

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

MELODY A. THOMAS-MORGAN, *Petitioner/Appellee*,

v.

GREGORY R. BODINE, *Respondent/Appellant*.

No. 1 CA-CV 21-0243 FC
FILED 2-10-2022

Appeal from the Superior Court in Yavapai County
No. P1300DO20060917
The Honorable Michael P. McGill, Judge

AFFIRMED;
SPECIAL ACTION JURISDICTION DENIED

COUNSEL

Gregory R. Bodine, Prescott
Respondent/Appellant

Prescott Law Group PLC, Prescott
By J. Andrew Jolley, Taylor R. Nelson
Counsel for Petitioner/Appellee

MEMORANDUM DECISION

Judge Brian Y. Furuya delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Michael J. Brown joined.

F U R U Y A, Judge:

¶1 Gregory Bodine (“Husband”) appeals the superior court’s order denying his post-judgment petition for relief and finding him in civil contempt, without allegedly complying with Arizona Rule of Family Law Procedure (“ARFLP”) 92. For the following reason, we affirm the court’s denial of Husband’s petition for relief and decline to accept special action jurisdiction concerning his contempt argument.

FACTS AND PROCEDURAL HISTORY

¶2 Husband and Melody Thomas-Morgan (“Wife”) were divorced by decree in October 2008 and share children together. As part of the decree, the superior court awarded Wife monthly spousal maintenance of \$2,400 for ten years after consideration of the factors enumerated in Arizona Revised Statutes (“A.R.S.”) § 25-319. As part of the division of property within the decree, the court further ordered Husband to transfer ownership of two term life insurance policies – AIG and ING – insuring Husband’s life to Wife. Husband was required to “maintain payment of all necessary premiums and all other associated costs in connection with said policies so long as duties of child support and spousal maintenance [were] owed to [Wife].”

¶3 In late 2011, Wife moved for contempt against Husband for failing to comply with the 2008 decree by allowing the AIG and ING policies to lapse. Following an evidentiary hearing on Wife’s motion, Husband transferred ownership of another term life insurance policy, his West Coast life insurance policy, to Wife “to replace the ones that had lapsed” and Husband was further required to maintain this policy until his child support and spousal maintenance obligations were fulfilled.

¶4 In 2017, Husband petitioned to modify spousal maintenance. After the court denied his request, Husband moved for a new trial and to alter/amend the court’s judgment denying his petition. Husband argued the court failed to consider his request that ownership of the West Coast 20-

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year, \$250,000 life insurance policy be returned to him given the parties' youngest son's emancipation. In a signed October 5, 2017 order, the court explained it did not rule on the West Coast policy issue because the policy was not the subject of Husband's petition to modify spousal maintenance. Nevertheless, in view of Husband's position within his petition that he was unable to make spousal support payments, the court found it was "appropriate to leave the life insurance policy in effect until [Husband's] obligation to [Wife] [wa]s fully satisfied." The court otherwise denied Husband's motion for new trial and to alter/amend the court's judgment denying his petition and Husband's subsequent motion for reconsideration.

¶5 At the end of 2020, Husband filed a petition under ARFLP 85—later amended—for relief from the court's October 5, 2017 order. Husband argued the annual premium for the West Coast life insurance policy had significantly increased such that he could not afford the increased annual payment and Wife refused to discuss an equitable arrangement to reduce coverage or otherwise restructure the obligation to moderate the increase to costs. As such, Husband sought relief from the court, wherein he proffered a number of alternatives, including procuring a smaller coverage policy, obtaining a new, but equivalent policy from a different insurer that would cost less to maintain, or reinstating the lapsed policy subject to a more affordable payment structure where he could pay monthly rather than annually.

¶6 Following a two-day evidentiary hearing on Husband's petition for relief in mid-March 2021, the court denied the petition and found Husband in contempt for allowing the West Coast life insurance policy to lapse.¹ Husband testified he had allowed the policy to lapse but it could be reinstated. The court required Husband to bring the policy current by March 29, 2021 and pay the policy in full by December 17, 2021 – and if it was not paid in full by such date and every year thereafter until resolved, he would be in violation of court order. Thereafter, Husband unsuccessfully moved for reconsideration, but the court extended the deadline to reinstate the West Coast policy to April 30, 2021. Husband timely appealed, and we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and -2101(A)(2).

¹ A judgment entered in April 2020 reflects Husband owed \$14,145 in arrearages, plus 10 percent interest per annum in spousal maintenance. At the March 2021 hearing, Husband testified he paid another \$1,000 to Wife – thus owing a remaining \$13,145 in arrearages, plus interest.

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DISCUSSION

¶7 We review a superior court’s ruling on a petition for relief from a family law judgment or order for an abuse of discretion. *See Clark v. Kreamer*, 243 Ariz. 272, 275, ¶ 10 (App. 2017). The court abuses its discretion when it commits an error of law or the record “is devoid of competent evidence to support the court’s decision.” *Woyton v. Ward*, 247 Ariz. 529, 531, ¶ 5 (App. 2019) (citations omitted). We review questions of law—including the interpretation of family court rules—de novo. *In re Amber S.*, 225 Ariz. 364, 367, ¶ 6 (App. 2010). We accept the court’s finding of fact absent clear error, ARFLP 82(a)(5), and thus view the facts in the light most favorable to sustaining the court’s rulings, *see Alvarado v. Thomson*, 240 Ariz. 12, 13, ¶ 1 n.1 (App. 2016).

¶8 Citing ARFLP 82(a)(1), Husband argues the court did not make findings of fact or conclusions of law “based upon the facts” to support denying relief and denial of his petition otherwise violates ARFLP 1(b). Husband, however, misapplies the nature of these rules to his arguments. ARFLP 82 requires the court to make separate findings of fact and conclusions of law to support its decision after the close of evidence, which can be “stated orally on the record after the close of the evidence” or appear in a filed “opinion, minute entry, or memorandum of decision.” ARFLP 82(a)(1). ARFLP 1(b) calls for the construction and application of the rules of family law procedure “in a manner that ensures a just, prompt, and inexpensive determination of every action and proceeding.” Neither of these rules support Husband’s argument, which essentially amounts to a request to reweigh the evidence on appeal, which we will not do, *see Lehn v. Al-Thanyyan*, 246 Ariz. 277, 284, ¶ 20 (App. 2019). Therefore, his criticism of the findings of fact and conclusions of law based upon ARFLP 1(b) and 82(a)(1) are unavailing.

¶9 In any event, following the close of evidence at the March 2021 hearing, the court initially denied outright Husband’s petition on the ground that he was simply required by court-order to maintain the West Coast life insurance policy until he fulfilled his spousal maintenance obligations, *see supra* ¶¶ 2-3, and he failed to do so. It appears the underlying rationale of the court was that Husband’s petition, seeking replacement of the West Coast policy for a different policy—could not, as a matter of law, be granted where the West Coast policy was tied to Wife’s settled and established property rights under the parties’ divorce decree. In the 2008 decree, the court ordered that Wife be transferred ownership of the AIG and ING policies—as her sole and separate property—and further that these policies be maintained by Husband until satisfaction of his child

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support and spousal maintenance obligations. Because Husband allowed these policies to lapse, the court in 2012 ordered that he transfer ownership of his West Coast policy to Wife and maintain such policy until his fulfillment of the same aforementioned terms.

¶10 Therefore, as a matter of law, replacement of the West Coast policy, which is Wife's separate property, for a policy with different terms is prohibited. See *In re Marriage of Gaddis*, 191 Ariz. 467, 469 (App. 1997) ("Provisions in a decree 'as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.'") (quoting A.R.S. § 25-327(A)); see also *LaPrade v. LaPrade*, 189 Ariz. 243, 246 (1997). Accordingly, the court did not abuse its discretion in denying Husband's petition for relief. See *Pettit v. Pettit*, 218 Ariz. 529, 531, ¶ 4 (App. 2008) (explaining we may affirm the superior court's ruling for any reason supported by the record) (citation omitted).

¶11 Husband also argues the court abused its discretion in finding him in contempt based on the court's and Wife's noncompliance with ARFLP 92. It is well established that civil contempt rulings are not appealable and may only be reviewed through special action. *BMO Harris Bank Nat'l Ass'n v. Bluff*, 229 Ariz. 511, 513, ¶ 5 (App. 2012); *Stoddard v. Donahoe*, 224 Ariz. 152, 154, ¶ 7 (App. 2010). We decline to accept special action jurisdiction as requested by Husband in his reply brief.

CONCLUSION

¶12 For the foregoing reasons, we affirm the court's denial of Husband's petition for relief and decline to accept special action jurisdiction related to Husband's contempt argument.

¶13 Because we do not find circumstances existing under A.R.S. § 25-324(B), we deny Wife's request for an award of her reasonable attorney's fees. However, as the prevailing party on appeal, we award Wife her costs upon compliance with ARCAP 21. We deny Husband's requests for an award of costs and sanctions against Wife.

