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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA11-214

Opinion Delivered October 12, 2011

ERIC FRENCH
APPELLANT

V.

BARBARA FRENCH
APPELLEE

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, FIFTEENTH DIVISION
[NO. DR-08-4312]

HONORABLE RICHARD MOORE, JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

The circuit court in this divorce case entered a post-decree order that (1) directed appellant Eric French to pay certain debts; (2) awarded appellee Barbara French a survivor-annuity option under Mr. French's federal pension; and (3) awarded Mrs. French $7090 in attorney fees. For reversal, Mr. French argues that the circuit court erred in all three rulings. We find no error and affirm.

Appellant and appellee were divorced by a decree entered April 15, 2010. Their property-settlement agreement, which was incorporated but not merged into the decree, divided their real and personal property and apportioned their personal and business debts. Two provisions of the agreement are pertinent to this appeal. The first awarded appellee one-half of appellant's Federal Employees Retirement System (FERS) account and required appellant's attorney to "be responsible for dividing this account" within thirty days. The

second required appellant to retire all debts associated with the parties' businesses, Hog Wild Café and Fred and Barbara French, Inc.

When appellant's attorney did not divide the FERS account within thirty days as agreed, appellee's attorney drafted a Court Order Acceptable for Processing (COAP) as required by the Office of Personnel Management (OPM) to allocate the FERS benefits. *See* 5 C.F.R. 838.01 & 838.103 (2011). The COAP, entered on May 20, 2010, not only granted appellee a portion of the basic FERS retirements benefits, it also allowed her to elect a former-spouse survivor annuity, which was available under FERS but was not mentioned in the divorce decree.

Months later, appellee informed the court that OPM required the survivor-annuity provision in the COAP to appear in the divorce decree, and she asked the court to amend the decree accordingly. She also asked the court to hold appellant in contempt for violating the property-settlement agreement in various respects, including not dividing the FERS benefits within thirty days, not paying the parties' business debts, not executing a quitclaim deed to the marital home, and not making certain payments or reimbursements in a timely fashion. Appellant filed a counterpetition for contempt, stating that appellee had likewise failed to obey the property-settlement agreement.

The parties' motions were heard on October 12, 2010. Appellant testified that he earned a yearly salary of $167,000 and received approximately $300 per month in FERS benefits. He admitted that he had not paid an agreed-upon amount of $22,000 to appellee within the time called for by the property-settlement agreement; that he had not quitclaimed

his interest in the marital home; and that he had not retired the parties' business debts, even though he had funds available. With regard to his counterpetition for contempt, he stated that appellee had not executed documents to transfer her interest in an Edward Jones account, as required by the property-settlement agreement.

Appellee testified that the parties' business debts consisted of at least two judgments totaling approximately $43,500. She further stated that she had incurred attorney fees of $1500 to prepare the COAP plus additional fees associated with filing the contempt citations, for a total of $5150. She also expected to owe additional fees incurred in the month before the hearing and during the hearing itself. She asked the court to award her those fees; to award her interest on appellant's delayed payments of $22,000; to require appellant to execute a quitclaim deed on the house; and to amend the original decree to include her survivor's annuity.

At the close of the hearing, the court granted appellee most of the relief she sought and threatened appellant with contempt unless he either retired the parties' business debts within thirty days or removed appellee's name from them. The court also agreed to add a survivor-annuity provision to the divorce decree. On the matter of attorney fees, the court stated:

> I do think that attorney's fees are to be paid to [appellee's] counsel. You can send your billing to [appellant's counsel], and if there is a problem you can let me know. But a lot of these issues I don't think we needed to be here on.

On November 10, 2010, the court entered an order setting forth the above rulings and awarding appellee $7090 in attorney fees. This appeal followed.

I. *Order to Pay Business Debts*

The circuit court ordered appellant to "retire the business debts per the property-settlement agreement within thirty days of the entry of this order or make necessary arrangements to have [appellee's] name removed from these obligations." Appellant argues that, because one of the debt obligations was a consent judgment entered by the Pulaski County Circuit Court's Twelfth Division, the court in this case, the Fifteenth Division, had no jurisdiction to order its payment.

At the outset, appellant's argument suffers from several procedural infirmities. The consent judgment to which he refers appears in his addendum but is not in the record. We do not consider documents in a party's addendum that are not part of the record. *Union Pac. R.R. v. Barber*, 356 Ark. 268, 149 S.W.3d 325 (2004); Ark. Sup. Ct. R. 4-2(a)(8) (2011). Appellant also offers no convincing argument or authority to support his claim that the Fifteenth Division lacked jurisdiction to order payment of the debts. We will not address an argument that is not properly developed on appeal and not supported by convincing argument or authority. *Scott v. Scott*, 86 Ark. App. 120, 161 S.W.3d 207 (2004). Further, appellant raises this argument for the first time on appeal. The question of whether one division of a circuit court has interfered with the authority of another division is not one of subject-matter jurisdiction that can be raised at any time. *See Foster v. Hill*, 372 Ark. 263, 275 S.W.3d 151 (2008); *Ferguson v. Ferguson*, 2009 Ark. App. 549, 334 S.W.3d 425.

In any event, we conclude that the actions of the circuit court in directing appellant to pay the business debts did not usurp the authority of the Twelfth Division. Appellant

agreed to retire the debts in a property-settlement agreement, which was incorporated into the circuit court's decree. The court simply enforced its own decree along with the performance of a written agreement entered into in contemplation of divorce, as it had the power to do. Ark. Code Ann. § 9-12-313 (Repl. 2009).

II. *Amendment of the Decree*

On November 10, 2010, the court added a provision to the April 15, 2010 divorce decree granting appellee the right to elect a survivor annuity under appellant's FERS pension. Appellant argues that the circuit court lacked jurisdiction to amend the decree more than ninety days after it was entered.

A court may modify a judgment to correct errors or mistakes or to prevent a miscarriage of justice within ninety days of the judgment having been filed. Ark. R. Civ. P. 60(a) (2011). We have held that modifications for the purpose of dividing property that was not apportioned in the original decree must ordinarily be made within this ninety-day time frame. *Linn v. Miller*, 99 Ark. App. 407, 261 S.W.3d 471 (2007); *Tyer v. Tyer*, 56 Ark. App. 1, 937 S.W.2d 667 (1997).[1]

In *Carver v. Carver*, however, we affirmed a post-decree order that divided retirement benefits more than ninety days after entry of the divorce decree. *Carver*, 93 Ark. App. 129, 217 S.W.3d 185 (2005). We relied on the fact that the Carvers had always intended to divide the retirement benefits and on the fact that the trial court, within ninety days of entering the

[1]As authority for this point, appellant cites an unpublished case from 2001. Unpublished decisions issued before July 1, 2009, may not be cited, quoted or referred to in arguments, briefs or opinions. Ark. Sup. Ct. R. 5-2(c) (2011).

original decree, entered an order specifically reserving jurisdiction over the retirement account. Similarly, in this case, the parties' property-settlement agreement expressly stated their intention to divide the FERS benefits, from which the survivor annuity originated. Moreover, the circuit court, less than ninety days after entering the original decree, entered the COAP, which set forth appellee's right to elect a survivor annuity and expressly reserved jurisdiction to modify or "deal with any . . . effects" of the order. Under these circumstances, we conclude that *Carver* controls and that the circuit court retained jurisdiction to address appellee's survivor annuity in the November 10, 2010 order.

III. *Attorney Fees*

A circuit court has the inherent power to award attorney fees in domestic-relations proceedings. *Gillison v. Gillison*, 2011 Ark. App. 244, 382 S.W.3d 795. The decision to award fees and the amount of fees are within the court's discretion. *Id.* In awarding fees, the court may use its own experience as a guide and can consider the various factors set forth in *Chrisco v. Sun Industries*, 304 Ark. 227, 800 S.W.2d 717 (1990). *Id.*[2] The court may also consider the disparity in the parties' incomes. *Stout v. Stout*, 2011 Ark. App. 201, 378 S.W.3d 844. A court need not conduct an exhaustive hearing on the amount of attorney fees because it has presided over the proceedings and gained familiarity with the case and the services rendered by the attorney. *Gillison*, *supra*. Further, we have not strictly required documentation of time and

[2]The *Chrisco* factors include, *inter alia*, the time spent on the case, the experience and ability of the attorney, the amount involved in the case, and the customary fees in the locality.

expense in a divorce case where the circuit court has had the opportunity to observe the parties, their level of cooperation, and their obedience to court orders. *Stout*, *supra*.

Appellant argues that the $7090 fee award to appellee was excessive because she expended only $1500 for her attorney's preparation of the COAP. Yet appellee testified that she incurred $5150 in fees through September 2010, and would incur still more relative to the contempt proceedings. Given the court's recognition that the contempt proceedings were primarily necessitated by appellant's needless refusals to comply with the property-settlement agreement, we see no abuse of discretion in the amount of the award.

Appellant also contends that the court had no authority to order him to pay attorney fees in the absence of a finding of contempt. On the contrary, a court may direct a party to pay attorney fees for failing to follow a court order, without finding that party in contempt. *Rogers v. Rogers*, 83 Ark. App. 206, 121 S.W.3d 510 (2003).

Finally, appellant argues that the fee award should have been reduced because appellee violated the terms of the divorce decree when she failed to remove her name from an Edward Jones account in a timely fashion. The circuit court ruled, however, that appellant did not present sufficient evidence at the contempt hearing to permit an offset of the attorney-fee award. Having reviewed the testimony on this point, we cannot say that the court abused its discretion in so ruling.

Affirmed.

PITTMAN and HART, JJ., agree.

Hensley Law Firm, P.A., by: *James E. Henley, Jr.*, for appellant.

Amy Boroughs, for appellee.