

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

In re the Marriage of:)	1 CA-CV 05-0243
)	
DEBRA L. CORRAL,)	DEPARTMENT A
)	
Petitioner/Appellee,)	MEMORANDUM DECISION
)	(Not for Publication -
v.)	Rule 28, Arizona Rules
)	of Civil Appellate
RICK CORRAL,)	Procedure)
)	
Respondent/Appellant.)	FILED 02-16-06
)	

Appeal from the Superior Court in Maricopa County

Cause No. DR2000-018399

The Honorable Cari A. Harrison, Judge

AFFIRMED IN PART; VACATED IN PART; REMANDED

Mehrens and Wilemon, P.A.	Phoenix
by Craig Mehrens	
Amy Wilemon	
Attorneys for Petitioner-Appellee	

Davis Limited	Phoenix
by Greg R. Davis	
Attorney for Respondent-Appellant	

W I N T H R O P, Judge

¶1 Rick Corral ("Father") appeals from the trial court's final dissolution decree. Father argues that the trial court abused its discretion in awarding to Debra L. Corral ("Mother") "retroactive child support" based on an amount of \$363 per month for a twenty-one month period in which arrearages accumulated, and

in failing to credit him for payments he purportedly made to reduce the community credit card debt and the mortgage on the couple's home. Finding that the court abused its discretion with regard to the amount of child support arrearages, but did not abuse its discretion regarding credits for payments allegedly made by Father, we affirm the decree in part, vacate in part, and remand.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Father and Mother were married on June 14, 1986. On October 13, 2000, Mother filed a petition for dissolution of the marriage. At the time of the petition, the couple had two minor children.¹ The elder minor child was born April 5, 1983; the younger minor child was born June 3, 1991.²

¶3 On December 15, 2000, the trial court ordered Father to pay Mother \$363 monthly for child support, beginning on January 1, 2001. The elder minor child became eighteen years of age and graduated from high school in April 2001. On August 10, 2001, Mother filed a contempt petition, alleging that Father had not paid child support since April 2001 and owed \$1,452 in arrearages plus interest. However, Mother withdrew her petition on September 24, 2001, after Father paid \$1,815 to Mother to satisfy the outstanding child support arrearages. On October 5, 2001, the parties filed a "Stipulation for Entry of *Pendente Lite* Orders," in which they

¹ The couple had another child who was no longer a minor.

² Father had adopted the child born April 5, 1983.

agreed that only one minor child remained for whom support might be necessary; for the purpose of temporary orders only, monthly income of \$3,000 would be attributed to Father and \$2,000 to Mother; and Father would pay child support in the amount of \$146 per month beginning October 1, 2001, "without prejudice to either party to claim and prove that [Father's] income is higher or lower than the amount of \$3,000.00 per month, and to seek an augmentation of or reimbursement for any child support paid after October 1, 2001." On November 19, 2001, the trial court issued an order in accordance with the parties' stipulation.

¶4 Trial was held on April 19, 2004. On June 2, 2004, the trial court issued a signed minute entry ordering dissolution of the parties' marriage. The court ordered, *inter alia*, that the parties have joint legal custody of the remaining minor child; Father be attributed monthly income of \$3,000 for the purpose of calculating child support; Father pay monthly child support in the amount of \$71.23 to Mother; Father pay \$167.24 in unreimbursed medical expenses; and Father pay child support arrearages based on an amount of \$363 per month for the time period of September 2002 through May 2004. The court further ordered the parties to "submit an order to the Court to enter judgment on the arrearages and unreimbursed medical expenses."

¶5 Additionally, the court determined the marital residence to be community property; adopted a \$155,000 appraisal of the

property; determined that Father's equity in the home was \$35,000; and awarded the property to Mother as her sole and separate property with the requirement that she either refinance the property or put the property on the market for immediate sale. Although Father contended that Mother should be assessed a fair market rental value for living in the home during the divorce proceedings, and testified that "a fair rental value is \$1,500 per month," the court did not find Father's opinion credible. The court also concluded that "[t]here is no evidence to support Father's claim that he paid two months of the mortgage payments."

¶6 Further, the court ordered that the community debt on five credit card accounts "be paid out of the equity of the home prior to any remaining equity being distributed to either party." The court also noted that Father was in violation of Arizona law, see Ariz. Rev. Stat. ("A.R.S.") §§ 13-3606 (2001), -3607 (2001), because he had married another woman in Las Vegas while still married to Mother.³ The court found that "Father further attempted to mislead this Court at trial by claiming that the marriage was invalid as the 'license' had not been filed with the Clerk. These facts clearly impact Father's credibility." Finally, the court ordered Father's attorney to "submit a Decree of Dissolution of Marriage consistent with this ruling within 30 days of the date of this order."

³ The marriage certificate states that the date of marriage was September 28, 2002.

¶7 On July 6, 2004, Father moved for clarification and reconsideration, arguing that the court had failed to quantify the consumer debt or acknowledge the community credit card debts he had paid during the pendency of the divorce, and had erred in not crediting him for the two mortgage payments he testified he had paid.⁴ On July 19, 2004, the trial court held a hearing on Father's motions, initially concluded that it could not enter a ruling on the request for clarification of the court's ruling on the payment of community debt, and informed Father that he could file a motion for new trial if he wished to do so. The court later ruled as follows:

The Court notes that in [Father's] Motion for Clarification and Motion for Reconsideration he has set forth a table purportedly representing the names of the community credit cards, the account numbers and the amount of debt extinguished by him. Unfortunately, this evidence was not presented at the trial nor was it set forth in any of the exhibits admitted into evidence at the time of trial. [Father] also represented that the copies of two cashier's checks attached as Exhibit 1 were "presented" to the Court at the hearing. The copies of these two checks were not listed as an exhibit, presented to the Court at the trial or admitted into evidence. The Court will not speculate as to why this evidence was not presented at the trial nor as to what affect [sic], if any, it would have had on the Court's ruling. [Father] clearly had evidence available and chose not to introduce it.

¶8 On September 21, 2004, Father filed "Renewed Motions for Clarification and Reconsideration or, in the Alternative, Motion for New Trial." Father argued, *inter alia*, that he had testified

⁴ Father attached as an exhibit copies of the two checks allegedly used to pay the mortgage.

at trial to paying \$22,620 in community consumer debt, and although he had not submitted documentary evidence to support his testimony, the trial court had erred in not crediting him for those payments. On December 8, 2004, the court denied Father's motion and awarded \$500 to Mother for attorneys' fees.

¶9 On February 4, 2005, the trial court entered a signed judgment in favor of Mother in the amount of \$7,623 for unpaid child support⁵ and \$167.24 for unreimbursed medical expenses. The court ordered that the amounts be set off against any amount due Father for the sale or refinance of the home.

¶10 On March 10, 2005, the court's signed dissolution decree was filed. That decree incorporated all of the findings, rulings, and orders of the court's signed minute entry filed June 2, 2004. Father filed a notice of appeal from the decree on April 4, 2005. We have jurisdiction to decide his appeal from the decree pursuant to A.R.S. §§ 12-120.21(A)(1) (2003) and 12-2101(B) (2003).

ANALYSIS

I. Jurisdiction

¶11 Father initially argues that the trial court abused its discretion in ordering that he pay to Mother child support

⁵ The amount of unpaid child support was based on multiplying \$363 times twenty-one months, the number of months over which arrearages occurred, and arriving at a figure of \$7,623. Specifically, the court ordered that Father "pay all arrearages owed to Mother, DEBRA CORRAL, for back child support for the time period of September 2002 through May 2004 in the amount of \$363 per month."

arrearages for the period of September 2002 through May 2004 based on an amount of \$363 per month. Mother argues that this court lacks jurisdiction to consider this issue because the issue became ripe for appeal once the trial court issued its February 4, 2005 signed judgment in favor of Mother for unpaid child support, and Father did not file a timely notice of appeal from the February 4 judgment. Mother contends that "[t]he order for arrearages was a separate judgment and not a part of the dissolution."⁶

¶12 If a party fails to file a timely notice of appeal, this court lacks jurisdiction to consider the issue sought to be appealed. See *PNL Credit L.P. v. S.W. Pac. Invs., Inc.*, 179 Ariz. 259, 262, 877 P.2d 832, 835 (App. 1994); *Lee v. Lee*, 133 Ariz. 118, 124, 649 P.2d 997, 1003 (App. 1982). This court reviews *de novo* questions of law, including those involving jurisdiction. See *Tovrea Land & Cattle Co. v. Linsenmeyer*, 100 Ariz. 107, 114, 412 P.2d 47, 52 (1966); *State v. Rodriguez*, 205 Ariz. 392, 395, ¶ 7, 71 P.3d 919, 922 (App. 2003).

¶13 Rule 54(b) of the Arizona Rules of Civil Procedure provides in pertinent part as follows:

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim,

⁶ Mother also suggests that Father waived the issue of arrearages by failing to raise it in his motions for clarification, reconsideration, and new trial. However, Father's appeal is from the dissolution decree, not those motions, and the issue of arrearages was raised in the trial court and addressed in the decree.

or third-party claim, or when multiple parties are involved, the court may direct the entry of final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Thus, a trial court must make a decision concerning all claims before a final judgment may be entered, unless the trial court certifies an interim order or judgment for immediate appeal pursuant to Rule 54(b).

¶14 In this case, the trial court issued a signed minute entry ordering dissolution of the parties' marriage on June 2, 2004. However, the trial court did not consider this signed minute entry its final judgment, because the court ordered Father to "submit a Decree of Dissolution of Marriage consistent with this ruling," and ordered the parties to "submit an order to the Court to enter judgment on the arrearages." Mother filed a proposed judgment on the arrearages and unreimbursed medical expenses, and the signed judgment was filed on February 4, 2005. However, the arrearages were based on the amount to be included in the final dissolution decree, which was not filed until March 10, 2005. Thus, the trial court's February 4 judgment constituted an interim order that was based on the subsequent March 10 decree. Moreover,

the February 4 judgment did not contain the determinations and direction required by Rule 54(b) to make it final and appealable. Consequently, the February 4 judgment was not ripe for appeal. Therefore, Father's appeal from the March 10 decree could fairly raise the issue of arrearages, and we have jurisdiction to consider the issue.

II. Child Support Arrearages

¶15 As we previously noted, Father argues that the trial court abused its discretion in ordering him to pay Mother child support arrearages for the period of September 2002 through May 2004 based on an amount of \$363 per month. Father argues that, because the trial court only ordered him to "prospectively" pay \$71.23 monthly, and only ordered him to pay \$146 monthly during pendency of the divorce, the amount of "retroactive child support" ordered constitutes an abuse of the court's discretion. We agree.

¶16 We review the trial court's rulings involving child support arrearages for an abuse of discretion. See *Ferrer v. Ferrer*, 138 Ariz. 138, 140, 673 P.2d 336, 338 (App. 1983).

¶17 The trial court ordered Father to pay child support arrearages in the amount of \$363 per month for the period of September 2002 through May 2004. However, the record shows that, although the court initially ordered Father to pay \$363 per month for child support, the court changed the child support payments to \$146 per month beginning October 1, 2001, as stipulated by the

parties. That order was based on stipulations that monthly income of \$3,000 would be attributed to Father and that neither party would be precluded from later claiming and proving that Father's monthly income was higher or lower than \$3,000. Further, if a discrepancy from the stipulated amount of Father's income existed, either party could "seek an augmentation of or reimbursement for any child support paid after October 1, 2001."

¶18 In this case, the trial court ultimately determined Father's income to be \$3,000, the stipulated amount. Father does not appeal that ruling. Because neither party proved that Father's monthly income was higher or lower than the stipulated amount of \$3,000, the stipulated amount of the child support payment pending trial (\$146 per month) should not have been adjusted. The trial court's own order makes this clear. Accordingly, the trial court abused its discretion in calculating child support arrearages based on an amount of \$363 per month. We conclude that the record supports an arrearage of \$146 per month, plus any applicable interest, for the period from September 2002 through May 2004.

III. Community Credit Card Debts and the Mortgage

¶19 Father next argues that the trial court abused its discretion in apparently rejecting his testimony that he had paid down the community credit card debt and in not crediting him for

having made two mortgage payments to cure Mother's default.⁷ In its June 2, 2004 minute entry, the trial court found some of Father's testimony to not be credible based at least in part on his second marriage. Father acknowledges that "this evidences at least some degree of disrespect for the letter of the law," but argues that it should not impact his credibility. We disagree.

¶20 We review the trial court's apportionment of community property and debt for an abuse of discretion. See *Hrudka v. Hrudka*, 186 Ariz. 84, 93, 919 P.2d 179, 188 (App. 1995). "So long as the trial court acts equitably, it is allowed great discretion in the apportionment of the community assets and obligations." *Neal v. Neal*, 116 Ariz. 590, 594, 570 P.2d 758, 762 (1977).

¶21 Witness credibility is a matter for the trier of fact, and the trial court could accept or reject, in whole or in part,

⁷ Without citation to the record, Father asserts that the trial court was presented with copies of the mortgage payment checks at trial. The record does not support Father's assertion. The check copies are not listed as an exhibit in the Exhibit Worksheet prepared for trial, and we find no indication in the trial transcript that the checks were presented to the court. Further, in response to Father's post-trial motions for clarification and reconsideration, the trial court found as follows: "[Father] also represented that the copies of two cashier's checks attached as Exhibit 1 were 'presented' to the Court at the hearing. The copies of these two checks were not listed as an exhibit, presented to the Court at the trial or admitted into evidence." Thus, although Father had the opportunity to present copies of the checks at trial, he did not do so. Because the check copies were not admitted into evidence, the trial court could not consider them. See *Gutierrez v. Gutierrez*, 193 Ariz. 343, 349-50, ¶¶ 26-27, 972 P.2d 676, 682-83 (App. 1998). We find no error in the trial court's determination not to consider evidence not properly presented to it at trial.

Father's testimony. See *Callender v. Transpac. Hotel Corp.*, 179 Ariz. 557, 562, 880 P.2d 1103, 1108 (App. 1993); *Lee*, 133 Ariz. at 122-23, 649 P.2d at 1001-02. We defer to the trial court's determination of witnesses' credibility and the weight to give conflicting evidence. *Gutierrez*, 193 Ariz. at 347-48, ¶ 13, 972 P.2d at 680-81; see also *Danielson v. Evans*, 201 Ariz. 401, 406, ¶ 13, 36 P.3d 749, 754 (App. 2001) (stating that we defer to the trial court's factual findings and will not overturn them unless they are clearly erroneous).

¶22 We conclude that the trial court could consider Father's decision to enter marriage with a second wife before obtaining a divorce from Mother as bearing on his credibility. Further, Father admitted that, to obtain the marriage certificate, he had "purported to be divorced." Father's representation that he was already divorced was obviously false, and the trial court could have considered his prior misrepresentation in determining his credibility.⁸ Thus, the trial court did not abuse its discretion in declining to accept Father's testimony.

¶23 Further, Father's testimony was not "uncontroverted" as he claims. As to the credit card debts, Mother testified that she had paid one half of the balance of the community credit cards.

⁸ We also recognize that Father's testimony was not disinterested. The trial court is not bound by the uncontradicted testimony of an interested party. See *Kocher v. Dep't of Revenue*, 206 Ariz. 480, 482, ¶ 10, 80 P.3d 287, 289 (App. 2003).

Although she conceded that credit card debts might exist in addition to the five community credit card debts of which she was aware, when asked about other cards she expressed disbelief "that we have that many credit cards." As to the mortgage, Mother testified that she had made all of the payments on the house since March 19, 2000, and had not missed a payment. She denied that Father had made any payments toward the mortgage during the pendency of the divorce. The trial court could properly have considered Mother's testimony as controverting, or at least creating a question about the veracity of, Father's testimony. Moreover, even if Mother had not presented the aforementioned testimony, the trial court could still have considered and rejected Father's testimony based on its determination of his credibility. We therefore find no abuse of the trial court's discretion in failing to credit Father for payments he allegedly made to reduce the community credit card debt and the mortgage.

IV. Attorneys' Fees On Appeal

¶24 Mother requests an award of costs and attorneys' fees on appeal pursuant to A.R.S. § 25-324 (2000). In our discretion, we decline to award attorneys' fees to Mother. Each party shall bear his or her own costs and attorneys' fees on appeal.

CONCLUSION

¶25 We affirm in part the trial court's dissolution decree filed March 10, 2005; vacate in part that portion of the

dissolution decree ordering Father to pay arrearages for the time period of September 2002 through May 2004 in the amount of \$363 per month; and remand with directions to recalculate the arrearages, if any, owed by Father for the period of September 2002 through May 2004 based on the court-ordered and stipulated amount of \$146 per month, plus any accumulated interest on the arrearages. This amount shall be entered in the decree and replace the vacated portion of the decree. Further, the trial court shall vacate its interim judgment filed February 4, 2005, and shall issue a new judgment based on the court's new calculations and any unreimbursed medical expenses.

LAWRENCE F. WINTHROP, Judge

CONCURRING:

PATRICK IRVINE, Presiding Judge

JAMES B. SULT, Judge