidence presented to the [c]ourt that the home is currently worth approximately \$198,000 and that the home was purchased for approximately \$124,000, a difference of \$74,000.” There was further evidence presented that Alarie’s contributions to the ASRS during the marriage amounted to approximately \$38,000.

¶8 Ha argues that “[i]n relying on these findings, the trial court concluded [Alarie] was somehow shortchanged by the arrangement regarding the home.” And that “[c]onsidering the value of the home, attributing its value to [Ha], and then using that attribution as an offset against [Alarie’s] retirement is an abuse of discretion.” Ha argues “[n]othing else in the record could support allocating all of [Alarie’s] retirement to him.”

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¶9 Ha does not cite to any authority for the assertion that the trial court cannot consider one spouse's contributions to the increase in value of separate property as to which the other spouse has a beneficial interest. Indeed, it is within the court's discretion to apportion the increase in value of separately held property if community labor and expenditures were responsible for a portion of the increase in value.¹ See *Honnas v. Honnas*, 133 Ariz. 39, 40 (1982) ("Community funds and labor, however, were used for the benefit of the separate property, and the community is entitled to share in the enhanced value of the property due to this expenditure of funds and labor."); see also *Tester v. Tester*, 123 Ariz. 41, 44 (App. 1979). A spouse is generally entitled to compensation for community funds expended to make mortgage payments on the property of another spouse and "also to a percentage share of any increase in the value of the property due to 'the general trend of rising real estate values.'" See *Barnett v. Jedynak*, 219 Ariz. 550, ¶¶ 14-15 (App. 2009) (quoting *Drahos v. Rens*, 149 Ariz. 248, 250 (App. 1985)). We find Ha's argument otherwise unpersuasive and see no reason that a court cannot consider a spouse's, or the community's, expenditures for property in which a spouse has a beneficial interest that has increased in value. Certainly trial courts, in making an equitable division of community property, are to "consider all factors that bear on the equities of the division." *In re Marriage of Inboden*, 223 Ariz. 542, ¶ 18 (App. 2010).

¶10 Consequently, we affirm the trial court's consideration of the increase in value of the home, and its distribution of the ASRS retirement account. See *Tester*, 123 Ariz. at 45 ("[T]he preferable mode of division [of community interest in retirement benefits] is to award the pension rights to the employee and property of equal value to the spouse."); *Cockrill v. Cockrill*, 124 Ariz. 50, 54 (1979) (holding trial court has broad discretion to apportion increase in value of separate property due to community expenditures and select method that "will achieve substantial justice between the parties"). It is well within the trial court's discretion to award Alarie the ASRS retirement savings. We find no abuse of discretion and affirm the court's division of property.

¹On appeal, Ha does not argue that Alarie's expenditures were not responsible for the increase in value of the marital home and thus this argument is waived. See *State v. Moody*, 208 Ariz. 424, n.9 (2004) ("Failure to argue a claim usually constitutes abandonment and waiver of that claim." (quoting *State v. Carver*, 160 Ariz. 167, 175 (1989))).

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Spousal Maintenance

¶11 In her response to Alarie’s petition for dissolution, Ha requested \$1,000 per month in spousal maintenance because she “lacks sufficient property to provide for [her] needs,” “is unable to support [herself] through appropriate employment,” and “lacks earning ability . . . adequate to support [herself].” She specifically claims that she is “disabled under medical care . . . unable to work, and [her] English is limited.”

¶12 In reviewing a claim for spousal maintenance, we review the evidence in the light most favorable to Alarie, as the non-appealing party. *In re Marriage of Pownall*, 197 Ariz. 577, ¶ 31 (App. 2000). The award of spousal maintenance is within the trial court’s “sound discretion,” and will not be disturbed if there is any reasonable evidence to support the judgment. *Id.* We are “constrained by the presumption that the [s]uperior [c]ourt ‘found every fact necessary to support the judgment, and such presumptive findings must be sustained if the evidence on any reasonable construction justified it.’” *See Neal*, 116 Ariz. at 592 (quoting *Porter*, 67 Ariz. at 282).

¶13 A trial court may order maintenance to a spouse based on a set of five enumerated grounds, which generally involve the degree of the receiving spouse’s financial independence. A.R.S. § 25-319(A)(1)-(5). In determining, as a threshold matter, whether the requesting spouse is eligible for spousal maintenance, the court considers “only the circumstances of the requesting spouse.” *In re Marriage of Cotter & Podhorez*, 245 Ariz. 82, ¶ 7 (App. 2018); *see also* § 25-319(A). If the court in its discretion awards spousal maintenance, there are an additional thirteen factors the court must evaluate in determining the amount of spousal maintenance to be paid and its duration. § 25-319(B)(1)-(13).

¶14 To be eligible for spousal maintenance, Ha must establish one of the factors set out in § 25-319(A), including that she either (1) lacked sufficient property to provide for her reasonable needs; (2) is unable to be self-sufficient through appropriate employment; (3) has made significant financial or other contribution to the education or career of Alarie; (4) had a marriage of a long duration and is of an age that may preclude the possibility of gaining employment; or (5) has significantly reduced her income or career opportunities for the benefit of Alarie. Ha argues she is entitled to spousal maintenance under the first two factors.

¶15 In denying Ha’s request for spousal maintenance, the trial court found that the marriage was of short duration and noted that

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no evidence was presented that [Ha] contributed to the education expenses of [Alarie]; although [Ha] stated that she had high blood pressure and could not work she presented no corroborating evidence in support of that claim; and [Ha] stated that her lifestyle had improved since moving back into her mother's home. This indicated to the [c]ourt that [Ha] has sufficient property to provide for her reasonable needs.

The court further stated that evidence was presented that, while Ha "had lived in the United States for more than 10 years, and had taken some English classes . . . her command of the English language was poor." It also noted that, while "[e]vidence was presented that [Ha] had been employed before and during the marriage, but had stopped working during the marriage," "[i]t was unclear to the [c]ourt if [Ha's] failure to find employment was based upon high blood pressure or if she simply chose not to work during the marriage." Lastly, the court stated that "evidence was presented that [Ha's] lifestyle had improved since she moved back into her mother's home."

¶16 Ha primarily challenges the trial court's finding that she had sufficient property, arguing that this conclusion was based solely on the court's unsupported belief that Ha's lifestyle had improved since she moved back into her mother's home. However, reasonable evidence supports this finding. Ha testified that her standard of living was better before she was married, while she was living with her mother. It would have been reasonable for the court to conclude that, now that she was again living with her mother, her standard of living has improved. Additionally, for more than two and a half years, Ha paid Alarie \$400 per month to help with utilities. Since moving back in with her mother, Ha does not pay rent or for utilities, and states that "[m]y mother [takes] care of everything. I don't pay her a dime." The court, thus, concluded this evidence "indicated to the [c]ourt that [Ha] has sufficient property to provide for her reasonable needs."

¶17 Although Ha essentially is asking us to reconsider the evidence and reach a different conclusion, it is not the role of this court to reweigh the evidence. *Gutierrez*, 193 Ariz. 343, ¶ 13. Therefore, we find no abuse of discretion and affirm the trial court's denial of spousal maintenance.

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Disposition

¶18 For the foregoing reasons, we affirm the decree of dissolution and the trial court's order as to the division of property and refusal to award spousal maintenance.