IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

AMANDA ELIZA LEON-CARPENTER,
Appellant,

and

MICHAEL JAMES CARPENTER,
Appellee.

No. 2 CA-CV 2020-0058-FC
Filed April 5, 2021

Appeal from the Superior Court in Pima County
No. D20133762
The Honorable Deborah Pratte, Judge Pro Tempore

AFFIRMED

COUNSEL

David Lipartito, Tucson
Counsel for Appellant

Pahl & Associates, Tucson
By Danette R. Pahl
Counsel for Appellee

MEMORANDUM DECISION

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

V Á S Q U E Z, Chief Judge:

¶1 In this domestic-relations action, Amanda Leon-Carpenter appeals from the trial court's post-decree rulings regarding parenting time and child support, civil contempt, enforcement of the dissolution decree, and attorney fees in favor of Michael Carpenter. She argues that the court erred by (1) modifying parenting time for the parties' two younger children, (2) exceeding its jurisdiction in finding Amanda in civil contempt, (3) awarding attorney fees in favor of Michael, and (4) declining to order Michael to pay Amanda a share of the refund from their 2014 joint income tax return. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the trial court's rulings. *Little v. Little*, 193 Ariz. 518, ¶ 5 (1999). Amanda and Michael's marriage was dissolved in 2016. The decree of dissolution included a parenting plan for the parties' three minor children and provided for disposition of the marital residence and the joint filing of their 2013 income tax return.

¶3 In May 2018, Amanda filed a post-decree petition to modify parenting time and child support and to enforce the decree. Amanda asserted that the modification was necessary because of the "continuous disagreement" between the parties over the parenting plan's "structure and terms" and because the oldest child "refus[ed] to have contact with [Michael]." In July 2018, Michael filed a counter-petition, also seeking modification of parenting time and stating that the existing plan had caused "continued animosity" between the parties and that the "frequent exchanges" were not in the children's best interests.

¶4 Michael subsequently filed petitions for contempt against Amanda, arguing she had violated the trial court's order regarding reunification therapy between Michael and the oldest child. He also maintained that Amanda had violated the decree by failing to comply with provisions regarding the marital home.

¶5 After four days of evidentiary hearings, the trial court issued an under-advisement ruling in November 2019. The court modified the parenting plan as to all three children, found Amanda in "indirect civil contempt," ordered child support in a recalculated amount, declined to issue any orders as to the 2014 income tax return, and awarded Michael his attorney fees. Following this ruling, Amanda and Michael each filed motions to alter or amend the judgment, which the court denied as to all relevant parts in a February 2020 ruling.

¶6 Amanda filed a notice of appeal.[1] We have jurisdiction pursuant to A.R.S §§ 12-120.21(A)(1) and 12-2101(A)(2).

Modification of Parenting Time

¶7 Amanda argues the trial court erred in modifying the parenting time for the two younger children because there was insufficient evidence to show a "material change in circumstances" and there was no "meaningful analysis of abuse" under A.R.S. § 25-403.03(F). We review a court's parenting-time order for an abuse of discretion but review de novo questions of statutory interpretation. *See Gonzalez-Gunter v. Gunter*, 249 Ariz. 489, ¶ 9 (App. 2020). "We will not set aside the [trial] court's findings of fact unless clearly erroneous, giving due regard to the opportunity of the court to judge the credibility of witnesses." *In re Estate of Zaritsky*, 198 Ariz. 599, ¶ 5 (App. 2000).

[1] Michael contends this court lacks jurisdiction over this appeal because it was not timely filed and, thus, should be dismissed. Although Amanda's post-judgment motion was titled "Petitioner's Motion to Alter or Amend Judgment[] Pursuant to Rule 83," Ariz. R. Fam. Law P.—which extends the time for appeal, *see* Ariz. R. Civ. App. P. 9(e)(1)(C)—Michael argues its substance was that of a motion for reconsideration under Rule 35.1, Ariz. R. Fam. Law P.—which does not extend the time for appeal, *see* Ariz. R. Civ. App. P. 9(a), (e)(1). However, because the trial court treated and ruled on the motion pursuant to Rule 83, we will also consider it a motion to alter or amend the judgment. *See Farmers Ins. Co. v. Vagnozzi*, 132 Ariz. 219, 221-22 (1982) (despite motion not "substantially satisfy[ing] the requirements" of time-extending motion, "when the trial court has stated in the record its intention to [treat motion as time-extending motion], the motion will also be treated by the appellate courts as [time-extending motion]"). The time for appeal was thus extended, making Amanda's appeal timely.

¶8 To modify parenting time, the trial court must first find "a change in circumstances materially affecting the welfare of the child." *Black v. Black*, 114 Ariz. 282, 283 (1977). The court has broad discretion in making this finding. *Pridgeon v. Superior Court*, 134 Ariz. 177, 179 (1982). "If the court finds such a change in circumstances, it must then determine whether a change in [parenting time] would be in the child's best interests," *Christopher K. v. Markaa S.*, 233 Ariz. 297, ¶ 15 (App. 2013), which includes considering the factors enumerated in A.R.S. § 25-403(A).

¶9 Here, the trial court found a "sufficient basis to modify the parenting plan regarding all the children"—that basis included the confusion surrounding how to handle Michael's military drill weekends and the change in the relationship between the oldest child and Michael. The trial court's findings are supported by the record, despite Amanda's contention to the contrary. The record reflects that the parties had continuing difficulties agreeing how to handle weekends, specifically weekends when Michael had drill. The record also supports the court's finding of a significant change in the relationship between the oldest child and Michael. Although the oldest child has turned eighteen since the court's ruling and is no longer subject to the parenting plan, the court was nonetheless within its discretion to find that the change in the relationship with Michael supported modifying the parenting plan for all the children.

¶10 The trial court then properly assessed each factor under § 25-403(A) to determine whether a modification of parenting time was in the best interests of the children. As required by § 25-403, the court considered and made specific findings as to "all factors that are relevant to the children's physical and emotional well-being." In her opening brief, Amanda points to the court's finding that, before the reunification process, Michael was emotionally abusive toward the oldest child for several years. *See* § 25-403(A)(1) (court shall consider relationship between parent and child), (A)(8) (court shall consider whether child abuse or domestic violence occurred). But the court additionally stated that the "demeaning, hostile, and threatening" communication between the parties was emotionally abusive and to such an extent that the court was "concerned that the parents might have undiagnosed or untreated mental health issues." *See* § 25-403(A)(5) (court shall consider "mental and physical health of all individuals involved"). The court noted that this "long-term arguing . . . has negatively affected the children individually and in having a healthy relationship with the parents." *See* § 25-403(A)(1). It also found that Amanda had "intentionally misled the [c]ourt in denying or downplaying her role in the interference [with] the reunification of" the oldest child with

Michael. *See* § 25-403(A)(7) (court shall consider "[w]hether one parent intentionally misled the court").

¶11 Amanda nevertheless contends that the trial court abused its discretion in weighing "more heavily" certain factors under § 25-403(A) that favored modification, despite the evidence of Michael's "verbal and emotional abuse" of her and the two oldest children. But as to these findings—and its findings for the other § 25-403(A) factors—the court was entitled to assign the weight to the evidence it deemed appropriate, and we do not reweigh the evidence on appeal. *See Hurd v. Hurd*, 223 Ariz. 48, ¶ 16 (App. 2009).

¶12 Amanda further contends that certain of the trial court's § 25-403(A) findings were clearly erroneous, specifically "that the Father is more likely to allow the children frequent, meaningful and continual contact with the Mother" and "that the current parenting plan is rather complex and somewhat chaotic and a simple plan would be easier for the children." Both of these findings are supported by the record. Indeed, as to the court's finding about the complicated nature of the prior parenting plan, Amanda petitioned to modify the parenting plan because its "structure and terms" had caused "continuous disagreement."

¶13 The record also supports the court's finding that Amanda interfered with the reunification process between Michael and the oldest child. For example, the reunification counselor testified she was concerned because it "d[id] not appear that [Amanda] support[ed] the process of therapeutic reunification" and Amanda "shared her lack of support" with the oldest child. In turn, she testified that the oldest child "communicated almost the identical choice in the words and in the same incidents with the same tone behind them" as Amanda, which indicated "intentional or unintentional" parent-coaching that could have long-term negative effects on the child. The counselor further testified that it was "very difficult" to schedule appointments through Amanda and that she had to ask Amanda to leave the premises during the sessions following an incident when the oldest child left the session prematurely after texting with Amanda. Thus, because the court's findings are supported by evidence, they are not clearly erroneous.

¶14 Amanda also contends that "there was no meaningful analysis of abuse under" § 25-403.03(F), which requires a specific finding that Michael met his "burden of proving to the court's satisfaction that parenting time will not endanger the child or significantly impair the child's emotional development" if there is a finding of domestic violence. *See*

DeLuna v. Petitto, 247 Ariz. 420, ¶ 1 (App. 2019). Contrary to Amanda's argument, the court was not required to make any specific finding because, in its best-interests analysis under § 25-403(A)(8), the court did not find evidence of domestic violence or child abuse by the parents that would trigger § 25-403.03(F). However, the court did find that the parents were emotionally abusive toward each other and "that the communication from the Father to [the oldest child] over a period of years was emotionally abusive." As discussed above, the court assigned this finding the weight it deemed appropriate in its best-interests analysis. Because the court adequately considered each factor relating to the best interests of the children and its findings are supported by the record, it did not abuse its discretion in modifying the parenting plan.

Contempt Finding

¶15 Amanda next appeals from the trial court's civil-contempt order. "[W]e have an independent obligation in every appeal to ensure we have jurisdiction." *Robinson v. Kay*, 225 Ariz. 191, ¶ 4 (App. 2010). Generally, we lack jurisdiction over appeals from civil-contempt orders, and such orders are only reviewable by special action. *See Stoddard v. Donahoe*, 224 Ariz. 152, ¶ 7 (App. 2010). But the general rule does not apply to contempt orders that go beyond the finding of contempt and are instead based upon an underlying order, which is appealable pursuant to § 12-2101. *See Green v. Lisa Frank, Inc*., 221 Ariz. 138, ¶¶ 13, 21 (App. 2009). Here, the November 2019 ruling, which, among other things, required Amanda to refinance the marital residence and make the mortgage payments, is appealable under § 12-2101(A)(2). *See In re Marriage of Dorman*, 198 Ariz. 298, ¶ 4 (App. 2000) (order modifying underlying dissolution decree is appealable special order after judgment). We therefore have jurisdiction over the civil-contempt order and do not need to consider Amanda's request to accept special-action jurisdiction.

¶16 Amanda argues the trial court erred by finding her in contempt because it acted outside of its jurisdiction and lacked a sufficient basis. We review a civil-contempt finding and any sanction for an abuse of discretion, accepting a trial court's factual findings unless clearly erroneous. *Stoddard*, 224 Ariz. 152, ¶ 9.

¶17 Amanda, relying on *Danielson v. Evans*, 201 Ariz. 401 (App. 2001), argues that the "trial court erred and acted outside its jurisdiction in holding [her] in [civil] contempt" for failing to make the mortgage payments because "[c]ontempt may not be imposed for failure to pay a community debt." In *Danielson*, this court held that property settlement

payments could not be enforced by contempt. 201 Ariz. 401, ¶¶ 34-38 (citing *Proffit v. Proffit*, 105 Ariz. 222, 225 (1969)). But Michael, relying on *Eans-Snoderly v. Snoderly*, 249 Ariz. 552, ¶¶ 8-15 (App. 2020), contends that the trial court had jurisdiction because, in that case, this court determined that A.R.S. § 25-317(E) "gives the [trial] court jurisdiction to consider a petition for contempt for a spouse's failure to comply with the terms of a separation agreement, including an obligation for payment of money, except the court cannot order incarceration for such nonpayment."

¶18 In *Eans-Snoderly*, this court distinguished its holding from that in *Danielson* by stating that the latter did not address the trial court's jurisdiction for contempt proceedings that arose from the nonpayment of a settlement-agreement obligation. 249 Ariz. 552, ¶ 13. Because the payment at issue here was part of a settlement agreement that was incorporated into the decree, we find Michael's analysis persuasive and our analysis in *Eans-Snoderly* dispositive. The trial court thus had jurisdiction to enter its finding of civil contempt.

¶19 Amanda further argues that "there was an insufficient legal or factual basis to hold [her] in contempt" because there was no showing that her failure to pay the mortgage was done "willfully" or that it harmed Michael. But Amanda's admissions that she failed to make payments or notify Michael support the trial court's finding that Amanda was aware of her obligation to make the payments and that she "knowingly and intentionally violated the order" by not making them or notifying Michael for over two years. The court also found that the purpose of the underlying order for Amanda to refinance the mortgage was so that Michael's credit was not damaged. Michael testified that the missed payments showed up on his credit report. The record thus supports the court's finding that Michael's credit was likely damaged by Amanda's failure to pay the mortgage. Therefore, the court did not abuse its discretion.

¶20 Amanda also argues that "there was insufficient basis to hold [her] in contempt for interfering in the reunification therapy," contending that she repeatedly denied she interfered and the counselor's opinion should be afforded little if any weight. But again, Amanda is asking us to reweigh the trial court's credibility and evidence determinations, which we will not do on appeal. *Hurd*, 223 Ariz. 48, ¶ 16. Because there is sufficient evidence based on the testimony of the reunification counselor to support the court's finding that Amanda was willfully "instrumental in the estrangement of the [oldest] child with her father and that she interfered with reunification therapy," the court did not err in holding her in contempt.

Attorney Fees

¶21 Amanda next challenges the award of attorney fees to Michael. In awarding attorney fees to Michael, the trial court stated that it had "considered the requirements of A.R.S. § 25-324(A) and . . . Rule 92," Ariz. R. Fam. Law P. We review an award of attorney fees for an abuse of discretion. *See Motzer v. Escalante*, 228 Ariz. 295, ¶ 4 (App. 2011).

¶22 Section 25-324(A) provides that a trial court "may order a party to pay a reasonable amount to the other party" for attorney fees and costs "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings." Under Rule 92, a trial court may, in its finding of contempt, include "appropriate sanctions for obtaining the contemnor's compliance with the order, including . . . attorney fees, costs, . . . and any other coercive sanction or relief permitted by law, provided the order includes a purge provision under section (f)."

¶23 Amanda argues that, in considering the requirements of § 25-324(A), the trial court only considered the "reasonableness of the parties' positions" and not the "relative financial strength of the parties." But in its post-decree ruling, the court expressly stated it had considered "the financial resources of the parties, as well as the reasonableness of the position the parties have taken." Even though the court made no express findings as to the parties' financial resources, neither party requested that it do so, and thus we "must assume that the trial court found every fact necessary to support its judgment and must affirm if any reasonable construction of the evidence justifies the decision." *Stevenson v. Stevenson*, 132 Ariz. 44, 46 (1982). To the extent Amanda contends the court erred because "[t]he uncontroverted evidence showed that [Michael's] income was much greater than [hers]," the court was well within its discretion to determine whether an award was appropriate, despite the income disparity. *See Magee v. Magee*, 206 Ariz. 589, ¶ 18 (App. 2004) ("If the trial court finds such a disparity, it is then authorized to undertake its discretionary function of determining whether an award is appropriate.").

¶24 Furthermore, the trial court found that Amanda's positions were unreasonable, specifically referring to her positions "regarding [the oldest child's] parenting time and reunification therapy" and "her actions . . . regarding her obligations concerning the marital residence." Amanda contends the court was required to evaluate her legal positions, and not her conduct, in its reasonableness determination under § 25-324(A). We disagree.

¶25 There was an independent basis for the award of attorney fees under Rule 92. In its contempt finding, the trial court awarded Michael his attorney fees as a sanction for Amanda's "unreasonable positions and her behavior for interfering with the reunification of the [oldest] child and [Michael]." Because Amanda makes no argument that fees were improper under this rule and it is dispositive on this issue, the court did not abuse its discretion in awarding Michael attorney fees.

2014 Tax Return

¶26 In the original decree, the trial court ordered the parties to jointly file their 2013 income tax return and, if any portion was intercepted by the state to pay for Michael's separate child-support arrears, Michael was responsible for paying Amanda her fifty percent share of the refund. Amanda contends the 2014 income tax refund should have been treated identically because the "parties were delayed in filing the 2013 taxes and filed them simultaneously with the 2014 return" and the state seized the full amount of the refunds. She maintains that "it was only fair, just, and consistent with Arizona community property law" that the 2014 refund be treated identically. But she waived appellate review of this issue because she fails to support her argument with any legal authority. *See Polanco v. Indus. Comm'n,* 214 Ariz. 489, n.2 (App. 2007) (unsupported argument waived on appeal); Ariz. R. Civ. App. P. 13(a)(7). Even if the argument were not waived, it lacks merit. The trial court was correct in "declin[ing] to issue orders regarding the 2014 tax return[]" because it was not part of the underlying decree.

Attorney Fees on Appeal

¶27 Michael requests his attorney fees and costs on appeal pursuant to § 25-324 and Rule 21, Ariz. R. Civ. App. P. Having reviewed the record as to the financial resources of both parties and having considered the reasonableness of the parties' positions, in our discretion, we deny Michael's request. *See* § 25-324(A). As the prevailing party, however, Michael is entitled to his costs on appeal upon compliance with Rule 21(b). *See* A.R.S. § 12-341.

Disposition

¶28 For the foregoing reasons, we affirm the trial court's November 2019 and February 2020 post-decree rulings.