

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



DIVISION ONE  
FILED: 11/06/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

In re the Matter of: ) No. 1 CA-CV 11-0479  
)  
MELISSA ELLEN CRAMER, ) DEPARTMENT T  
)  
Petitioner/Appellee, ) **MEMORANDUM DECISION**  
) (Not for Publication -  
v. ) Rule 28, Arizona Rules  
) of Civil Appellate  
JASON D. LUCOVICH, ) Procedure)  
)  
Respondent/Appellant. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. FC2009-052059

The Honorable Alfred M. Fenzel, Judge

**AFFIRMED**

Sacks Tierney P.A.  
By David L. Rose  
Attorneys for Petitioner/Appellee

Scottsdale

Jason D. Lucovich,  
Respondent/Appellant In *Propria Persona*

Scottsdale

**D O W N I E**, Judge

¶1 Jason Lucovich ("Father") appeals from an order of the family court modifying parenting time and child support. Finding no error, we affirm.

## FACTS AND PROCEDURAL HISTORY

¶12 Father and Melissa Cramer ("Mother") are the parents of E.C., who was born in January 2009. In July 2009, Father filed a Petition for Paternity, Child Custody, Parenting Time and Child Support. He requested sole custody and asked the court to add his name to E.C.'s birth certificate and change E.C.'s last name. Mother acknowledged Father's paternity and agreed his name should be on the birth certificate. She requested sole legal custody and asked that Father's parenting time initially be supervised because he had never met E.C. Mother also requested child support.

¶13 After an evidentiary hearing in October 2009, the court awarded joint legal custody to the parents, ordered Father to pay child support, and awarded Father parenting time on alternate weekends and mid-week visits on Mondays and Wednesdays from 4:00 to 7:30 p.m. The court denied Father's request to change E.C.'s last name.

¶14 In November 2010, Father filed a "MOTION PETITIONING TO MODIFY PARENTING TIME ORDER AND MOTION TO COMPELL [sic] COMPLIANCE WITH PARENTING TIME ORDERS AS WELL AS ALLOW MAKE UP TIME FOR NON-COMPLIANCE." He alleged a "substantial and continuing change of circumstances" warranting modifications to parenting time and child support. Father alleged he had "become a central and known part" of E.C.'s life and that a "deep

parent-child bond" had developed. He requested an order establishing paternity, expanding his parenting time, and awarding child support pursuant to the Child Support Guidelines ("Guidelines").

¶15 Mother responded that she was a "stay-at-home parent" and that expanding Father's parenting time would require E.C. to spend more time in day care. Mother, however, agreed child support should be modified, as she was no longer employed.

¶16 After an evidentiary hearing in May 2011, the court increased Father's parenting time on Mondays and Wednesdays by two hours each day and ordered Father to pay \$834.82 in child support. The court also declared Father's paternity and ordered E.C.'s birth certificate amended to include Father's name.<sup>1</sup>

¶17 Father timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(2).

#### DISCUSSION

¶18 Father does not clearly identify the issues for appellate review, and his opening brief fails to comply with the Arizona Rules of Civil Appellate Procedure ("ARCAP"). As we

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<sup>1</sup> Father's petition again asked the court to change E.C.'s surname. Mother objected. No formal ruling on this request appears in the record. "A motion that is not ruled on is deemed denied by operation of law." *State v. Hill*, 174 Ariz. 313, 323, 848 P.2d 1375, 1385 (1993). In 2009, the court denied Father's name-change request. Although the 2010 request was slightly different, Father presented no testimony or evidence to support it.

understand his arguments, Father contends the family court: (1) failed to make findings on the record; and (2) did not comply with the Guidelines in modifying child support.<sup>2</sup>

### **I. Parenting Time**

¶9 Father agreed that the existing custody order should remain in place and advised the court he was seeking to expand his parenting time. A parenting time order may be modified "whenever modification would serve the best interests of the child." A.R.S. § 25-411(J). "[J]oint custody does not necessarily mean equal parenting time." A.R.S. § 25-403.02(A)(5).

¶10 The requirement for findings of fact applies to contested *custody* cases. A.R.S. § 25-403(B) ("In a contested custody case, the court shall make specific findings on the record about all relevant factors and the reasons for which the decision is in the best interests of the child."). Father's modification petition was captioned: "MOTION PETITIONING TO MODIFY PARENTING TIME ORDER AND MOTION TO COMPELL [sic] COMPLIANCE WITH PARENTING TIME ORDERS AS WELL AS ALLOW MAKE UP

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<sup>2</sup> Father also alleges the court failed to make findings in connection with its 2009 custody order, and he generally challenges the proceedings culminating in that order. However, the time to appeal such matters expired long ago. See ARCAP 9(a) (notice of appeal must be filed within 30 days from entry of judgment).

TIME FOR NON-COMPLIANCE." In his prayer for relief, Father requested "an order expanding Father's parenting time."

¶11 At the outset of the evidentiary hearing, the family court announced that the proceeding related to a "petition to modify parenting time." The court stated:

This is a case that deals with what the parenting time should be.

I can't imagine that you need a busload of witnesses to tell me what the parenting time schedule should be. . . .

So the only issue today would be -- we've agreed to joint legal custody -- it's a question of what the parenting time schedule should be. And that's all we're going to discuss, besides incomes. All right?

Neither party objected to the court's recitation of the issues properly before it.

¶12 A request for increased parenting time does not trigger the statutory requirement for findings of fact. *Cf. Owen v. Blackhawk*, 206 Ariz. 418, 421, ¶ 11, 79 P.3d 667, 670 (App. 2003) (emphasis added) (order changing residential parent is "an order regarding physical custody *as opposed to an order regarding parenting time*"). Parenting time is merely "one aspect of custody." *Id.* The family court did not err by failing to make findings of fact on the record.

## II. Child Support

¶13 Father alleged Mother voluntarily quit her job to "frustrate" his time with E.C. He urged the court to attribute Mother's prior income to her when setting child support. Mother, on the other hand, testified that she left her job because E.C.'s day care provider closed. The court did not impute income to Mother.

¶14 A court may consider the reasons a parent is unemployed and attribute income if "earnings are reduced as a matter of choice and not for reasonable cause." Guidelines § (5)(E). However, if a voluntary reduction in employment income is "reasonable, the court shall balance that parent's decision and benefits therefrom against the impact the reduction in that parent's share of child support has on the children's best interest." *Id.*

¶15 During the modification hearing, the court explained that Father's child support obligation would be \$859.73 if Mother's former wages were imputed to her, but that his child support payment would *decrease* to \$834.82 if wages were not imputed. Father did not dispute the court's calculations. Father benefitted financially from the court's decision not to

impute income to Mother, and he therefore is not aggrieved by the decision.<sup>3</sup>

### III. Attorneys' Fees

¶16 Mother requests attorneys' fees incurred on appeal based on Father's superior income and his allegedly unreasonable positions. See A.R.S. § 25-324 ("[A]fter considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings," the court "may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding under this chapter . . .").

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<sup>3</sup> Father also complains, in cursory fashion, that the court used the wrong number of parenting time days, failed to address tax deductions and uncovered medical costs, and "placed an unfair burden of transportation" on him. Mother notes that Father did not raise these arguments at the trial level, and Father does not cite to the record to demonstrate otherwise. See ARCAP 13(a)(6), (b)(1) (argument must include citations to the record). Even if Father's motion for reconsideration was properly before the court (his improvidently filed notice of appeal to the Arizona Supreme Court was pending), a party generally does not preserve issues for appeal by raising them for the first time in a motion for reconsideration. *Evans Withycombe, Inc. v. W. Innovations, Inc.*, 215 Ariz. 237, 240, ¶ 15, 159 P.3d 547, 550 (App. 2006); see also *Cullum v. Cullum*, 215 Ariz. 352, 355 n.5, ¶ 14, 160 P.3d 231, 234 n.5 (App. 2007) (party generally cannot argue on appeal legal issues not timely raised below); *Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 343, 678 P.2d 525, 528 (App. 1984) (appellate court is not required to scour the record to find support for a party's claims). Moreover, Father has not cited any legal authority for his arguments. See ARCAP 13(a)(6), (b)(1); *Cullum*, 215 Ariz. at 355 n.5, ¶ 14, 160 P.3d at 234 (appellate court "will not consider argument posited without authority").

