IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE THE MARRIAGE OF

MICHAEL GOODMAN,
Petitioner/Appellee,

and

ANGELA M. WILSON-GOODMAN,
Respondent/Appellant.

No. 2 CA-CV 2023-0129
Filed April 22, 2024

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NOT FOR PUBLICATION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 Maricopa County
No. FC2019092305
The Honorable Keith Miller, Judge

REVERSED AND REMANDED

COUNSEL

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MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Brearcliffe and Judge Kelly concurred.

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

¶1 Angela Wilson-Goodman ("Wife") appeals from the superior court's entry of partial summary judgment in favor of Michael Goodman ("Husband") and denial of her cross-motion for summary judgment in this ongoing dissolution proceeding. In particular, she contends the court erred in finding that her law firm ("WGLG") was community property subject to division. In the alternative, she argues material issues of fact remain in dispute, such that summary judgment was improper. For the following reasons, we reverse and remand so that the court may enter partial summary judgment in Wife's favor.

Factual and Procedural Background

¶2 In reviewing a superior court's rulings on cross-motions for summary judgment, we construe the facts and reasonable inferences "in the light most favorable to the party against whom summary judgment was granted." *Wood v. Nw. Hosp., LLC*, 249 Ariz. 600, ¶ 4 (App. 2020). The material facts set forth below are undisputed.

¶3 Before their marriage in 2000, the parties executed a premarital agreement. As part of the agreement, the parties identified Wife's then-existing law practice, Wilson Law Offices, P.C. ("WLO"), as Wife's sole and separate property. The premarital agreement further memorialized that Wife's business interest in WLO "and its successors in interest . . . shall at all times remain [Wife]'s sole and separate property free from any claims of [Husband]."

¶4 In 2004, WLO gained a new business partner and was renamed Wilson-Goodman & Fong, P.C. ("WG&F"). In 2006, the parties executed the Goodman Family Revocable Trust Agreement (the "Family Trust"). The Family Trust agreement listed Husband and Wife as trustors and co-trustees. It stated that all separate property transferred to the trust would retain its character as separate property subject to the conditions of the agreement. It further provided that Husband or Wife would deliver a written statement designating each contribution as separate or community

property, and that either party's failure to "designate the separate property character of any asset contributed to the trust estate" would leave said asset to be "deemed community property."

¶5 About two weeks later, in their capacities as co-trustees of the Family Trust, Husband and Wife established a single-member holding entity, Angela M. Wilson-Goodman P.L.L.C. (the "Holding Entity"). In the Holding Entity's operating agreement, the parties set forth that its purposes would include providing legal services and acquiring, managing, and selling property, including stock in WG&F. The Family Trust was identified as the sole interest holder of the Holding Entity. Wife was identified as its manager.

¶6 In 2009, WG&F was reorganized as a professional limited liability company. In 2012, Wife's business partner left WG&F, and Wife filed articles of organization for WGLG. WGLG's sole member was listed as the Holding Entity. Wife represented that WGLG retained the telephone and fax numbers associated with WLO and both iterations of WG&F. WGLG retained the family law clients, fee agreements, insurance contracts, payroll service and account number, vendor and customer relationships, email and website addresses, firm logo, accounting books, and furniture from WLO and WG&F. WGLG continued to operate under that name at the time this appeal was filed.

¶7 In December 2012, Wife filed for Chapter 11 bankruptcy. In the bankruptcy schedules, Wife listed both the Holding Entity and WG&F as her sole and separate property, valuing each at $0. The only reference to WGLG in the bankruptcy schedules occurred in identifying Wife's source of income. In her amended bankruptcy disclosure statement, Wife stated that WGLG had been named as a third-party defendant in litigation that might result in WGLG's liability for the debt of WG&F, P.L.L.C., if it were found to be a successor entity to WG&F. In analyzing the liabilities and liquidation value of the various firms for bankruptcy purposes, Wife represented that the "liquidation value of WGLG is likely zero, net of obligations." The bankruptcy was ultimately discharged.

¶8 In December 2019, Husband filed the petition for dissolution. In July 2022, Wife filed a motion for partial summary judgment asking the superior court to find, as a matter of law, that WGLG is her sole and separate property. Husband cross-moved, requesting the court instead find WGLG to be a community property business. In January 2023, the court conducted a hearing on the cross-motions. In March 2023, the court held that WGLG is community property. In April 2023, the court signed and

entered the order pursuant to Rule 78(b), Ariz. R. Fam. Law P. Wife has appealed from that judgment. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Discussion

¶9 We review a superior court's ruling on summary judgment de novo. *Palmer v. Palmer*, 217 Ariz. 67, ¶ 7 (App. 2007). We likewise review de novo a superior court's characterization of property as community or separate, as that is a conclusion of law. *Hammett v. Hammett*, 247 Ariz. 556, ¶ 13 (App. 2019).

I. Wife's Business Interest in Her Law Firms

¶10 The superior court concluded that all of Wife's pre-2012 law practices—WLO and both iterations of WG&F—were governed by the parties' premarital agreement. However, it reasoned that Wife's representations during her bankruptcy proceedings "prevent [her] from now claiming that [WGLG] is a successor in interest to [WLO]." In particular, the court recounted Wife's bankruptcy filing statements that WLO "was not operating and had a value of 0.00" and that WGLG was "approximately six months old" and had "a value of 'zero, net of obligations.'" It therefore deemed WGLG community property and granted Husband's cross-motion for partial summary judgment. Wife contends the court erred in so ruling.

¶11 As with all contracts, we review the superior court's interpretation of a premarital agreement de novo. *See Rand v. Porsche Fin. Servs.*, 216 Ariz. 424, ¶ 37 (App. 2007) (contract interpretation question of law); *Alulddin v. Alfartousi*, 255 Ariz. 436, ¶ 8 (App. 2023) (enforceability of premarital agreement reviewed de novo). In interpreting a contract, courts "seek to discover and effectuate the parties' expressed intent." *Terrell v. Torres*, 248 Ariz. 47, ¶ 14 (2020). We construe the contract's language according to its plain, ordinary meaning, attempting "to reconcile and give effect to all terms of the contract to avoid any term being rendered superfluous." *Id.*

¶12 As noted above, the parties' premarital agreement states, in relevant part:

> [Husband] further covenants and agrees that [Wife]'s business interest in [WLO] and its successors in interest, including any increases

> or accumulations of any nature whatsoever, even if due to [Wife]'s personal services, skill and efforts, except as specifically set forth herein, shall at all times remain [Wife]'s sole and separate property free from any claims of [Husband]. Both parties hereby waive all provisions of community property law of the State of Arizona to the contrary.

¶13 By its plain language, the premarital agreement protects as Wife's separate property her ongoing "business interest in [WLO] and its successors in interest." *See id.* Arizona courts include a spouse's "personal goodwill" when valuing that party's professional practice for the purpose of marital dissolution. *See, e.g.*, *Walsh v. Walsh*, 230 Ariz. 486, ¶¶ 15, 20 (App. 2012) (distinguishing "realizable benefits," such as spouse's interest in law "firm's net assets," from "goodwill based on his reputation and experience" when calculating divisible marital property); *see also Mitchell v. Mitchell*, 152 Ariz. 317, 321 (1987) ("goodwill of a professional practice has value, and it should be treated as property upon dissolution of the community, regardless of the form of business").

¶14 Under this standard, the liquidation value of Wife's law practice reported during the bankruptcy proceedings represents only one portion of her discernable business interest in her law practice. Her business interest in her law firm also includes intangible assets. *See Gerow v. Covill*, 192 Ariz. 9, ¶ 26 (App. 1998); *see also Walsh*, 230 Ariz. 486, ¶ 11 (goodwill "is essentially reputation that will probably generate future business" (quoting *Dugan v. Dugan*, 457 A.2d 1, 3 (N.J. 1983))). These included Wife's continuing clientele, fee agreements, insurance contracts, payroll service, vendor relationships, and other indicia of Wife's professional reputation. By the terms of the premarital agreement, none of these were transmuted into community property merely because Wife reorganized WG&F upon the loss of her partner and the subsequent bankruptcy.

¶15 Just as a spouse "cannot change the community nature of the goodwill asset by merely changing the form of its ownership through incorporation," *Gerow*, 192 Ariz. 9, ¶ 27, neither do the changes in the form of Wife's law practice alter the separate nature of that property. On this issue, *Gerow* is particularly instructive. There, a few months after the wife filed her petition for dissolution, the husband, who had operated as an independent consultant throughout the marriage, transferred his goodwill

in the form of clients, contacts, expertise, and knowledge to a start-up corporation wholly owned by a third party. *Id.* ¶¶ 3-4, 10, 25. We reasoned that because the husband's goodwill accumulated due to his "labors expended during marriage," and because that goodwill heavily contributed to the start-up's success, the wife was entitled to one-half ownership interest in the start-up's stock. *Id.* ¶¶ 10, 26-27, 29, 31. We have since reiterated that incorporation of separately held property does not change its character as community or separate property. *See Hefner v. Hefner*, 248 Ariz. 54, ¶ 13 (App. 2019) ("To suggest otherwise elevates semantics over substance.").

¶16 These cases support Wife's position. Through various incarnations of her law practice, Wife identified the practices, the Holding Entity, and, eventually, WGLG as her sole and separate property. For example, she acknowledged during the bankruptcy proceeding that WGLG could be held responsible for the prior debts of WG&F and its predecessors, a fact the superior court failed to recognize in its ruling. The court also overlooked that the Holding Entity held a one-hundred percent membership interest in both WG&F and in WGLG. For this reason, the formation of WGLG did not break the chain of ownership.

¶17 Husband argues that Arizona jurisprudence demands a different outcome. He maintains that, in evaluating corporate ownership, courts have found a ten-percent shift in ownership sufficient to overcome a finding of successor liability, whereas here WGLG "has substantially different ownership than Fong PLLC, Fong PC, and Wilson PC." *See A.R. Teeters & Assocs., Inc. v. Eastman Kodak Co.*, 172 Ariz. 324, 330 (App. 1992). Under this line of caselaw, upon the development of the Family Trust and the Holding Entity, WG&F underwent a change in form. *See Warne Invs., Ltd. v. Higgins*, 219 Ariz. 186, ¶ 18 (App. 2008).

¶18 But, the terms of the premarital agreement require us to conduct a different inquiry. Here, the relevant question remains whether Wife's business interest in WGLG is a successor in interest to her business interest in WLO. On this point, the record indicates that WLO and WGLG share a "substantial similarity in the ownership and control." *Id.* (quoting *Teeters*, 172 Ariz. at 330). As Wife noted in her bankruptcy proceedings, she is the primary economic engine of WGLG, as was the case with WLO when the parties entered their premarital agreement. Like in *Warne*, WGLG is a "service business" that generates revenue from Wife's intangible assets: her "contacts, skills, and knowledge" transferred across all of her law practices and continued into WGLG. *Id.* ¶¶ 20-21. Finally, like in *Warne*, WGLG

retained the prior firms' customer base and goodwill. *Id.* ¶ 20. In other words, under *Warne*, WGLG may reasonably be seen as a mere continuation of WLO. *Id.* ¶¶ 19-29.

¶19 In sum, the only events that might conceivably have broken the chain of successor liability from WLO to WGLG were the loss of the business partner, the bankruptcy, and the incorporation under the new name of WGLG. None of these facts are enough to overcome the parties' clear intent to maintain Wife's law practice as separate property, as set forth in the premarital agreement.

¶20 Husband also argues that the Holding Entity must be deemed community property under the pertinent provision of the Family Trust agreement because Wife never delivered a separate written statement to the trustees of the Family Trust "designating ownership of the Holding Entity" as her separate property. That provision deems any asset to be community property if either party fails to deliver a writing to the trustee designating its separate character when contributing the asset to the Family Trust. Thus, Husband maintains WGLG, which eventually came to be held by the Holding Entity, is community property.

¶21 Although the superior court's ruling did not directly address this argument, we conclude the express terms of the preexisting premarital agreement satisfied the written statement requirement because it clearly identified the Holding Entity as Wife's sole and separate property. In entering the premarital agreement, Husband covenanted that Wife's business interest in her law firm, and the successors to that interest, "shall *at all times* remain [Wife]'s sole and separate property free from any claims of [Husband]." (Emphasis added.) In short, under the terms of the premarital agreement, the Holding Entity had already been clearly designated, in writing, as Wife's separate property and that assertion was, by those terms, automatically refreshed in every context. This complied with the requirement of a writing to confirm the asset's separate character. And, because the premarital agreement was already in the possession of the trustees—that is, Husband and Wife—at the time of this contribution, delivery was satisfied.

II. Judicial Estoppel

¶22 Husband argues the superior court's grant of partial summary judgment in his favor was nonetheless correctly grounded in judicial estoppel principles. Specifically, he contends that representations Wife made to the court during her 2012 bankruptcy proceedings "are

decisive and prevent Wife from now claiming that [WGLG] is a successor in interest to [WLO]." He maintains the court implicitly found that Wife's claims were thereby judicially estopped.

¶23 Judicial estoppel is intended "to protect the integrity of the judicial process by preventing a litigant from using the courts to gain an unfair advantage." *Flood Control Dist. of Maricopa Cnty. v. Paloma Inv. Ltd. P'ship*, 230 Ariz. 29, ¶ 34 (App. 2012). For judicial estoppel to apply, "(1) the parties must be the same, (2) the question involved must be the same, and (3) the party asserting the inconsistent position must have been successful in the prior judicial proceeding." *In re Marriage of Thorn*, 235 Ariz. 216, ¶ 27 (App. 2014) (quoting *State v. Towery*, 186 Ariz. 168, 182 (1996)). "Judicial estoppel should be invoked cautiously." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Maricopa County*, 196 Ariz. 173, ¶ 8 (App. 1999).

¶24 Assuming arguendo that the superior court premised its ruling on judicial estoppel, such reliance was error.[1] Husband was not a party to the bankruptcy proceedings. *See Marriage of Thorn*, 235 Ariz. 216, ¶ 27. Nor was Wife's position in the bankruptcy proceedings inconsistent with her position in the dissolution proceeding. As explained above, the characterization of WGLG as "a successor in interest" has different legal implications in the respective contexts of bankruptcy proceedings and the premarital agreement: bankruptcy only liquidated one aspect of Wife's business interests in her continuing law practice. Furthermore, Wife did

[1]Although federal courts disagree on the correct standard of review for judicial estoppel claims, *compare Bakery, Confectionery, Tobacco Workers & Grain Millers, Int'l Union AFL-CIO v. Kellogg Co.*, 904 F.3d 435, 441 (6th Cir. 2018) (applying de novo review), *with Stallings v. Hussmann Corp.*, 447 F.3d 1041, 1046 (8th Cir. 2006) (noting circuit split and applying abuse of discretion standard), Arizona courts have largely reviewed estoppel claims, including those of judicial estoppel, for abuse of discretion. *See, e.g.*, *State v. Brown*, 212 Ariz. 225, ¶ 13 (2006) ("Judicial estoppel is an equitable concept, and its application is therefore within the court's discretion." (quoting 31 C.J.S. *Estoppel & Waiver* § 139 (1996))); *Flying Diamond Airpark, LLC v. Meienberg*, 215 Ariz. 44, ¶ 27 (App. 2007) (collecting cases); *McCloud v. State*, 217 Ariz. 82, ¶ 10 (App. 2007) (refusal to apply equitable tolling); *but see Beltran v. Harrah's Ariz. Corp.*, 220 Ariz. 29, ¶ 18 (App. 2008) (reviewing de novo trial court's application of collateral estoppel). In any event, a court abuses its discretion when it commits an error of law. *Austin v. Austin*, 237 Ariz. 201, ¶ 22 (App. 2015).

not deny in bankruptcy proceedings that WGLG could be characterized as a successor in interest for some purposes. And, to the extent Wife sought to shield her law practice from preexisting debt, it appears that she was unsuccessful: during oral argument the parties agreed that the creditors remained able to pursue that debt. On this record, we reject Husband's claim that the elements for judicial estoppel have been met. *See id.*

III. Denial of Wife's Motion for Partial Summary Judgment

¶25 Wife argues that we should review the superior court's denial of her motion for partial summary judgment on the same issue. In particular, she contends that although denials of summary judgment are typically not appealable, the issue of whether the premarital agreement applies to all of her law firms is a question of law, and our discretionary consideration of that argument would avoid piecemeal litigation. We agree that consideration of this issue is appropriate because Wife's appeal from the grant of Husband's motion for partial summary judgment squarely challenges the legal finding that guided the court's denial of her motion for partial summary judgment and avoids piecemeal litigation. *See Kaufmann v. M & S Unlimited, L.L.C.*, 211 Ariz. 314, ¶ 5 (App. 2005); *Bothell v. Two Point Acres, Inc.*, 192 Ariz. 313, ¶ 7 (App. 1998). For the reasons stated above, the court erred in denying Wife's motion for partial summary judgment.

IV. Attorney Fees and Costs on Appeal

¶26 Both parties request their attorney fees on appeal pursuant to A.R.S. § 25-324(A). In our discretion, we deny both requests. *See id.* As the successful party, Wife is entitled to her costs on appeal, A.R.S. § 12-341, upon her compliance with Rule 21(b), Ariz. R. Civ. App. P.

Disposition

¶27 For the foregoing reasons, we reverse and remand so that the superior court may enter partial summary judgment in Wife's favor.