IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE THE MARRIAGE OF

JENNIFER BADALAMENTI,
Petitioner/Appellee,

and

DANIEL BADALAMENTI,
Respondent/Appellant.

No. 2 CA-CV 2020-0072-FC
Filed February 24, 2021

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NOT FOR PUBLICATION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 Pinal County
No. S1100DO201900811
The Honorable Richard T. Platt, Judge Pro Tempore

AFFIRMED

COUNSEL

Suzette Lorrey-Wiggs PC, Tempe
By Suzette Lorrey-Wiggs
Counsel for Petitioner/Appellee

Daniel Badalamenti, Mesa
In Propria Persona

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 Daniel Badalamenti appeals from the trial court's decree of dissolution of his marriage to Jennifer Badalamenti. He argues the court erred by (1) ordering him to pay one-half of Jennifer's student loan debt; (2) failing to consider "applicable homestead exemptions" in dividing the marital home; and (3) including his income from his second job in calculating child support. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to affirming the decree. *In re Marriage of Foster*, 240 Ariz. 99, ¶ 2 (App. 2016). The parties were married in 2007 and have three minor children. In May 2019, Jennifer petitioned for dissolution of their marriage. After a bench trial in January 2020, the court issued a dissolution decree in which it established Jennifer as the sole legal decision-maker and primary residential parent and ordered Daniel to pay Jennifer $733 per month in child support. The court evenly divided the parties' community property and equally apportioned their debts, including their respective student loans. The court awarded Jennifer possession of the marital home, subject to refinancing it within ninety days to reimburse Daniel for his half of the equity, with his share to be first applied to his portion of the community debts and any remaining money to him. In the event the refinance did not occur, the court ordered the house sold, with the proceeds first applied to pay community debts and any remainder split evenly between the parties.

¶3 Daniel appealed.[1] We have jurisdiction under A.R.S. § 12-2101(A)(1).

[1]Following Daniel's notice of appeal, and at the direction of this court, the trial court entered an amended decree reflecting that it was a final order pursuant to Rule 78(c), Ariz. R. Fam. Law. P.

Student Loan Debt

¶4 Daniel challenges the trial court's order requiring him to pay one-half of Jennifer's student loan debt. He asserts that she incurred the debt knowing she would seek a divorce once she graduated and argues that her education did not benefit the community because she immediately left the marriage once she obtained her degree. We review the court's division of property and debts for an abuse of discretion but review the court's characterization of property and debts de novo. *Helland v. Helland*, 236 Ariz. 197, ¶ 8 (App. 2014) (property); *see Hammett v. Hammett*, 247 Ariz. 556, ¶¶ 13, 27-29 (App. 2019) (debt).

¶5 "There is a legal presumption that all property acquired during marriage is community property," *Marriage of Foster*, 240 Ariz. 99, ¶ 6, and should be distributed equitably, *see* A.R.S. § 25-318(A). Similarly, "where either spouse incurs an obligation during marriage for the benefit of the community, that debt is presumed to be a community obligation," *Johnson v. Johnson*, 131 Ariz. 38, 44 (1981), and equal division is presumptively equitable, *Toth v. Toth*, 190 Ariz. 218, 221 (1997). A trial court has discretion in whether to depart from an equal distribution. *See id.*

¶6 Daniel acknowledges that because Jennifer incurred the student loans during their marriage, these presumptions apply to that debt. But he suggests that the circumstances in this case dictate that he should not be held responsible for Jennifer's student loans, citing *Pyeatte v. Pyeatte*, 135 Ariz. 346 (App. 1982). The circumstances in *Pyeatte* are distinguishable from those here.

¶7 In *Pyeatte*, we concluded that the wife was entitled to reimbursement under a theory of unjust enrichment for the husband's living expenses and direct educational expenses she had paid to put him through law school. *Id.* at 356-57. We relied on the spouses' oral agreement that the wife would support the husband while he attended law school and then he would support her while she earned her master's degree. *Id.* at 349. After the husband's graduation but before the wife attended school, he informed her that he wanted a divorce, failing to fulfill his end of the bargain. *Id.*

¶8 In this case, Daniel does not point to a similar agreement that Jennifer failed to honor. Moreover, Daniel had borrowed money from his mother for his own schooling earlier in the marriage. That debt had not been repaid, and the trial court equally divided it between the parties, just as it divided Jennifer's student loans.

¶9 In considering how to divide the student loan debt, the trial court noted it was undisputed that the loan was acquired during the marriage and was, thus, presumed to be a community debt. The court credited Jennifer's testimony that some of the loan proceeds had been used to pay the family's monthly expenses and concluded that the loan funds had benefitted the marriage. Although Daniel asserts that he presented controverting testimony and that Jennifer had provided no supporting evidence, we do not reweigh the evidence and defer to the trial court's credibility findings. *See Lehn v. Al-Thanayyan*, 246 Ariz. 277, ¶ 20 (App. 2019). Daniel has thus failed to show an abuse of discretion here.

Marital Home

¶10 Daniel contends the trial court did not properly consider "applicable homestead exemptions" when it ordered that the net proceeds from the sale of the home, or his share of equity obtained through refinancing, be applied to the community debts. However, Daniel does not point to where in the record he raised this issue below. *See* Ariz. R. Civ. App. P. 13(a)(7)(B) (for each contention, party must refer to place in record where issue was raised and ruled upon). And because he apparently is raising this issue for the first time on appeal, we do not consider it. *See Airfreight Express Ltd. v. Evergreen Air Ctr., Inc.*, 215 Ariz. 103, ¶ 17 (App. 2007). Similarly, we do not consider his argument that some of the proceeds from the home should be solely his as "homestead proceeds," a contention that he did not meaningfully develop within the argument section of his brief. *See City of Tucson v. Tanno*, 245 Ariz. 488, ¶ 26 (App. 2018).

Child Support

¶11 Daniel contends the trial court should not have included his income from a second job in its calculation of his child support obligation. In the decree, the court calculated Daniel's obligation based in part on an average of 8.5 hours he worked per week at a second job. We review child support awards for an abuse of discretion, but we review de novo the court's conclusions of law and interpretation of the Arizona's Child Support Guidelines, A.R.S. § 25–320 app. ("Guidelines"). *Sherman v. Sherman*, 241 Ariz. 110, ¶ 9 (App. 2016). We accept the trial court's findings unless they are clearly erroneous. *Id.*

¶12 "As directed by statute, our supreme court has adopted guidelines to 'provide procedural guidance in applying the substantive law' for establishment and modification of child support obligations." *Milinovich v. Womack*, 236 Ariz. 612, ¶ 8 (App. 2015) (quoting *Little v. Little*,

193 Ariz. 518, ¶ 6 (1999)). The purpose of the Guidelines "is to establish a standard of support" consistent with the children's needs and to ensure consistency of support awards "for persons in similar circumstances." *Id.* (quoting *Engel v. Landman*, 221 Ariz. 504, ¶ 38 (App. 2009)).

¶13 Relevant here, in calculating a parent's gross income for child support purposes, the Guidelines provide that "[t]he court may . . . consider income actually earned that is greater than would have been earned by full-time employment if that income was historically earned from a regular schedule and is anticipated to continue into the future." Guidelines § 5(A). Thus, the Guidelines do not entitle a parent to a decreased child support obligation when the parent has regularly worked more than forty hours a week during the marriage and continues to do so. *See McNutt v. McNutt*, 203 Ariz. 28, ¶ 14 (App. 2002). Here, Daniel testified that he continued to work "seven to ten hours" per week at a second job he had held for over a decade. Under the Guidelines, the trial court had discretion to consider Daniel's historically earned, continuing income from regularly scheduled work beyond full-time employment.

¶14 Daniel cites *Lundy v. Lundy*, 242 Ariz. 198, ¶ 8 (App. 2017), to suggest otherwise. But in *Lundy* there was no evidence of regular, historically earned, continuing income from work beyond full-time employment. *Id.* ¶ 9. In contrast, as noted above, Daniel's own testimony established such extra income in this case. Finally, although Daniel points out that he testified he wanted to quit the second job, he had not done so. The record thus supports a conclusion that the income would continue into the future. To the extent Daniel's testimony created any conflict about whether the income would continue, we defer to the trial court's resolution of it. *See Lehn*, 246 Ariz. 277, ¶ 20 (appellate court defers to trial court's resolution of conflicting facts). The court thus did not abuse its discretion by including Daniel's second-job income in calculating his child support obligation.

Disposition

¶15 For the foregoing reasons, we affirm the trial court's dissolution decree. In our discretion, we deny Jennifer's request for attorney fees under A.R.S. § 25-324, but she is entitled to recover her costs on appeal upon compliance with Rule 21, Ariz. R. Civ. App. P. *See* A.R.S. § 12–341.