

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

AMBROSIO BARRIOS,
Petitioner/Appellee,

and

MARGARITA A. BARRIOS,
Respondent/Appellant.

No. 2 CA-CV 2015-0180
Filed July 12, 2016

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NOT FOR PUBLICATION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. D20141244
The Honorable Ken Sanders, Judge Pro Tempore

AFFIRMED

COUNSEL

Law Offices of Trini Armenta, Tucson
By Trini Armenta
Counsel for Petitioner/Appellee

Law Offices of Hector A. Montoya, PLLC, Tucson
By Hector A. Montoya
Counsel for Respondent/Appellant

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MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Presiding Judge Vásquez and Judge Kelly¹ concurred.

M I L L E R, Judge:

¶1 Margarita Barrios appeals from the decree of dissolution denying her requests for spousal maintenance and attorney fees. For the following reasons, we affirm.

Factual and Procedural Background

¶2 Ambrosio and Margarita Barrios were married in November 1988 and have no minor children. Ambrosio petitioned for divorce in April 2014. Ambrosio and Margarita participated in several settlement conferences at which they reached agreements as to vehicles, several bank accounts, and debts. They also agreed that Margarita would remain in the marital home, pay the mortgage, and make good-faith efforts to refinance it, at which point Ambrosio would be relieved as an obligor on the mortgage.² The issues remaining for trial were the values of certain debts and assets, any offsets that needed to be paid, the amount and duration of spousal maintenance, and the payment of attorney fees and costs. After a three-day trial at which both parties testified, the trial court took the matter under advisement.

¶3 In its signed decree, the trial court noted the case was, “[a]t its essence . . . about debt – a lot of debt – and who should bear

¹The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

²There were additional agreements in the event refinancing was not possible within two years, Margarita sold the house, or the bank foreclosed on the mortgage.

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what percentage of the burden.” Margarita was awarded the marital residence, a personal vehicle, furniture, appliances, and other personal property, while Ambrosio received real property in Mexico, a personal truck, a tractor trailer, and other personal property.³ After assigning debts, the court ordered Ambrosio to pay Margarita an equalization payment of \$26,338.81.

¶4 Regarding Margarita’s request for spousal maintenance, the trial court reviewed the factors in A.R.S. § 25-319(A) and concluded she had not established a statutory basis for entitlement to an award. Finally, the court concluded each party should bear their own costs and attorney fees. Margarita appeals. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Spousal Maintenance

¶5 Margarita contends the trial court erred by failing to award her spousal maintenance. We review the court’s decision for an abuse of discretion, viewing the evidence in the light most favorable to sustaining the court’s order and affirming if the order is supported by reasonable evidence. *Boyle v. Boyle*, 231 Ariz. 63, ¶ 8, 290 P.3d 456, 458 (App. 2012).

¶6 In reviewing a trial court’s spousal maintenance award, “we first consider whether the [requesting] spouse ‘meets the statutory requirements for maintenance set out in A.R.S. § 25-319(A).’” *Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶ 15, 972 P.2d 676, 681 (App. 1998), quoting *Thomas v. Thomas*, 142 Ariz. 386, 390, 690 P.2d 105, 109 (App. 1984). Then, if any one of the statutory conditions is met, we review the amount and duration of the award to determine whether the court properly considered the factors listed in § 25-319(B). *Gutierrez*, 193 Ariz. 343, ¶ 15, 972 P.2d at 681. Pursuant to § 25-319(A), the trial court may award spousal maintenance if it finds any of the following conditions is met: (1) the spouse lacks

³ Assets awarded to Margarita totaled \$82,078. Assets awarded to Ambrosio totaled \$58,771. Margarita’s assigned debts totaled \$96,531.70, while Ambrosio’s debts totaled \$46,885.89.

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sufficient property to provide for his or her reasonable needs, (2) the spouse is unable to be self-sufficient through appropriate employment or lacks earning capacity to be self-sufficient, (3) the spouse contributed to the educational opportunities of the other spouse, or (4) the marriage was of a long duration and the spouse is of an age that may preclude the possibility of gaining employment to be self-sufficient. § 25-319(A)(1)-(4).

¶7 Margarita argues the trial court erred in failing to find she was eligible for maintenance pursuant to subsections one, two and four. Specifically, Margarita contends she has insufficient property because the value of the marital residence is less than the principal on the mortgage, and she cannot be self-sufficient because she is 47 years old, currently earns \$28,000 per year, suffers from migraines, and needs gall-bladder surgery.

¶8 The trial court's denial of spousal maintenance is supported by reasonable evidence. *See Boyle*, 231 Ariz. 63, ¶ 8, 290 P.3d at 458. Margarita was awarded the marital home, a vehicle, a dune buggy, furnishings, and appliances. To the extent that the award of the home is actually a "debt" due to the agreement Margarita would pay the mortgage and refinance in her name, that debt was included in the calculation of the equalization payment. Further, although the marriage was of a long duration and Margarita had to cut back on work due to her migraines, she still is able to work full-time as a caregiver. Regarding her surgery for gall stones, she admitted at trial there was no evidence she would not be able to work due to the surgery.

¶9 Other than the statement in her brief that her standard of living before the divorce "was much higher than what [she] is now facing," Margarita provides no explanation for why she cannot be self-sufficient. The trial court did not err in finding Margarita failed to satisfy any of the requirements to qualify for an award. *See* § 25-319(A). Because she did not meet this threshold, we need not consider her remaining argument regarding the factors found in § 25-319(B). *See* § 25-319(A), (B); *Gutierrez*, 193 Ariz. 343, ¶ 15, 972 P.2d at 681.

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Trial Attorney Fees and Costs

¶10 Margarita argues the trial court erred by denying her request for attorney fees and costs pursuant to A.R.S. § 25-324(A). Under § 25-324(A), a trial court may order a party to pay attorney fees or costs “after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings.” We review the court’s ruling for an abuse of discretion.⁴ *Engel v. Landman*, 221 Ariz. 504, ¶ 45, 212 P.3d 842, 852 (App. 2009).

¶11 Margarita first argues there is a significant income disparity because Ambrosio’s trucking business “brings in over \$180,000.00 annually in gross income.” She appears to argue Ambrosio overstated his business expenses and the trial court should have considered gross business receipts rather than his net income when comparing their financial resources. However, Margarita admitted to reviewing and signing a 2013 federal income tax return reporting Ambrosio’s net income from the trucking business was only \$18,701. Similarly, the joint return for 2012 showed a net income of \$13,081, while 2011 showed a business loss of \$2,291. To the extent Margarita argues this was a misrepresentation, she points to no evidence that the tax returns were false when she signed them. Moreover, both Margarita and Ambrosio testified on these matters, and it is the duty of the trial court, not this court, to weigh the evidence and determine credibility of witnesses. *Premier Fin. Servs. v. Citibank (Arizona)*, 185 Ariz. 80, 85, 912 P.2d 1309, 1314 (App. 1995).

¶12 Margarita also argues Ambrosio was unreasonable because she had to research the values of the vehicles and trailers and acquire the tax returns and other paperwork at trial. However, Margarita admitted at trial that Ambrosio had provided some documentation of values, much of the paperwork was in her

⁴The court made no findings in the record regarding the request for attorney fees, nor was it required to do so in the absence of a request. See § 25-324(A); *Myrick v. Maloney*, 235 Ariz. 491, ¶ 10, 333 P.3d 818, 821-22 (App. 2014).

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possession in the marital residence, and both parties worked toward settlement. The trial court did not abuse its discretion by denying Margarita's request for attorney fees and costs.

Disposition

¶13 For the foregoing reasons, we affirm the decree of dissolution. In our discretion, we decline Margarita's request for an award of appellate attorney fees pursuant to § 25-324(A).