DIVISION ONE
FILED: 10/30/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:	)	1 CA-CV 11-0741
	)	1 CA-CV 12-0415
ROSALYNDA ARBALLO,	)	(Consolidated)
	)	
Petitioner/Appellee,	)	DEPARTMENT B
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
SAMUEL ORONA-HARDEE,	)	Rule 28, Arizona Rules
	)	of Civil Appellate
Respondent/Appellant.	)	Procedure)
	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. FC2008-007471 and FC2008-008007 (Consolidated)

The Honorable Daniel J. Kiley, Judge

AFFIRMED IN PART, DISMISSED IN PART

Rosalynda Arballo — Phoenix
Petitioner/Appellee

Samuel Orona-Hardee — Kingman
Respondent/Appellant

O R O Z C O, Judge

¶1 Samuel Orona-Hardee (Father) appeals the family court's order clarifying a parenting time order and denying his request to modify child support, as well as his motion to reconsider sibling visitation. Father also appeals the court's denial of a "Motion to Modify Court Order Dated January 21, 2009." For the following reasons, we affirm in part and dismiss in part.

FACTS AND PROCEDURAL HISTORY

¶2 In an order dated January 21 2009, the family court awarded temporary sole legal custody of the parties' minor child to Rosalynda Arballo (Mother). Due to concerns about Father's history of domestic violence and his unwillingness to follow court orders, the court also ordered that Father would not be allowed any visitation, including supervised visitation, until further order of the court.

¶3 Following a trial on a petition to establish parenting time, in June 2009, the court awarded Mother sole legal custody of the child and ordered that Father have no parenting time until he participated in a psychological evaluation and random drug testing.[1]

[1] Father filed a notice of appeal from the January 2009 temporary orders but did not appeal the June 2009 order regarding parenting time. The appeal was subsequently dismissed

¶4 In May 2011, Father filed a petition for sibling visitation, requesting visitation between the child and her half-siblings while Father was incarcerated. The court denied the petition in an unsigned minute entry dated June 13, 2011. Father then filed a motion to reconsider. On July 11, 2011, Father filed a "Motion for Clarification of Judgement [sic] and Modification of Support," seeking to clarify whether the June 2009 parenting time order would allow Father to contact the child by phone or mail and asking the court to suspend his child support obligation indefinitely. In an unsigned minute entry dated August 26, 2011, the court clarified the order concerning Father's contact with the child and denied both Father's request to suspend his child support obligation and his motion to reconsider sibling visitation. Father filed a notice of appeal from this unsigned minute entry.

¶5 Meanwhile, on August 23, 2011, Father filed a Motion to Modify Court Order Dated January 21, 2009. Because the court interpreted Father's motion as a request to vacate, not modify, the order, the court treated the filing as a motion for reconsideration. The court noted that Father filed his motion "far too late" and, in an unsigned minute entry dated October

---

because Father never filed an opening brief. *See Arballo v. Orona-Hardee*, 1 CA-CV 09-0253.

17, 2011, denied the motion as untimely. Father also filed a notice of appeal from this unsigned minute entry.

¶6 In December 2011, this court reviewed its jurisdiction over the appeal from the minute entry dated August 26, 2011. We determined that the denial of the motion to reconsider sibling visitation was not appealable. However, we found that the ruling on the Motion for Clarification of Judgment and Modification of Support was substantively appealable, but the appeal was premature because the minute entry was not signed. Pursuant to *Eaton Fruit Co. v. Cal. Spray-Chemical Corp.*, 102 Ariz. 129, 130, 426 P.2d 397, 398 (1967), we revested jurisdiction in the family court for the purpose of permitting that court to consider an application by Father for a signed order corresponding to the August 26, 2011 minute entry. Accordingly, on February 22, 2012, the family court filed a signed order incorporating the language from the August 26, 2011 minute entry.

¶7 Upon Father's request, the family court also filed a signed order on April 26, 2012, which incorporated the language from the minute entry dated October 17, 2011.

¶8 On September 27, 2012, on the court's own motion, we consolidated the two appeals. We have jurisdiction over the Motion for Clarification of Judgment and Modification of Support

pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101.A.2 (Supp. 2011).

DISCUSSION[2]

¶9 Father contends that the family court erred in treating his Motion to Modify Court Order Dated January 21, 2009 as a motion for reconsideration and instead should have treated the motion as a petition to modify parenting time.

¶10 A petition to modify parenting time must set forth

> detailed facts supporting the requested modification or clarification, the specific parenting time or visitation plan sought, and a certification whether the underlying parenting time or visitation order or agreement contains a provision requiring the parties to pursue mediation or other alternative dispute resolution process prior to requesting the court to modify or clarify the order or agreement.

Ariz. R. Fam. L.P. 91.F.1.a.

¶11 Father's Motion to Modify Court Order Dated January 21, 2009 did not comply with Rule 91. In his motion, Father did not allege a change in circumstances warranting a change in

---

[2] Father did not raise any issues on appeal relating to the motion to reconsider sibling visitation or the Motion for Clarification of Judgment and Modification of Support. As a result, we do not address the rulings. *See* ARCAP 13(a)6 (Appellant's brief must set forth "[a]n argument which shall contain the contentions of the appellant with respect to the issues presented."); *Schabel v. Deer Valley Unified Sch. Dist. No. 97*, 186 Ariz. 161, 167, 920 P.2d 41, 47 (App. 1996) (refusing to consider an issue not raised and argued in the appellant's opening brief and affirming the trial court's dismissal of the claim).

parenting time. *See Pridgeon v. Superior Ct.*, 134 Ariz. 177, 179, 655 P.2d 1, 3 (1982) ("In considering a motion for change of custody, the court must initially determine whether a change of circumstances has occurred since the last custody order."). Nor did Father set forth a proposed parenting time plan or a certification regarding mediation. In fact, Father's motion asserts that the underlying order is not supported by sufficient evidence and requests that the family court "restore [his] parenting rights" or, alternatively, conduct a hearing to determine the best interests of the child.[3] We agree with the family court that Father's motion was a request to reconsider the underlying parenting time order from 2009 and was untimely.

¶12 The denial of a motion for reconsideration may be appealable in certain instances as a "special order made after final judgment," A.R.S. § 12-2101.A.2, but only if it raises

[3] Father cites A.R.S. § 25-408.A (Supp. 2011) and argues that the family court erred by denying his motion without first holding a hearing. Father's reliance on § 25-408.A is misplaced. That statute applies to the initial parenting time determination. In compliance with § 25-408.A, the family court held a hearing in June 2009 and considered the factors set forth in § 25-403 (Supp 2011) in determining the best interests of the parties' child. The court made detailed findings on the record and concluded that Father's "violent and antisocial behavior places any child at risk, even in a supervised visitation setting." The court, therefore, ordered Father have no visitation until he participated in a full-scale psychological evaluation and random drug testing. The court noted that Father may petition the court for parenting time after he fulfilled those two requirements. Nothing in the record indicates that Father has satisfied either requirement.

"different issues than those that would be raised by appealing the underlying judgment." *In re Marriage of Dorman*, 198 Ariz. 298, 300, ¶ 3, 9 P.3d 329, 331 (App. 2000). Here, Father did not raise any issues that were not before the family court when it entered the underlying judgment in June 2009; Father generally disagrees with the family court's findings and its order that he have no parenting time. Thus, the family court's denial of Father's Motion to Modify Court Order Dated January 21, 2009, is not appealable.[4]

CONCLUSION

¶13 For the foregoing reasons, we dismiss the appeal of the family court's denial of the Motion to Modify Court Order Dated January 21, 2009, and we affirm the court's rulings on the motion to reconsider sibling visitation and Motion for Clarification of Judgment and Modification of Support.

/S/

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

MAURICE PORTLEY, Presiding Judge

/S/

RANDALL M. HOWE, Judge

[4] The issues Father raises about the underlying parenting time order should have been raised on direct appeal of the June 2009 order. However, the time to appeal that order has long since passed; it is now a final judgment and the issues before the court at the time the order was entered cannot be re-litigated. *Stapley v. Stapley*, 15 Ariz. App. 64, 69 n.3, 485 P.2d 1181, 1186 n.3 (1971). Therefore, Father is barred from arguing that the family court erred when it denied Father any parenting time in the June 2009 order.