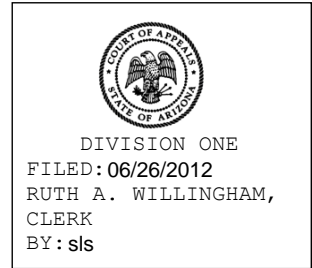


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:) 1 CA-CV 11-0114
)
NANCY E. FULLER,) DEPARTMENT E
)
Petitioner/Appellant,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
RICHARD RALPH FULLER,)
)
Respondent/Appellee.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FN2010-000062

The Honorable Peter C. Reinstein, Judge

AFFIRMED

Collins & Collins LLP Phoenix
by C. Robert Collins
Jonathan S. Collins
Attorneys for Petitioner/Appellant

R.J. Peters & Associates PC Phoenix
by Carrie P. Cravatta
Attorneys for Respondent/Appellee

P O R T L E Y, Judge

¶1 Nancy Fuller ("Wife") appeals the denial of her motion to set aside portions of the Consent Decree of Dissolution ("Decree"). For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Wife filed for divorce after approximately two and one-half years of marriage. Richard Fuller ("Husband") contested the March 2010 dissolution petition and the court ordered the couple to attend an Early Resolution Conference ("ERC"). They met with an ERC attorney case manager on July 9, 2010, to discuss their divorce issues and to possibly settle any property disputes.

¶3 They entered into a comprehensive written agreement that divided their community property and debts at the end of the meeting. Later that day, their agreement was accepted by the family court and incorporated into the signed and notarized Decree.

¶4 Less than two weeks later, Wife challenged the ERC agreement and alleged that it did not reflect their negotiated property division. She also alleged that she only saw the last page of the agreement before it was submitted to the court. She, however, withdrew her challenge shortly after Husband filed a response opposing the motion. Less than two months later, she filed another motion to set aside the Decree. After Husband responded, the motion was denied, and Wife appealed.

DISCUSSION

¶15 Wife argues that the court erred when it denied her motion to vacate the property and debt provisions of the Decree. She relies on Arizona Rule of Family Law Procedure 85(C)(1), which permits a court to

relieve a party . . . from a final judgment, order or proceeding for the following reasons:

. . .

c. fraud, misrepresentation, or other misconduct of an adverse party;

d. the judgment is void;

. . .

f. any other reason justifying relief from the operation of the judgment.

Specifically, she argues that the motion should have been granted because the court lacked subject matter jurisdiction to issue the property and debt orders, and the Decree was the byproduct of Husband's misconduct.¹

¹ Wife also argues that the court should have held a hearing to explore her allegations. A request for an evidentiary hearing, however, does not appear in her motion or elsewhere in the record. We generally will not consider an argument that is raised for the first time on appeal, and decline to do so here. *Payne v. Payne*, 12 Ariz. App. 434, 435-36, 471 P.2d 319, 320-21 (1970) (citations omitted) (As a general rule, a legal argument will not be addressed on appeal unless it was presented below "so as to give the trial court an opportunity to rule properly.").

¶16 We review the denial of relief from a final order for an abuse of discretion. See *Birt v. Birt*, 208 Ariz. 546, 549, ¶ 9, 96 P.3d 544, 547 (App. 2004) (citation omitted); see also Ariz. R. Fam. L.P. 1 cmt. ("Wherever the language in [the Arizona Rules of Family Law Procedure] is substantially the same as the language in other statewide rules, the case law interpreting that language will apply to these rules."); Ariz. R. Fam. L.P. 85 cmt. ("This rule is based on Rule 60, Arizona Rules of Civil Procedure."). We are not, however, bound by the court's "interpretation of statutes and rules [because such issues] are questions of law, which we review de novo." *In re Reymundo F.*, 217 Ariz. 588, 590, ¶ 5, 177 P.3d 330, 332 (App. 2008) (citations omitted).

I. Subject Matter Jurisdiction

¶17 Wife first argues that the judgment is void because the court lacked jurisdiction to assign her separate property to Husband and order her to pay two of his separate debts. Because a "court has only such jurisdiction as is granted by statute," *Weaver v. Weaver*, 131 Ariz. 586, 587, 643 P.2d 499, 500 (1982) (citations omitted), we independently review Wife's jurisdictional challenge. See *In re Reymundo F.*, 217 Ariz. at 590, ¶ 5, 177 P.3d at 332 (citations omitted).

¶18 The family court has broad discretion to divide the parties' community property and debt in a fair and equitable

manner. Ariz. Rev. Stat. ("A.R.S.") § 25-318 (West 2012);² e.g., *In re Marriage of Berger*, 140 Ariz. 156, 168, 680 P.2d 1217, 1229 (App. 1983) (citations omitted); *Nelson v. Nelson*, 114 Ariz. 369, 372, 560 P.2d 1276, 1279 (App. 1977) (citation omitted). The court, however, can only assign "each spouse his or her separate property under § 25-318(A) and impress[] a lien pursuant to § 25-318(C)." *Weaver*, 131 Ariz. at 587, 643 P.2d at 500.

¶19 Wife argues that the family court did not have jurisdiction to order her to pay Husband \$10,000 from the equity in the home that she had purchased before their marriage, which was awarded to her as her sole and separate property. She argues that the order directing her to pay two of Husband's separate debts is similarly void because the court exceeded its jurisdiction. We disagree.

¶10 A void judgment is one where the court "lacked jurisdiction, either of the subject matter or the parties. Erroneous judgments are those which have been issued by a court with jurisdiction but which was subject to reversal on timely direct appeal." *Cockerham v. Zikratch*, 127 Ariz. 230, 234, 619 P.2d 739, 743 (1980) (citations omitted). In other words, an erroneous judgment is not necessarily void. *Id.* at 235, 619

² We cite the current version of an applicable statute if no revisions material to this decision have occurred since the dissolution proceeding and order.

P.2d at 744; *Auman v. Auman*, 134 Ariz. 40, 42, 653 P.2d 688, 690 (1982).

¶11 Here, neither the Decree nor the contested provisions are void. The court had jurisdiction over the divorce and the parties. Consequently, the court had "the authority to determine all questions concerning the divorce, including property rights." *Auman*, 134 Ariz. at 42, 653 P.2d at 690 (citations omitted). If, however, the court erred by awarding separate property to the wrong spouse, an appeal was the proper remedy. *Perras v. Perras*, 151 Ariz. 201, 202, 726 P.2d 617, 618 (App. 1986). If the error is not appealed, and the requirements of Rule 85 are not satisfied, the decree cannot be attacked; it is res judicata and can be enforced in spite of the error. *Id.* (citations omitted).

¶12 Wife did not appeal the July 2010 Decree. As a result, the Decree and its terms became res judicata and the family court did not abuse its discretion when it denied Wife's motion to vacate portions of the Decree pursuant to Rule 85(C)(1)(d). See *Cockerham*, 127 Ariz. at 235, 619 P.2d at 744 ("While the defects to which defendants here refer may well make the default judgment erroneous, they fall short of undermining jurisdiction so as to render that judgment void and subject to vacation under 60(c)(4).").

II. Misconduct

¶13 Wife also argues that the challenged terms should have been set aside pursuant to Rule 85(C)(1)(c) due to Husband's misconduct. "The rule governing motions for relief from final judgments is primarily intended to allow relief from judgments that are unjust due to extraordinary circumstances that cannot be remedied by legal review." *De Gryse v. De Gryse*, 135 Ariz. 335, 336, 661 P.2d 185, 186 (1983) (citation omitted). We will affirm the order denying Wife's motion unless the court clearly abused its discretion. See *id.* at 338, 661 P.2d at 188 (citation omitted).

¶14 Wife alleges that Husband was aggressive and intimidating during their ten-year relationship – which included the two and one-half year marriage – and argues that, as a result, she was unable to engage in meaningful negotiations at the ERC. She further argues that a history of domestic abuse should qualify as grounds for relief under Rule 85(C)(1)(f). We need not address the issue because a party cannot invoke the Rule's protection based on information that could have been communicated to the court before the Decree was signed. See *Craig v. Superior Court in & for Pima Cnty. (Thomas S. Craig, Jr.)*, 141 Ariz. 387, 389, 687 P.2d 395, 397 (App. 1984) (citation omitted).

¶15 Wife also submits that the judicial process leading up to the Decree was flawed because she was never asked if domestic abuse was an issue. She contends that, pursuant to Maricopa County Superior Court Administrative Order Number 2005-045, the case manager was required "to seek to know about domestic violence and then to not proceed" with the joint conference session. We disagree.

¶16 The administrative order requires the case manager to "screen the case to determine if either party is a victim of domestic violence" and take protective measures only if there appears to be a domestic violence victim. Here, Wife did not raise any issue of intimidation or abuse before her second motion to set aside the Decree and, after reviewing the entire record on appeal, we cannot conclude that the case manager violated the administrative order.

¶17 Wife also argues that the ERC agreement was not binding because it was not subject to Rule of Family Law Procedure 69, or, alternatively, that it was not binding because it was not "on the record." Again, we disagree.

¶18 The administrative order plainly states that the Early Resolution Triage Program "shall be conducted in accordance with family law statutes." Moreover, Rule 69 provides that an agreement executed during an ERC is "valid and binding" on the

parties if it is in writing or placed on the record.³ Because the ERC agreement was in writing, it was valid and binding pursuant to Rule 69.⁴

¶19 If Wife was concerned about the agreement's terms or Husband's alleged influence on her decisions, she had to bring that information to the court's attention in some meaningful fashion before signing the consent Decree. Because there was a consent hearing and the parties were divorced pursuant to their agreement, we presume that Wife did not raise any claim of duress or domestic abuse. See *Fletcher v. Fletcher*, 137 Ariz. 497, 498, 671 P.2d 938, 939 (App. 1983) (citation omitted). As

³ Rule 69(A) provides, in pertinent part, that:

An Agreement between the parties shall be valid and binding if

1. the agreement is in writing, or
2. the terms of the agreement are set forth on the record before a judge, commissioner, judge pro tempore, court reporter, or other person authorized by local rule or Administrative Order to accept such agreements

⁴ Rule 69(B) provides, in pertinent part, that:

Any agreement entered into by the parties under this rule shall be presumed to be valid and binding, and it shall be the burden of the party challenging the validity of the agreement to prove any defect in the agreement, except that nothing herein shall preclude the court from exercising its independent discretion pursuant to A.R.S. § 25-317. . . .

a result, the court had no reason to suspect undue influence and inquire further before incorporating the agreement into the Decree. See *Sharp v. Sharp*, 179 Ariz. 205, 208-09, 877 P.2d 304, 307-08 (App. 1994) (citations omitted) (“[A] court may approve a valid separation and property settlement agreement and incorporate it into the dissolution decree if the agreement is free from fraud or undue influence and if it is fair and equitable.”).

¶20 Finally, Wife argues that Husband’s failure to disclose that the marital residence was her separate property and that certain credit card debt represented his separate obligations constituted misconduct that warranted Rule 85 relief. Wife, however, knew the true facts and was free to disclose them. Furthermore, although she claims that Husband did not disclose that she had purchased the house before the marriage, the court assigned the home to her as her sole and separate property, in accordance with the ERC agreement. And, the court apparently received some additional information about the couple’s debts because the court modified one of the ERC provisions that required Wife to pay half of a credit card debt. See *Stevenson v. Stevenson*, 132 Ariz. 44, 46, 643 P.2d 1014, 1016 (1982) (If the court is not required to make, and neither party requests, specific findings of fact, an appellate “court must assume that the trial court found every fact necessary to

support its judgment and must affirm if any reasonable construction of the evidence justifies the decision.”).

¶21 Wife’s failure to provide information or otherwise correct the record at the time the Decree was entered precludes her from now asserting that it should be set aside based on inaccuracies perpetuated by her silence. See *Craig*, 141 Ariz. at 389, 687 P.2d at 397 (“The princip[le] of res judicata prevents the real party in interest from obtaining a modification of the award based upon facts which could have been raised at the dissolution hearing.”). On this record, we cannot conclude that the court abused its discretion by denying her motion. See *De Gryse*, 135 Ariz. at 338, 661 P.2d at 188 (citations omitted) (in the interest of finality in family law matters, moving party must prove extraordinary circumstances to qualify for relief from property settlement).

III. Attorneys’ Fees on Appeal

¶22 Husband has requested fees and costs on appeal but has not cited any statutory authority to support his request. He argues only that Wife’s unreasonable positions and actions after the entry of the Decree caused him to incur unnecessary legal fees. We will not address her conduct after the entry of the Decree but before the appeal was filed because it was incumbent on Husband to ask for fees from the family court so that it

could determine, in the first instance, whether fees were warranted.

¶123 On appeal, we exercise our discretion and deny his request for fees. We grant his request for costs on appeal upon compliance with Arizona Rule of Civil Appellate Procedure 21.

CONCLUSION

¶124 Based on the foregoing, we affirm the denial of Wife's motion for relief from the Consent Decree.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

PHILIP HALL, Judge

/s/

DIANE M. JOHNSEN, Judge