

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2010-007004

08/15/2012

JUDGE DAVID J. PALMER

CLERK OF THE COURT
C. Soto
Deputy

IN RE THE MARRIAGE OF
MICHAEL DEAN WHITEFIELD

CHRISTINA S HAMILTON

AND

YVONNE L WHITEFIELD

CHRISTOPHER S HILDEBRAND

MINUTE ENTRY

The court has read and considered the Motion for Reconsideration and Motion for Clarification filed by Respondent/Wife, as well as the Response to those Motions filed by Petitioner/Husband.

MOTION FOR RECONSIDERATION

In her Motion for Reconsideration, Wife seeks a modification of the spousal maintenance award that she was granted; specifically she was granted an award of \$5750.00 per month for a period of 5 years. Specifically, she seeks a lifetime award of spousal maintenance. She cites *Rainwater v. Rainwater*, 177 Ariz. 500, 869 P.2d 176 (1993) in support of her argument which is essentially that the parties' lifestyles and income levels during the marriage were not appropriately considered in determining the duration of that award. She points to the fact that Husband's income from his interests in a business, Executive Technologies¹ as well as from his flying part time as an airline pilot far exceeds hers as a court reporter.

¹ The court concluded in its decree that Husband's interest in this business was his sole and separate property.

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What she did not include in her motion was the fact that against Husband's wishes, she was awarded an income-producing property, the condominium unit in Tucson, as her sole and separate property. She will earn income from the rental of that property in addition to her salary as a court reporter.

THE COURT FINDS its award of spousal maintenance is supported by the evidence, was within the court's discretion and is reasonable in terms of amount and duration when considered in context of the parties' respective abilities to earn income as well as property awarded to each spouse.

IT IS ORDERED denying Wife's Motion for Reconsideration.

MOTION FOR CLARIFICATION

In her Motion for Clarification, Wife seeks specification relative to the items of personal property that were purportedly located in the Coconino house at the time she vacated that home. The court's orders awarded to Husband some televisions in the home, a pool table and wine cooler as his sole and separate property, with the parties to have as their sole and separate property all other property in their possession. She is apparently claiming that when she vacated the home that she had left other items of property she now says are her sole and separate property.

As Husband asked in his Response for specifics as to what property was involved, she listed in her reply 16 separate items. She asks the court for an order declaring those items to be hers and for Husband to be ordered to arrange a time she may pick up those items.

The court cannot conclude without more, that such items are in fact hers without some evidence to prove those items were either purchased outside the term of the marriage, or purchased during the marriage with her sole and separate funds.

With respect to the listed items,

IT IS ORDERED that Husband is to either turn over the family photo books to Wife, or to meet with Wife if he desires to have copies of any photos, to designate any wishes to copy. Alternatively, he may copy the entire set of photos and keep the copies for himself and give Wife the originals. The costs of any such copying are to be born 67% by Husband and 33% by Wife.

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As to the remaining items, the parties through counsel are to confer in an attempt to locate and properly classify the items as being community or non-community and to divide the items appropriately

If there is no agreement that the items belong to one party or the other as opposed to being community in nature, the parties will be ordered to attend Post-Decree Mediation for resolution of that issue. If that mediation is not successful, the parties will notify this court that an evidentiary hearing is necessary to divide those items.

In the event of an evidentiary hearing, the issue of attorney's fees will definitely be in play if the court finds either party's actions or positions to be unreasonable. It is the court's hope and belief that those few remaining items will be resolved by agreement of the parties.

IT IS ORDERED that each party shall be responsible for their own attorney's fees pertaining to this Motion for Reconsideration and Motion for Clarification.

IT IS FURTHER ORDERED signing this minute entry as a formal written order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/S/: HONORABLE DAVID J. PALMER

JUDICIAL OFFICER OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.