DIVISION ONE
FILED: 10/22/2013
RUTH A. WILLINGHAM, CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:	)	No. 1 CA-CV 12-0555
	)	
JARED ROBERT GEORGE GROW,	)	DEPARTMENT D
	)	
Petitioner/Appellee,	)	**MEMORANDUM DECISION**
	)	
v.	)	(Not for Publication –
	)	Rule 28, Arizona Rules of
JENNIFER MARIE GROW,	)	Civil Appellate Procedure)
	)	
Respondent/Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause Nos. FC2009-071164 and FC2009-071402 (consolidated)

The Honorable Harriett Chavez, Judge

AFFIRMED IN PART, REVERSED IN PART AND REMANDED

Jared Robert George Grow Petitioner/Appellee *in Propria Persona*	Avondale
Jennifer Marie Grow Respondent/Appellant *in Propria Persona*	Surprise

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K E S S L E R, Judge

¶1 Jennifer Marie Grow ("Mother") appeals from the family court's orders revising terms of the 2010 consent decree that dissolved her marriage to Jared Robert George Grow ("Father"). For the reasons that follow, we affirm the family court's

finding on the effective date of the consent decree, and reverse and remand the court's order regarding the claiming of dependents for tax purposes.

FACTUAL AND PROCEDURAL HISTORY

¶2 The parties were married in 2006 and had two children, Son and Daughter ("Children"). In 2009, Mother and Father separately petitioned the family court for dissolution of their marriage. The court consolidated the cases and ordered Father to pay $1,500 per month for spousal maintenance and $421.09 per month for child support ("Temporary Orders").

¶3 In mid-March 2010, the parties executed and filed a settlement agreement ("Settlement Agreement") in which they agreed to share joint legal custody of the Children, Father assented to pay Mother $375 in monthly child support through December 2010, and they agreed neither party was entitled to spousal maintenance. At the end of the month, Father paid Mother an amount for maintenance and support he calculated by retroactively applying the Settlement Agreement's terms to the "second half of the month." Mother objected to the payment, reminding Father that they had agreed the Settlement Agreement's terms would not be effective until the consent decree was "signed into orders."

¶4 The parties presented the family court with a consent decree ("Decree") that reiterated Father's support and

maintenance obligations as set forth in the Settlement Agreement. The Decree also contained a detailed equal parenting time schedule and provided that Mother and Father shall each claim one child per year as a dependent for tax purposes. The court approved and signed the Decree on Friday July 30, 2010 and filed it Tuesday August 3, 2010. Issues subsequently arose between the parties regarding adherence to the parenting time schedule and Father's compliance with his support and maintenance obligations.

¶5 In 2012, Father filed a petition for order to show cause and motion for contempt arguing Mother violated the Decree by interfering with his parenting time schedule and claiming both children as dependents for the 2010 tax year. In response, Mother alleged Father failed to fulfill his spousal maintenance and child support obligations under the Temporary Orders because, as of mid-March 2010, he ceased paying any maintenance and began paying only $375 per month in child support. According to Mother, Father's obligations under the Temporary Orders regarding maintenance ($1,500/month) and support ($421.09/month) were enforceable until September 1, 2010, the date Mother posited as the Decree's effective date. The family court held an evidentiary hearing at which Mother admitted she improperly claimed both Children as dependents in 2010, and she

agreed to file an amended return deleting the tax credit for Son.

¶6 The court issued a signed minute entry modifying certain terms of the Decree. Specifically, the court found Father in arrears on his spousal maintenance obligations under the Temporary Orders for the period of March 1, 2010 through July 31, 2010, the day after the court signed the Decree.[1] The court also issued an order "that Father shall be entitled to claim both children" for the 2011 tax year.

¶7 Mother filed a motion to correct an error in the minute entry pursuant to Arizona Rule of Family Law Procedure ("ARFLP") 85. Mother requested that the family court delete its order entitling Father to claim both children for tax purposes in 2011, and amend the order to be consistent with the Decree's provision that each parent may claim one child. Mother argued that permitting Father to claim both children in 2011 was erroneous because she agreed to amend her 2010 tax return by deleting her claim regarding Son.

¶8 Mother also filed a motion to amend the judgment pursuant to ARFLP 82(B). In this motion, Mother requested that the court enlarge the time period regarding Father's arrearages to include the month of August 2010. Mother argued that pursuant to Arizona Revised Statutes ("A.R.S.") section 25-

[1] The court found Father overpaid child support in 2010.

327(A) (2007), because the Decree was filed on August 3, 2010, the parties were subject to the Temporary Orders' provisions through August 31, 2010. The court denied Mother's motions without comment in an unsigned minute entry in June 2012.

¶9 Mother filed a notice of appeal from the court's modification of the Decree and the denial of her motion to amend the judgment. Because the June 2012 minute entry was unsigned and therefore not final and appealable, this Court suspended the appeal and revested jurisdiction in the family court pursuant to *Eaton Fruit Co. v. California Spray-Chemical Corp.*, 102 Ariz. 129, 130, 426 P.2d 397, 398 (1967), so Mother could apply for a signed order. The family court issued a signed order consistent with the June 2012 minute entry. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(2), (4) (Supp. 2012).

DISCUSSION

I. Decree's Effective Date

¶10 On appeal, Mother argues the family court erred by finding Father's maintenance and support obligations under the Temporary Orders were effective only through July 2010 and not

August 2010.[2] She contends the court's ruling contravened ARFLP 81(A) and A.R.S. § 25-327(A) because the court found the Decree to be effective August 1, 2010—the first day of the month following July 30, 2010, the date the court signed the Decree—instead of September 1, 2010, the first day of the month following the Decree's filing on August 3, 2010. We, however, confine our analysis to the statutory basis asserted because the record reflects Mother did not argue below that ARFLP 81(A)[3] required the court to find September 1, 2010 as the Decree's effective date. Mother has therefore waived this argument on appeal. *See Reeck v. Mendoza*, 232 Ariz. 299, 303, ¶ 14, 304 P.3d 1122, 1126 (App. 2013) ("[W]e will not consider issues not presented to the family court."); *Odom v. Farmers Ins. Co. of*

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[2] Father has not filed an answering brief responding to Mother's arguments. When there are debatable issues and an appellee fails to file an answering brief, we may consider such failure a confession of reversible error. *See* ARCAP 15(c); *United Bonding Ins. Co. v. Thomas J. Grosso Inv., Inc.*, 4 Ariz. App. 285, 285, 419 P.2d 546, 546 (1966); *Hoffman v. Hoffman*, 4 Ariz. App. 83, 85, 417 P.2d 717, 719 (1966). In our discretion, however, we decline to do so. *Nydam v. Crawford*, 181 Ariz. 101, 101, 887 P.2d 631, 631 (App. 1994) (stating the confession of reversible error doctrine is discretionary).

[3] ARFLP 81(A) provides in relevant part:

> The filing with the clerk of the judgment constitutes entry of such judgment, and the judgment is not effective before such entry, except that in such circumstances and on such notice as justice may require, the court may direct the entry of a judgment *nunc pro tunc*, and the reasons for such direction shall be entered of record.

Ariz., 216 Ariz. 530, 535, ¶ 18, 169 P.3d 120, 125 (App. 2007) ("Generally, arguments raised for the first time on appeal are untimely and deemed waived.").

¶11 Because this issue requires statutory interpretation, we apply a *de novo* standard of review. *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, 178, ¶ 5, 181 P.3d 219, 225 (App. 2008). When interpreting a statute, our goal is to give effect to the legislature's intent. *State v. Peek*, 219 Ariz. 182, 184, ¶ 11, 195 P.3d 641, 643 (2008). We first look to the statute's plain language as the best indicator of that intent. *See Fragoso v. Fell*, 210 Ariz. 427, 430, ¶ 7, 111 P.3d 1027, 1030 (App. 2005). When statutory language is clear and unambiguous, we give effect to it and do not use other methods of statutory interpretation. *Id.*

¶12 Section 25-327(A) provides, in relevant part:

> Except as otherwise provided in § 25-317, subsections F and G [not applicable here], the provisions of any decree respecting maintenance or support may be modified or terminated only on a showing of changed circumstances that are substantial and continuing . . . . *Modifications and terminations are effective on the first day of the month following notice of the petition for modification or termination* unless the court, for good cause shown, orders the change to become effective at a different date *but not earlier than the date of filing the petition* for modification or termination.

(Emphases added.)

¶13 Contrary to Mother's contention that A.R.S. § 25-327(A) required the family court to find September 1, 2010 as the Decree's effective date because the court filed the Decree on August 3, 2010, the plain language of the statute clearly demonstrates it is not applicable here. Rather, A.R.S. § 25-327(A) applies to situations where an existing decree is subject to modification or termination based on changed circumstances. In this case, Father's maintenance and support obligations in the Decree did not modify or terminate his obligations as set forth in a previous decree. Instead, the Decree in this case is the initial consent decree that legally dissolved the parties' marriage, terminated the Temporary Orders, and, as the parties intended, incorporated the Settlement Agreement's terms. *See* A.R.S. § 25-315(F); ARFLP 47(M). Consequently, the court correctly did not apply A.R.S. § 25-327(A) to determine the Decree's effective date.

II. Orders Regarding Claiming Children for Tax Purposes

¶14 Mother contends the court erred by ordering her to amend her 2010 tax returns to properly reflect only a deduction of Daughter while also ordering Father is entitled to claim both Children for 2011. According to Mother, "[t]he trial court is fully justified in ordering either the correction or compensation but not both."

¶15 During the evidentiary hearing, Mother admitted that she improperly claimed both Children as dependents in 2010. The family court first suggested that Father claim both Children in 2011 to even things out and help Mother avoid paying any penalties for refiling. However, after being informed that both parents actually claimed Son in 2010, and one party would be required to refile, the family court ordered Mother to modify her return to correct the error and delete the tax credit for Son.

¶16 The minute entry from the proceeding included both options. It ordered that Father would be entitled to claim both Children for tax purposes in 2011, and noted that Mother agreed to file an amended tax return for 2010. Allowing such an outcome would produce an inequitable result that conflicts with the Decree's clear provision on child support: "Father shall claim [Son] as a dependant every year and Mother shall claim [Daughter] every year for tax purposes." If Mother amended her 2010 tax return, Father should not be allowed to claim both Children in 2011. Conversely, if Mother did not amend her 2010 tax return, Father should be entitled to claim both Children for tax purposes in 2011.[4] We therefore remand to the family court

[4] We note that if Father is entitled to claim both Children in 2011, he should also be required to amend his 2010 return to delete the tax credit for Son.

to revisit the order and take appropriate action to comport with the Decree.

CONCLUSION

¶17 For the foregoing reasons, we affirm the family court's finding on the effective date of the consent decree, but reverse the court's order regarding the claiming of Children as dependents for tax purposes and remand for further proceedings consistent with this decision.

/s/
DONN KESSLER, Judge

CONCURRING:

/s/
ANDREW W. GOULD, Presiding Judge

/s/
MICHAEL J. BROWN, Judge