

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2012-008466

08/06/2013

HONORABLE CHRISTOPHER WHITTEN

CLERK OF THE COURT  
A. Quintana  
Deputy

IN RE THE MATTER OF  
FRANCISCA L ARVALLO-BRASHEAR

MARC A LESSOW

AND

DALE E BRASHEAR

DALE E BRASHEAR  
3831 W MICHELLE DR  
GLENDALE AZ 85308  
NEIL R POSTON

FAMILY COURT SERVICES-CCC

TRIAL

Courtroom 201 (OCH)

Prior to the commencement of today's hearing Petitioner's Exhibits 1-36 and Respondent's Exhibits 37-41 are marked for identification.

8:53 a.m. This is the time set for Trial/Evidentiary Hearing regarding Petitioner's Petition for Dissolution of a Non-Covenant Marriage with Children filed November 8, 2012. Petitioner/Mother is not present but represented by above-named counsel. Respondent/Father is present and represented by above-named counsel.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Discussion is held with the Court regarding the status of the case.

Dale E. Brashear is sworn and testifies.

Frank Brashear is sworn and testifies.

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9:30 a.m. Petitioner/Wife is now present.

Francisca L. Arballo-Brashear is sworn and testifies.

Frank Brashear retakes the stand and further testifies.

Petitioner's Exhibits 7-13, 15-16, 22, 24-26, 28 and 33-35 are entered in evidence.

Respondent's Exhibit 37 is entered in evidence.

Based upon the matters presented,

**DECREE OF DISSOLUTION**

During the proceedings, the Court heard from the witnesses, including the parties. The Court has since considered the evidence, including the demeanor of the witnesses, reviewed the exhibits as well as the case history, and considered the parties' arguments.

After significant deliberation, the Court makes the following findings and enters the following orders:

**THE COURT FINDS** as follows:

- A. At the time this action was commenced at least one of the parties was domiciled in the State of Arizona and that said domicile had been maintained for at least 90 days prior to the filing of the Petition for Dissolution of Marriage.
- B. The conciliation provisions of A.R.S. § 25-381.09 have either been met or do not apply.
- C. The parties were married on May 3, 2003. By operation of law, the marital community is deemed to have terminated on November 9, 2012.
- D. The marriage is irretrievably broken and there is no reasonable prospect for reconciliation.
- E. There are three minor children, common to the parties, namely: Alianna Brashear (born February 12, 2004), Dale Brashear (born February 28, 2005) and Yeshaya Brashear (born November 15, 2009).
- F. Mother is not pregnant.
- G. This was not a covenant marriage.

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- H. To the extent that it has jurisdiction to do so, the court has considered, approved and made provision for the maintenance of each spouse and the division of property and debts.

**DISSOLUTION OF MARRIAGE**

**IT IS ORDERED** dissolving the marriage of the parties and restoring each party to the status of a single person.

**LEGAL DECISION-MAKING AND PARENTING TIME**

**Jurisdictional Findings**

**THE COURT FINDS** that Mother and Father have three minor children in common: Alianna Brashear (born February 12, 2004), Dale Brashear (born February 28, 2005) and Yeshaya Brashear (born November 15, 2007). The parties and the minor children have resided in Arizona continuously for at least the six months preceding the filing of the petition for dissolution. This Court, therefore, has jurisdiction as Arizona is the “home state” of the minor children. *See* A.R.S. § 25-1031. Further, this Court has jurisdiction pursuant to A.R.S. § 25-402.

**THE COURT FURTHER FINDS** that the federal Parental Kidnapping Prevention Act does not apply and that no international law concerning the wrongful abduction or removal of children applies.

**Best Interest Findings: A.R.S. § 25-403**

The Court has considered the agreement of the parties and the factors under A.R.S. § 25-403. The parties have stipulated to a finding that the agreed upon plan is in the best interests of the minor children.

**THE COURT FURTHER FINDS** that there is no history of domestic violence or child abuse (A.R.S. § 25-403.03), substance abuse issues (A.R.S. § 25-403.04) or any sexual offender issues (A.R.S. § 25-403.05).sufficient to preclude the award of joint legal decision-making, as agreed.

**Legal Decision-Making**

Legal decision-making authority, as defined by A.R.S. § 25-401(3), means the legal right and responsibility to make all non-emergency legal decisions for a child including those regarding education, health care, religious training and personal care decisions. For the purpose

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of interpreting or applying any international treaty, federal law, a uniform code or the statutes of other jurisdictions of the United States, legal decision-making means legal custody.

**THE COURT FURTHER FINDS** that based upon the agreements of the parties, it is in children's best interest that Mother and Father be awarded joint legal decision making-authority regarding Alianna Brashear (born February 12, 2004), Dale Brashear (born February 28, 2005) and Yeshaya Brashear (born November 15, 2007).

**IT IS THEREFORE ORDERED** awarding Mother and Father joint legal decision-making authority regarding Alianna Brashear (born February 12, 2004), Dale Brashear (born February 28, 2005) and Yeshaya Brashear (born November 15, 2007), as defined in A.R.S. § 25-401(2). For the purpose of this order, "Joint legal decision-making" means both parents share decision-making and neither parent's rights nor responsibilities are superior except with respect to specified decisions set forth herein. Shared or joint legal decision-making authority does not necessarily mean equal parenting time (A.R.S. § 25-403.02(E)).

**Specific Terms**

**Final Decision Making Authority-** Parental decisions shall be required for major issues in raising the children and in meeting on-going needs. When they arise, each parent shall give good faith consideration to the views of the other and put forth best efforts to reach a consensus decision. If the decision involves medical or schooling issues, the parties may further elect to seek input from treating physicians or educators. Both parents shall be provided with such input.

**IT IS ORDERED** that if they cannot agree after making a good faith effort to reach an agreement, any such major issue shall be presented to the Court for resolution.

**Parenting Time**

Parenting time was agreed to in the parties' April 26, 2013 stipulation, which was accepted as an order of the Court. That plan is clarified as follows:

- All vacation time shall take precedent over regular parenting time.
- The parties shall endeavor to agree on the dates each will exercise summer vacation time. In the event that they cannot do so, Mother's preference shall control in even years and Father's preference shall control in odd years.
- The parties shall exchange the children at the Starbuck's coffee shop at 4747 East Elliot Road, Phoenix.

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**CHILD SUPPORT**

**THE COURT FINDS** that the relevant financial factors and the discretionary allowances and adjustments which the Court will allow for a current calculation of child support pursuant to the Arizona Child Support Guidelines are set forth in the Child Support Worksheet, which the Court hereby incorporates and adopts as its findings with respect to child support.

**THE COURT FURTHER FINDS** that in applying these findings under the Arizona Child Support Guidelines, no deviation is appropriate regarding the obligation to pay child support.

**IT IS THEREFORE ORDERED** that Father shall pay to Mother as and for child support the sum of \$389.86 per month, payable through the Support Payment Clearinghouse on the 1st day of each month commencing September 1, 2013 by Income Withholding Order.

**LET THE RECORD REFLECT** that an Electronic Income Withholding Order is issued. Confirmation # 402365

**IT IS FURTHER ORDERED** that at any time an Income Withholding Order is not paying the child support obligation in full, Father shall make full and timely payments directly to the Support Payment Clearinghouse in accordance with the attached "Instructions for Making Support Payments through the Clearinghouse."

All payments shall be made through the Support Clearinghouse via an automatic Income Withholding Order issued this date. Father is advised that until such time as the Income Withholding Order becomes effective, Father has an affirmative obligation to pay the child support directly to the Support Clearinghouse.

All obligations for child support for each child shall terminate upon a finding of this Court that the child has attained the age of 18 years, or is otherwise emancipated. If any child attains the age of 18 years while attending high school, support shall continue to be provided during the period in which that child is actually attending high school but only until the child reaches 19 years of age. Support for special needs children may continue past the age of 18 based on a finding of this Court. Provisions for health insurance and non-insured health expenses for the children, as provided for below, shall be deemed to be additional child support and shall be enforceable as such.

Pursuant to A.R.S. § 25-503(I), the right of a parent, guardian or custodian to receive child support payments as provided in this Order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law.

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**Insurance and Unreimbursed Medical Expenses**

**IT IS FURTHER ORDERED** that Mother shall provide medical insurance for the benefit of the parties' minor child, and shall provide an insurance card and claim filing information/forms to the other parent. All medical, dental and orthodontia expenses incurred for the health and protection of the child not covered by insurance shall be paid 28% by Father and 72% by Mother.

**IT IS ORDERED** that unless good cause is shown, any request for payment or reimbursement of uninsured medical, dental, and/or vision costs must be provided to the other parent within 180 days after the date the services occur. The parent responsible for payment or reimbursement must pay his or her share, as ordered by the Court, or make acceptable payment arrangements with the provider or person entitled to reimbursement within 45 days after receipt of the request.

Both parents must use their best efforts to obtain services that are covered by the insurance. A parent who is entitled to receive reimbursement from the other parent for medical costs not covered by insurance shall, upon request of the other parent, provide receipts or other evidence of payments actually made.

**Tax Deduction For The Children As Dependents**

**IT IS ORDERED** that the parties may claim the eligible dependent as follows: Mother shall claim Alianna and Dale every year and Mother shall claim Yeshaya three out of every four years (Father shall claim her in 2013, 2014 and 2015 and Mother shall claim her in 2016, with that pattern repeating thereafter).

**IT IS FURTHER ORDERED** that if Father is not current in the total Court-ordered child support obligation for the current calendar year and/or any Court-ordered arrearage payment due during the calendar year for which the exemption is to be claimed but nevertheless claims the children for tax purposes, Father shall pay directly to the Support Payment Clearinghouse 100 percent of any and all tax refunds that Father receives, which shall be applied first towards Father's current child support obligation and then towards any arrearage.

**Exchange Of Income Information**

**IT IS FURTHER ORDERED** that the parties shall exchange income information every 24 months. Said financial information shall include, but not be limited to: personal tax returns with all schedules, affidavits of financial information, earning statements and other such documentation necessary to establish or prove the income of either party. In addition, at the time

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of the exchange of financial information, the parties shall also exchange residential addresses and the names and addresses of their respective employers.

**SPOUSAL MAINTENANCE**

Father seeks an award of spousal maintenance in an unspecified amount for an unspecified duration. Mother opposes the award, asserting that Father does not qualify for an award of spousal maintenance.

The determination of spousal maintenance is controlled by A.R.S. § 25-319. The threshold question is entitlement, which is controlled by subsection (A) of the statute. It provides as follows:

In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse for any of the following reasons if it finds that the spouse seeking maintenance:

1. Lacks sufficient property, including property apportioned to the spouse, to provide for that spouse's reasonable needs.
2. Is unable to be self-sufficient through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home or lacks earning ability in the labor market adequate to be self-sufficient.
3. Contributed to the educational opportunities of the other spouse.
4. Had 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 FINDS** that Father has not established a statutory basis for entitlement to an award of spousal maintenance. His claim is therefore denied and neither party is entitled to an award of spousal maintenance.

**DIVISION OF PROPERTY AND DEBTS**

**Community/Sole and Separate Property Claims and Debts**

The Court shall divide any disputed property in accordance with the property's character. Property is characterized by the time of its acquisition. If acquired by either spouse before

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marriage or acquired during marriage by gift, devise, or descent, property is characterized as separate property. A.R.S. § 25-213(A). The Court shall assign each spouse's sole and separate property to that spouse. A.R.S. § 25-318(A).

Property acquired by either spouse during marriage is characterized as community property (with the exceptions of property acquired by gift, devise, or descent). A.R.S. § 25-211(A). There is a presumption that any property acquired by either spouse during marriage is community property, unless demonstrated otherwise by clear and convincing evidence. *See Sommerfield v. Sommerfield*, 121 Ariz. 575, 578, 592 P.2d 771, 774 (1979). Any property acquired by either spouse outside of Arizona shall be deemed to be community property if such property would have been characterized as community property had it been initially acquired in Arizona. A.R.S. § 25-318(A).

**Equitable Division**

The Court shall divide community property equitably, although not necessarily in kind, without any regard to marital misconduct. A.R.S. § 25-318(A). As a general presumption, equitable division requires that community property be divided substantially equally. *See Toth v. Toth*, 190 Ariz. 218, 221, 946 P.2d 900, 903 (1997). However, the court may order an unequal division of community property in consideration of excessive or abnormal expenditures or the destruction, concealment, or fraudulent disposition of property. A.R.S. § 25-318(C).

When dividing property, the Court may consider all related debts and obligations. A.R.S. § 25-318(B). To determine property's value, the court shall select a valuation date. The selection of this valuation date rests within the wide discretion of the trial court and shall be tested upon review by the fairness of the result. *See Sample v. Sample*, 152 Ariz. 239, 242-43, 731 P.2d 604, 607-08 (Ct. App. 1986).

**Unequal Division of Property**

Only rarely is unequal division of community property appropriate to achieve equity. *See Toth*, 190 Ariz. at 221, 946 P.2d at 903 (unequal division of property was appropriate because one spouse contributed substantially disproportionate separate funds compared to the other's contribution); *see also Flower v. Flower*, 223 Ariz. 531, 531, 225 P.3d 588, 588 (Ct. App. 2010) (unequal division of property was appropriate because the parties incurred substantial community debt to benefit one spouse's separate property). *But see Inboden v. Inboden*, 223 Ariz. 542, 547, 225 P.3d 599, 604 (Ct. App. 2010) (vacating an order for the unequal division of property because each spouse had contributed separate funds to joint property).

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The Court shall consider all equitable factors before ordering an unequal division of community property , including: the length of the marriage, the contributions of each spouse to the community, the source of funds used to acquire the property to be divided, the allocation of debt, and any other factor that may affect the outcome. *See Inboden*, 223 Ariz. at 547, 225 P.3d at 604.

**THE COURT FURTHER FINDS** that this case does not present a unique set of facts or circumstances. Therefore, an equal division of community property is appropriate to achieve equity.

**Personal Property**

Mother requests that she be awarded certain personal property belonging to her which she believes is in Father's possession. Father requests that Mother reimburse him for personal property which was in a car he drove which he believes that Mother wrongfully caused to be repossessed with the property inside of it. He also requests damages for loss of business opportunities which he claims were caused by Mother wrongfully causing the car he was driving to be repossessed. All of those requests are denied.

Both parties are making claims that the other wasted and misused community resources and that they should reimburse the community for the same. Neither has met their burden of proving their claim of waste or misuse.

**IT IS ORDERED** Father is awarded as his sole and separate property, subject to any liens or encumbrances on the property, all vehicles, household furniture, furnishings and appliances, and other personal property currently in his possession.

**IT IS FURTHER ORDERED** Mother is awarded as her sole and separate property, subject to any liens or encumbrances on the property, all vehicles, household furniture, furnishings and appliances, and other personal property currently in her possession.

**Debts**

**THE COURT FINDS** that the following community debts were identified:

1. All Medical Providers listed in Trial Exhibit 16 \$ 8,807.87

**IT IS ORDERED** that in fairly and equitably allocating the community assets and the community debts, Mother and Father shall be solely responsible for one half of each of the debts listed in Trial Exhibit 16.

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**IT IS FURTHER ORDERED as follows:**

- Father shall be solely responsible for any credit card or debt in his name incurred after service of the Petition.
- Mother shall be solely responsible for any credit card or debt in her sole name incurred after service of the Petition.
- Any community debts that were not identified at the time of the trial shall be divided equally between the parties.
- Each party shall pay any debt incurred by him or her respectively since the date of service of the Petition in this matter.
- Each party shall indemnify and hold harmless from any and all debts designated as the responsibility of that party by the terms set forth in this Decree.

**Equalization**

**THE COURT FINDS** that the above allocation of the real and personal property, when considered with the division of debt, is fair and equitable under the circumstances and that no further adjustments are necessary.

**RESTORATION OF NAME**

Mother asks on the record to have her name restored.

**IT IS THEREFORE ORDERED** restoring Mother to her former name, Francisca Lucille Arvallo, date of birth August 31, 1977.

**ATTORNEY FEES AND COSTS**

Mother has requested an award of attorney fees and costs. An award of attorney fees and costs is governed by A.R.S. § 25-324. Section 25-324 provides as follows:

- A. The court from time to time, after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount to the other party for the costs and

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expenses of maintaining or defending any proceedings under this chapter or chapter 4, article 1 of this title. On request of a party or another court of competent jurisdiction, the court shall make specific findings concerning the portions of any award of fees and expenses that are based on consideration of financial resources and that are based on consideration of reasonableness of positions. The court may make these findings before, during or after the issuance of a fee award.

B. If the court determines that a party filed a petition under one of the following circumstances, the court shall award reasonable costs and attorney fees to the other party:

1. The petition was not filed in good faith.
2. The petition was not grounded in fact or based on law.
3. The petition was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay or to increase the cost of litigation to the other party.

C. For the purpose of this section, costs and expenses may include attorney fees, deposition costs and other reasonableness expenses as the court finds necessary to the full and proper presentation of the action, including any appeal.

D. The court may order all amounts paid directly to the attorney, who may enforce the order in the attorney's name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

**THE COURT FINDS** that there is substantial disparity of financial resources between the parties.

**THE COURT FURTHER FINDS** that neither party acted unreasonably in the litigation.

**THE COURT FURTHER FINDS** that the provisions of A.R.S. § 25-324(B) do not apply.

**THE COURT FURTHER FINDS** that neither Mother nor Father knowingly presented a false claim.

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**IT IS THEREFORE ORDERED** denying Mother's request for attorney fees and costs.

**IT IS FURTHER ORDERED** denying any affirmative relief sought before the date of this Order that is not expressly granted above.

There being no need to retain the Exhibits marked for identification but not offered into evidence,

**IT IS ORDERED** permanently releasing Exhibits 1-6, 14, 17-21, 23, 27, 29-32 and 36 to the immediate possession of Petitioner's counsel and Exhibits 38-41 to the immediate possession of Respondent's counsel.

ISSUED: Exhibit Release Form (2)

FILED: Child Support Worksheet, Child Support Order, Exhibit Worksheet

10:29 a.m. Matter Concludes.

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

/s/ JUDGE CHRISTOPHER WHITTEN

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JUDGE CHRISTOPHER WHITTEN  
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>.

Attachments:

DALE E BRASHEAR: Current Employer Information, Non IV-D Payment Instructions