

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

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

In re the Marriage of:) 1 CA-CV 07-0765
)
VICTOR M. COVARRUBIAS,) DEPARTMENT C
)
Petitioner/Appellant,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules
) of Civil Appellate
MARIA C. COVARRUBIAS,) Procedure)
) **FILED 11-18-08**
Respondent/Appellee.)
)

Appeal from the Superior Court in Maricopa County

Cause No. FN 2005-050489

The Honorable Gregory H. Martin, Judge

AFFIRMED

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by James L. Leather
Attorneys for Petitioner/Appellant

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by Patrick S. Sampair
Attorneys for Respondent/Appellee

I R V I N E, Judge

¶1 Victor Covarrubias ("Husband") appeals from the superior court's decree of dissolution, award of spousal

maintenance, and denial of his motion for new trial. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Victor Covarrubias and Maria Covarrubias ("Wife") were married in 1972 in Guadalajara, Mexico. Husband initially worked as a mechanic in Mexico, Chicago, and finally Arizona. In 1999, Husband stopped working as a mechanic in Arizona and began a swimming pool cleaning business with his adult children. Husband's gross income from the pool cleaning business has been \$8,000-\$9,000 per month. Husband testified that his monthly living expenses are currently \$8,200 with his new wife.

¶3 After moving to Arizona in 1983, Wife worked cleaning houses and took care of the kids. Wife is now 50 years old. An employment evaluation of Wife was ordered by the court, and the evaluation indicated that Wife is only capable of working low paying jobs based upon her work experience, age, education, and the fact that she speaks very little English. It is undisputed that Wife is capable of earning about \$1,200 a month. The parties refinanced their community residence to equally split the value of it. Wife received \$74,000 from Husband for her share of the community residence, and their son is to pay Wife

roughly \$30,000 for a lien he had placed on the home.¹ Husband remained in the community residence. Husband and Wife also own a parcel of property that will be divided into separate lots, one for each child and one for the Husband and Wife. Once sold, the proceeds from the parcel are to be split equally between Husband and Wife. Husband estimates the value of the parcel at \$260,000, although an appraisal had not been done and the property has not been listed for sale.

¶4 Husband filed for dissolution of marriage in June 2005. Wife responded requesting an equitable division of community property and debt, an award of spousal maintenance, and an award of attorneys' fees. The parties entered into settlement agreements regarding certain issues. Trial was held for two days. The court found that "Wife will never be able to be self-sufficient through her employment and as this is, again, a marriage of long duration, the Court concludes that Wife is entitled to spousal maintenance." The court ordered spousal maintenance in the sum of \$3,000 per month, as well as arrearages totaling \$54,000. Further, the court concluded that

¹ Wife was entitled to \$103,000 for her share of the community residence, but the son caused a lien to be placed on the house. The lien was paid out of Wife's portion of the community residence because Wife agreed to let the son pay her the remaining portion of her share of the community residence. It is unclear if husband originally agreed to pay for half of the lien.

Husband's position was unreasonable. Therefore, the court ordered that Husband contribute to Wife's fees and costs incurred in the matter.

¶5 Husband filed a motion for new trial. The court denied Husband's motion, and Husband timely appealed. This Court has jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(F) (2003).

DISCUSSION

¶6 Husband contends that the superior court abused its discretion in awarding spousal maintenance, and in the amount and duration of spousal maintenance awarded.² He also argues that the court abused its discretion in establishing the amount of retroactive spousal maintenance. Finally, Husband argues that the court abused its discretion in awarding Wife attorneys' fees and costs by finding that his position was unreasonable.

¶7 "Arizona law extends the trial court substantial discretion to set the amount and duration of spousal maintenance." *Rainwater v. Rainwater*, 177 Ariz. 500, 502, 869 P.2d 176, 178 (App. 1993). We review the superior court's award of spousal maintenance for an abuse of discretion. *Cullum v.*

² After this appeal was filed, Husband petitioned the trial court to modify spousal maintenance. The court found there was a substantial and continuing change in circumstances and therefore modified the spousal maintenance. The modified award is not before us in this appeal.

Cullum, 215 Ariz. 352, 354, ¶ 9, 160 P.3d 231, 233 (App. 2007). We view the evidence in the light most favorable to the superior court order and will affirm the judgment if there is any reasonable evidence to support it. *Id.*

¶8 In reviewing a spousal maintenance award, we first consider whether the spouse meets the requirements for maintenance set out in A.R.S. § 25-319(A) (2007). *Gutierrez v. Gutierrez*, 193 Ariz. 343, 348, ¶ 15, 972 P.2d 676, 681 (App. 1998). Second, we review the amount and duration of the award to determine whether the trial court properly considered the factors listed in A.R.S. § 25-319(B). *Id.* Section 25-319(A) provides that spousal maintenance may be awarded when any one of four factors is present. *Id.* at 348, ¶ 17, 972 P.2d at 681.

¶9 Section 25-319(A)(4) states that spousal maintenance is appropriate if the spouse seeking maintenance “[h]ad a marriage of long duration and is of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.” The court found that the marriage was a 33-year marriage, that Wife was 49 years old, and that Wife’s earning capacity was determined to be \$1,200 per month. As there is sufficient evidence the marriage was of a long duration and that Wife is an age that may preclude gaining employment to be self-sufficient, an award of spousal maintenance was appropriate.

¶10 Husband argues that the trial court "ignored at least two of the factors set forth in A.R.S. [§] 25-319[B]." Husband argues that the trial court ignored A.R.S. § 25-319(B)(4), which states that in awarding spousal maintenance the trial court shall consider "[t]he ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance." Specifically, he argues that after his monthly expenses he is only left with \$800 to satisfy the \$3,000 monthly spousal maintenance award, and as such the court must have ignored § 25-319(B)(4). The record indicates, however, that the trial court appropriately considered the financial needs of each party in reaching its decision.

¶11 Husband testified regarding his income and expenses. Husband provided a limited affidavit of financial information. Although the trial court's signed minute entry does not specifically detail Husband's financial situation, the foregoing evidence is presumed to have been fully considered by the court prior to issuing its decision. *Fuentes v. Fuentes*, 209 Ariz. 51, 55, ¶ 18, 97 P.3d 876, 880 (App. 2004). Moreover, although Husband's financial obligations are a consideration in awarding spousal maintenance, the burden rests on the spouse alleging inability to pay spousal maintenance to present evidence to support such inability. *Gutierrez*, 193 Ariz. at 350, ¶ 27, 972

P.2d at 683. Husband submitted limited financial information to the court for consideration and he cannot now complain that the court did not consider all of his finances. *Id.*

¶12 Husband also argues that the trial court ignored A.R.S. § 25-319(B)(9) in making the spousal maintenance award. That section provides that in awarding spousal maintenance the court shall consider “[t]he financial resources of the party seeking maintenance, including marital property apportioned to that spouse, and that spouse’s ability to meet that spouse’s own needs independently.” Specifically, Husband is arguing that the court did not consider in its decision that Wife received \$74,000 in cash, will receive \$30,000 from her son, and will receive roughly \$90,000 from the sale of the parcel of land. We reject that argument. The superior court specifically stated that Wife “should not have to spend down her assets to survive.” Because the superior court was in the better position to determine whether the parties can meet their needs independently, and there is evidence to support its decision, we do not find the court abused its discretion. *See Cullum*, 215 Ariz. at 354, ¶ 9, 160 P.3d at 233.

¶13 Husband further contends that it “appears from the ruling that the court used the advisory guidelines as a primary determinate of the maintenance award which has been found to be an inappropriate analytical shortcut.” We find no support for

this position. The superior court heard the testimony of Wife as to the standard of living established during the marriage. The court found that the parties were married for 33 years, that Wife could speak little English, and that Wife was a homemaker for a majority of the marriage. The court considered Wife's earning capacity. Husband submitted a financial affidavit minimally describing his expenses. The court then applied the advisory guidelines. The court's use of the guidelines for assisting in the calculation was not the sole basis for its determination of the amount or duration of the award. The record shows that the court made the necessary findings to comply with A.R.S. § 25-319(B). The court did not abuse its discretion.

¶14 Husband next argues that the superior court abused its discretion in establishing the amount of retroactive spousal maintenance. He simply reasserts the same arguments in support of this position. Because we find that the court did not abuse its discretion in its award of spousal maintenance, we find the court did not abuse its discretion in establishing the amount of retroactive spousal maintenance.

¶15 Finally, Husband argues that the court erred in awarding attorneys' fees and costs. He argues the court's "determination that the position taken by [Husband] regarding spousal maintenance was unreasonable is likewise an abuse of the court's discretion." Husband took the position that Wife was not

entitled to any spousal maintenance. We review a trial court's award of attorneys' fees for an abuse of discretion. *Medlin v. Medlin*, 194 Ariz. 306, 309, ¶ 17, 981 P.2d 1087, 1090 (App. 1999). Given Husband's position, and the fact that he earns substantially more than Wife, we cannot say that the trial court abused its discretion in awarding attorneys' fees and costs.

¶16 Wife requests an award of attorneys' fees and costs incurred in this appeal. After examining the financial resources and the reasonableness of the positions of each party, we award Wife costs and attorneys' fees in connection with this appeal pursuant to A.R.S. § 25-324 (2007) and upon her compliance with Rule 21(c), Arizona Rules of Civil Appellate Procedure. See *Leathers v. Leathers*, 216 Ariz. 374, 379, ¶ 22, 166 P.3d 929, 934 (App. 2007).

CONCLUSION

¶17 We affirm the trial court's decision.

PATRICK IRVINE, Judge

CONCURRING:

LAWRENCE F. WINTHROP, Presiding Judge

PHILIP HALL, Judge