IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE THE MARRIAGE OF

MARIA L. MORAN MACIAS,
FKA MARIA L. SHUPE,
Petitioner/Appellant/Cross-Appellee,

and

E. RICHARD SHUPE,
Respondent/Appellee/Cross-Appellant.

No. 2 CA-CV 2020-0131-FC
Filed September 1, 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NOT FOR PUBLICATION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. D20182734
The Honorable Patricia Green, Judge Pro Tempore

AFFIRMED

COUNSEL

The Ber Law Firm, Phoenix
By Hershel Ber
Counsel for Petitioner/Appellant/Cross-Appellee

E. Richard Shupe, Tucson
In Propria Persona

MEMORANDUM DECISION

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

E C K E R S T R O M, Judge:

¶1 Richard Shupe ("Husband") appeals from a decree of dissolution of his marriage to Maria L. Moran Macias ("Wife"). He challenges the trial court's rulings regarding property division and spousal maintenance. For the reasons that follow, we affirm.

Background

¶2 The parties married in 1988. They separated in July 2018. In August 2018, Wife filed a petition for dissolution of marriage. On the same day, she obtained an order of protection granting her exclusive use and possession of the marital residence. Shortly thereafter, Husband filed his own petition for dissolution after obtaining court permission to do so, due to his designation in 2014 as a vexatious litigant. Wife was served with Husband's petition on September 25, 2018, and the marital community terminated as of that date. *See* A.R.S. § 25-211. In September 2018, the trial court consolidated the matters.

¶3 A multitude of filings and hearings followed. In late 2019, the trial court conducted a four-day trial, at which both parties testified and presented evidence. In April 2020, the court issued a detailed ruling addressing various unresolved property issues and denying Husband's request for an award of spousal maintenance. Husband appealed.[1] We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1). *See also* Ariz. R. Civ. App. P. 9(c).

[1]Wife first filed her notice of appeal. Husband then filed a notice of cross-appeal. After Wife failed to file her opening brief, we dismissed her appeal.

Standard of Review

¶4 The trial court tasked with entering a dissolution decree has "broad discretion in determining what allocation of property and debt is equitable under the circumstances." *In re Marriage of Inboden*, 223 Ariz. 542, ¶ 7 (App. 2010). We will not disturb such a determination "absent a clear abuse of discretion." *Id.* The same standard applies to the trial court's denial of spousal maintenance. *Dopadre v. Dopadre*, 156 Ariz. 30, 32 (App. 1988).

¶5 "An abuse of discretion exists when the record, viewed in the light most favorable to upholding the trial court's decision, is devoid of competent evidence to support the decision." *State ex rel. Dep't of Econ. Sec. v. Burton*, 205 Ariz. 27, ¶ 14 (App. 2003); *see also Kohler v. Kohler*, 211 Ariz. 106, ¶ 2 (App. 2005) (appeals court will sustain trial court's apportionment of community property if evidence, viewed in light most favorable to upholding ruling, "reasonably supports it"). "We will defer to the trial court's determination of witnesses' credibility and the weight to give conflicting evidence." *Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶ 13 (App. 1998). And, accordingly, we will "defer to the judge with respect to any factual findings explicitly or implicitly made, affirming them so long as they are supported by reasonable evidence." *Twin City Fire Ins. Co. v. Burke*, 204 Ariz. 251, ¶ 10 (2003); *see also In re Estate of Zaritsky*, 198 Ariz. 599, ¶ 5 (App. 2000) ("We will not set aside the probate court's findings of fact unless clearly erroneous, giving due regard to the opportunity of the court to judge the credibility of witnesses.").

Discussion

¶6 Like Husband's briefs on appeal, much of the four-day trial focused on his claims that Wife had dissipated community assets and that he should be awarded corresponding credits for his half of the purported value of those assets. In its ruling, the trial court expressly rejected Husband's claims regarding the community automobile, which was damaged beyond repair in a car accident after the initiation of divorce proceedings, and approximately $40,000 that Husband alleged Wife had removed from the parties' safety deposit box. On appeal, Husband challenges these two express rulings, contending the court "abuse[d] its

discretion" and "ignored the preponderance of the evidence" in rejecting his request for credits.[2]

¶7 On both issues, the trial court found that Husband had failed to present evidence sufficient to substantiate his claim for a credit. In particular, the court found that Husband had failed to present "any evidence establishing that the parties' insurance should have covered any damage to the vehicle." It also found that the partial, incomplete bank records presented by Husband did not establish that the safety deposit box had contained $40,000 at the time Wife closed it. The court reached these conclusions after carefully reviewing the photographs and other evidence presented by Husband at trial, as well as the testimony of the parties. And our own review of the record confirms that the court's findings are supported by reasonable evidence. We therefore defer to those findings, *see Twin City Fire Ins. Co.*, 204 Ariz. 251, ¶ 10, and find no abuse of discretion in the court's resulting denial of Husband's requests for these credits, *see Marriage of Inboden*, 223 Ariz. 542, ¶ 7.

¶8 Husband also claims the trial court "abused its discretion by ignoring material issues [he] raised at trial" regarding other "valuable property" allegedly "dissipated by [Wife]." He details the items in question

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[2]Husband also contends the trial court denied him "his constitutional right to have witnesses for his self interest" by quashing a subpoena through which he sought to obtain the testimony of a bank employee. He asserts, as he did below, that the employee would have testified that she had counted $40,000 in front of Husband and saw him place that money in the parties' safety deposit box. But the employee in question stated in her sworn declaration in support of her motion to quash the subpoena that she had "no knowledge of the contents [of the safety deposit box], at any time." Moreover, as the motion to quash explained, Husband's subpoena failed to: set forth any areas of testimony to be provided or describe any relevant information about which the employee could testify; establish any reason or necessity for her testimony; specify whether her appearance would be for purposes of a deposition, hearing, or trial, as required by Ariz. R. Civ. P. 45(a)(1)(C)(i); or tender attendance and mileage fees, as required by Ariz. R. Civ. P. 45(d)(1). We therefore find no abuse of discretion in the trial court's decision to quash the subpoena in question. *See Schwartz v. Superior Court*, 186 Ariz. 617, 619 (App. 1996) (appellate court reviews ruling on motion to quash subpoena for abuse of discretion).

and their alleged replacement costs, which are not itemized in the court's ruling. But that ruling reflects an implicit finding that Husband failed to prove that Wife had dissipated the items in question. It ordered that "Wife must not remove from the residence any items of personal property (household furnishings, cookware, books, appliances, tools, etc.) that were purchased during the marriage and/or that are otherwise depicted in Husband's photos,"[3] and that Husband was entitled to "all the contents of the storage unit." As noted above, the ruling reflects that the court reviewed and considered the photographs submitted by Husband. But it evidently concluded that Husband's photographs and other evidence were insufficient to establish that the contested items had been sold or otherwise dissipated, rather than remaining in the home or the storage unit. The court also heard and considered the testimony of Wife and another witness, both of whom categorically denied the dissipation alleged by Husband.[4] We have no basis for second-guessing the court's implicit finding that Husband failed to prove the dissipation he alleges, particularly given the deference we owe to the trial court regarding the credibility of the witnesses who testified before it. *See Estate of Zaritsky*, 198 Ariz. 599, ¶ 5.

¶9 Husband advances various arguments regarding what he characterizes as Wife's "complete lack" of credibility, contending the trial court erred "by assigning any creditability" to her. But, as noted above, the credibility of witnesses is a question for the trier of fact, not this court. *See Gutierrez*, 193 Ariz. 343, ¶ 13. Moreover, the decree of dissolution expressly

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[3]The trial court then ordered the parties to "take turns selecting similar items, with Husband choosing first and selecting *two* items, and Wife choosing second and selecting *one* item. They will repeat this pattern until each has selected from all the personal property remaining in the marital residence." We defer to the court's conclusion that such division achieves "an equitable distribution of the remaining personal property and household furnishings, while also taking into consideration Wife's admitted sale" of other items. *See Marriage of Inboden*, 223 Ariz. 542, ¶ 7 ("broad discretion" of trial court to determine equitable allocation of property).

[4]Husband's assertions to this court that Wife never denied, and in fact admitted, dissipating the community assets in question are flatly contradicted by the trial transcript. She only admitted having stolen "some of [Husband's] *personal* items" (emphasis added) and having sold one air compressor, an item Husband does not reference on appeal.

notes that the court "considered the evidence, including the demeanor of the witnesses" in reaching its conclusions.

¶10 Husband also argues the trial court erred in denying his request for spousal maintenance. The court based this order on its finding that the parties were "similarly situated with respect to their income and employment options"—with "limited earning ability based on their age and current circumstances"—and that "neither party has sufficient funds to pay spousal maintenance to the other while meeting his or her own needs." These findings were reasonably supported by the testimony of the parties, and we therefore defer to them. *See Estate of Zaritsky*, 198 Ariz. 599, ¶ 5. Indeed, as the trial court noted, Husband's own testimony emphasized "that it was unreasonable for Wife to expect to return to work." Thus, we find no abuse of discretion in the court's denial of spousal maintenance. *See Dopadre*, 156 Ariz. at 32; *see also Gutierrez*, 193 Ariz. 343, ¶ 23 (spousal maintenance award may not be based upon speculative expectations).

¶11 Finally, Husband contends the trial court erred "by not weighing the evidence in allocating and assigning cost[s] to parties." This appears to be an argument regarding costs to repair damage Wife allegedly caused to the marital home. And, indeed, the court seems to have agreed that Wife had "failed to properly maintain the residence during her sole occupancy," at least in some respects. But Husband's claims in this regard are entirely speculative. *See In re Marriage of Goldstein*, 120 Ariz. 23, 25 (1978) (trial court not required to speculate or consider unproven costs when dividing community property). Moreover, on the first day of trial, the parties stipulated to the fair market value for the home. And the court ordered that Husband—to whom it granted exclusive use of the home until its sale—would not be obligated to make any repairs or perform any upkeep in excess of $500 in any given month without written agreement between the parties. Husband's claim that the court should have provided unspecified "relief" from hypothetical home repair costs thus fails.

¶12 Wife has requested attorney fees on appeal pursuant to A.R.S. § 25-324. Given that Wife initiated the present appeal before abandoning it, we decline her request.[5] However, as the prevailing party, Wife is

[5]For the first time in his reply brief, Husband asks us to sanction Wife "for an appeal process frivolously initiated" by requiring her to "reimburse the Court for cost in this action." We decline to address this untimely

entitled to her costs on appeal, A.R.S. § 12-341, upon her compliance with Rule 21, Ariz. R. Civ. App. P.

Disposition

¶13 We affirm the ruling of the trial court.

argument. *See Austin v. Austin*, 237 Ariz. 201, n.1 (App. 2015) (appellate court will not consider arguments first raised in reply brief).