

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

TACY OBERAN,
Appellee,

and

HEATHER GARNER,
Appellant.

No. 2 CA-CV 2020-0098-FC
Filed February 17, 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NOT FOR PUBLICATION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 Pima County
No. D20171780
The Honorable John J. Assini, Judge Pro Tempore

VACATED AND REMANDED

Tacy Oberan, Arizona City
In Propria Persona

Heather Garner, Tucson
In Propria Persona

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MEMORANDUM DECISION

Vice Chief Judge Staring authored the decision of the Court, in which Presiding Judge Espinosa and Judge Eckerstrom concurred.

STARING, Vice Chief Judge:

¶1 Heather Garner appeals from the trial court's order that Tacy Oberan owes no further spousal maintenance payments under the parties' consent decree of dissolution as a result of payments Oberan made related to shared household expenses during their attempted reconciliation. For the following reasons, we vacate the court's order.

Factual and Procedural Background

¶2 In October 2017, Oberan and Garner entered into a consent decree of dissolution of their nearly four-year marriage in which Oberan agreed to pay Garner "a minimum of \$700.00 per month in spousal maintenance/support." The decree further provided the payments were to begin that month, and "[e]ach payment thereafter shall be made by the first day of each month and shall continue until [Garner] is remarried or deceased or until the sum of \$13,850.00 has been paid to [Garner]."

¶3 In early 2018, Oberan and Garner reconciled, and later that year they entered into a domestic partnership and applied for a marriage license. The reconciliation lasted approximately fifteen months, during which Oberan stopped making spousal maintenance payments to Garner and neither party attempted to enforce or terminate the spousal maintenance award. After reconciliation failed, Garner filed a motion to enforce Oberan's spousal support payments, seeking \$10,500 in maintenance arrears for the period of December 2017 to March 2019. Oberan contested the motion, claiming she had fulfilled her support obligation based on her financial contributions to shared expenses while the parties were cohabitating.

¶4 In its order, the trial court noted "[t]he original spousal maintenance award was for a sum certain with an understanding that \$13,850 would be paid in total instead of setting a duration." The court continued: "[W]ith a \$700 per month payment, the award duration was approximately 19 months long. Because the parties entered a Consent Decree, the Court is left without any underlying factors that would have

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been necessary in order to determine if an award of spousal maintenance was appropriate.” Further, it stated, the “parties’ reconciliation plus what payments were made by [Oberan] to [Garner] were almost equal to the original award duration,” and found “the 15 months of help that [Garner] was seeking in order to achieve her independence was met during the parties’ reconciliation.” The court ultimately concluded Oberan had satisfied her spousal maintenance obligation and owed no further maintenance to Garner. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(2).

Discussion

¶5 On appeal, Garner argues the trial court “erred by retroactively modifying the spousal maintenance absent a motion to modify the order” and “by crediting past due support payments to th[ir]d parties absent a written agreement altering the terms of the consent decree.” Thus, she contends she “is entitled to entry of judg[er]ment for the full amount of spousal maintenance arrearages noted in her motion to enforce support.”

¶6 “[W]hen an appellant raises a debatable issue, the court, in its discretion, may find that an appellee’s failure to file an answering brief constitutes a confession of error.” *State ex rel. McDougall v. Superior Court (Blendu)*, 174 Ariz. 450, 452 (App. 1993). Oberan has failed to file an answering brief on appeal. And, as set forth in Garner’s opening brief, this matter presents a debatable issue, specifically, whether the trial court’s ruling constituted an impermissible retroactive modification of Oberan’s spousal support obligation, in violation of A.R.S. § 25-327(A). In our discretion, we consider Oberan’s failure to file an answering brief a confession of reversible error. *See Blendu*, 174 Ariz. at 452; Ariz. R. Civ. App. P. 15(a)(2) (“If the appellee does not timely file an answering brief, the appellate court may deem the appeal submitted for decision based on the opening brief and the record.”).

Disposition

¶7 We vacate the trial court’s order that Oberan owes no further spousal maintenance payments under the parties’ decree of dissolution and remand for further proceedings consistent with this decision.