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JUN -9 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re the Marriage of:	
JOHNNY RAY ARVIZU,	2 CA-CV 2008-0191
	DEPARTMENT B
Petitioner/Appellant,	
	MEMORANDUM DECISION
and	Not for Publication
	Rule 28, Rules of Civil
ERIKA L. ARVIZU (MOLINA),	Appellate Procedure
Respondent/Appellee.	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. D2005-0393

Honorable Sharon Douglas, Judge Pro Tempore

AFFIRMED

The Reyna Law Firm, P.C.
By Ron Reyna
Tucson
Attorney for Petitioner/Appellant

Erika L. Molina
Mesa
In Propria Persona

V Á S Q U E Z, Judge.

¶1 Appellant Johnny Arvizu appeals from the trial court's order denying his motion filed pursuant to Rule 60(c)(6), Ariz. R. Civ. P., to enforce appellee Erika Arvizu's obligation to pay a debt that had been allocated to her under the court's decree of dissolution of the parties' marriage. He argues the court erred in concluding Erika's subsequent bankruptcy discharge did not have a "significant effect" upon the distribution of assets under the decree because he ultimately was obligated to satisfy a portion of the debt. For the following reasons, we affirm.

Facts and Procedural Background[1]

¶2 The trial court entered a decree dissolving the parties' marriage in April 2006. The decree allocated to Erika a "2004 Chevrolet Trailblazer, subject to the debt owed thereon." She apparently made no payments on the Trailblazer, and it was repossessed and sold by the lienholder, Tucson Federal Credit Union, in July 2006. Erika filed a petition in the United States Bankruptcy Court pursuant to Chapter 7 of the bankruptcy code in August 2006 and received a discharge the following December. The discharge included the debt owed on the Trailblazer. In March 2007, the credit union filed a lawsuit against Johnny to recover the $15,790 balance it alleged remained on the loan. Johnny appealed from an arbitration award in the credit union's favor, and in July 2008 settled the case with the credit union for $2,500. The same month, he filed a motion pursuant to Rule 60(c)(6), requesting

[1]We view the record in the light most favorable to upholding the trial court's decision. *Little v. Little*, 193 Ariz. 518, ¶ 5, 975 P.2d 108, 110 (1999).

that the trial court order Erika to reimburse him approximately $7,000 for the settlement amount paid to the credit union, attorney fees, and court costs.[2] The court denied the motion on the basis it "could not find that there was a significant effect on the equitable distribution of the assets." This appeal followed; we have jurisdiction pursuant to A.R.S. § 12-2101(C).

Discussion

¶3 Johnny maintains the trial court erred in denying his Rule 60(c) motion to enforce the provisions of the decree relating to the allocation of debts. He contends the property distribution under the decree was, contrary to the court's findings, "significantly affected" by Erika's bankruptcy and his consequent responsibility for debts that had been allocated to her. "We review a trial court's denial of relief under Rule 60(c) for abuse of discretion." *Birt v. Birt*, 208 Ariz. 546, ¶ 9, 96 P.3d 544, 547 (App. 2004). But "[o]n appeal from denial of Rule 60(c) relief, the trial court will be sustained unless 'undisputed facts and circumstances require a contrary ruling,' in which event this court can and will overturn the trial court's discretionary ruling." *City of Phoenix v. Geyler*, 144 Ariz. 323, 330, 697 P.2d 1073, 1080 (1985), *quoting Coconino Pulp & Paper Co. v. Marvin*, 83 Ariz. 117, 121, 317 P.2d 550, 552 (1957).

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[2]The motion included Johnny's request for reimbursement of "half the cost of the engagement ring" he had given to Erika. He does not challenge the court's denial of that request on appeal. The motion also was combined with a motion for a reduction of child support payments for reasons unconnected with her bankruptcy. The court granted that motion, and it is not part of this appeal.

¶4 In support of his argument, Johnny relies on *Birt*, in which Division One of this court stated:

> [W]hen a party to a dissolution action files a petition in bankruptcy shortly after entry of the decree to avoid the decree's effect on allocation of community debts and such discharge may significantly [a]ffect . . . the equitable division of community property, the trial court should vacate th[at] portion[] of the decree pursuant to Arizona Rule of Civil Procedure 60(c)(6) . . . so it can provide relief to the non-discharged spouse.[3]

208 Ariz. 546, ¶ 1, 96 P.3d 544, 545-46. In *Birt*, the husband filed for bankruptcy two months after the entry of the dissolution decree, motivated by his belief that the property settlement in the decree was "erroneous." *Id.* ¶ 6. He sought the discharge of over $180,000 in debts, including $55,000 in debts incurred during the course of the marriage on which his former wife was a co-debtor; over $40,000, including attorney fees and part of the dissolution settlement, which had been awarded to his former wife; and over $5,000 of his own attorney fees in the dissolution action, on which his former wife was also listed as a co-debtor.[4] *Id.* ¶ 5.

¶5 On appeal, the court concluded the husband's bankruptcy discharge had a "significant effect on the Wife's ability to support herself and meet her reasonable needs,"

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[3]A state court only has jurisdiction to grant such relief when it does "not interfere with a determination of what debts were discharged or result in an 'end-run' around the discharge." *Birt*, 208 Ariz. 546, ¶ 30, 96 P.3d at 553; *see also In re Siragusa*, 27 F.3d 406, 408-09 (9th Cir. 1994).

[4]The bankruptcy court's order in *Birt* "d[id] not list the debts which had been discharged. Rather, the order explain[ed] that debts 'in the nature of alimony, maintenance, or support' [we]re not discharged." 208 Ariz. 546, ¶ 6, 96 P.3d at 547.

and thus remanded the case to the trial court with directions to vacate the relevant portions of the decree pursuant to Rule 60(c)(6) and "consider whether reallocating the community property and amending the equalization payments [wa]s appropriate in light of these changed circumstances." *Id.* ¶¶ 31, 37.

¶6 However, contrary to Johnny's assertion, *Birt* does not stand for the proposition that "a later bankruptcy by a party to a divorce requires or necessarily supports Rule 60(c)(6) relief." *Id.* n.10. "Each case must be determined on its own facts." *Id.* And here, Johnny fails to provide any undisputed facts or circumstances to support his argument that the court erred in finding there had been no significant effect on the property distribution mandated by the dissolution decree. *See Geyler*, 144 Ariz. at 330, 697 P.2d at 1080. Rather, his argument is based on his conclusory assertions that "$7,223.80 is certainly significant to the litigants," "if the auto loan was insignificant, [Erika] would not have filed for bankruptcy," and "nothing could be more significant" than his being "forced" to contest the proceedings over the defaulted loan.[5] And the mere fact Johnny was required to take on more debt than anticipated by the dissolution decree does not, absent additional factual basis in the record, demonstrate the overall distribution was "significantly affected," particularly because Erika

[5]We do not suggest the dollar amount involved here in itself rules out the possibility that it significantly affected the distribution, only that Johnny has utterly failed to support his contention that it did so with any relevant facts. *See Foster v. Childers*, 416 N.W.2d 781, 786 (Minn. App. 1987) (change in property distribution of less than $5,000 due to husband's discharge in bankruptcy "could be substantial" given wife's "moderate income and her stated plans to return to school").

was also arguably disadvantaged by her loss of any interest in the Trailblazer. We therefore cannot say the trial court abused its discretion in denying his motion. *Boncoskey v. Boncoskey*, 216 Ariz. 448, ¶ 13, 167 P.3d 705, 708 (App. 2007) ("[trial] court has broad discretion to achieve an equitable division [of community property and debts], and we will not disturb its allocation absent an abuse of discretion").

Disposition

¶7 For the reasons stated above, we affirm.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge