DIVISION ONE
FILED: 12/14/2010
RUTH WILLINGHAM, ACTING CLERK
BY: GH

**IN THE COURT OF APPEALS**
**STATE OF ARIZONA**
**DIVISION ONE**

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| STATE OF ARIZONA ex rel. ARIZONA DEPARTMENT OF ECONOMIC SECURITY (LISA M. SCHWOEGLER), | ) | 1 CA-CV 09-0584 |
| | ) | DEPARTMENT D |
| Petitioners/Appellees, | ) | **MEMORANDUM DECISION** |
| | ) | (Not for Publication |
| v. | ) | - Rule 28, Arizona |
| | ) | Rules of Civil |
| LENNY VALENTINE, | ) | Appellate Procedure) |
| | ) | |
| Respondent/Appellant. | ) | |

Appeal from the Superior Court in Maricopa County

Cause No. DR 1994-006692
LC 2008-000351-001 DT
(Consolidated)

The Honorable R. Jeffrey Woodburn, Commissioner

**AFFIRMED**

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Terry Goddard, Attorney General — Phoenix
By Carol A. Salvati, Assistant Attorney General
Attorneys for Petitioners/Appellees

Lenny Valentine, Respondent/Appellant — Phoenix
*In Propria Persona*

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**N O R R I S**, Judge

**¶1** Lenny Valentine timely appeals from the superior court's order suspending accrual of interest, after May 1, 2009,

on his child support arrearage judgment. Because the superior court properly applied Arizona Revised Statutes ("A.R.S.") sections 25-327 (2007) and 25-503 (Supp. 2009), we affirm the order.

## FACTS AND PROCEDURAL BACKGROUND

**¶2** On June 21, 1999, the superior court ordered Valentine to pay $3806 in past child support plus interest at 10% per annum. Aside from one payment of $370 in 2001, Valentine has never made any principal payments. The superior court ordered that as of July 31, 2008, Valentine owed $3436 in principal, $3283.81 in interest, and $247.50 in child support clearinghouse fees.

**¶3** On March 17, 2009, Valentine filed a "Petition for Modifaction [sic] and/or Termination of Child Support" pursuant to A.R.S. § 25-503(E). The superior court scheduled a modification hearing for July 29, 2009. On April 22, 2009, Valentine filed a "Petition to Suspend the Imposition of Intrest [sic]" pursuant to A.R.S. § 25-327(D) and on April 27, 2009, a "Motion for Order to Transport," seeking to be taken from jail to the modification hearing.

**¶4** In response to the "Motion for Order to Transport," the superior court ordered the Maricopa County Sheriff's Office to either take Valentine to the hearing or call the superior

court at the appointed time to allow Valentine to appear at the hearing by telephone. Following the modification hearing, at which Valentine appeared by telephone, the superior court, pursuant to A.R.S. § 25-327(D), suspended the accrual of any interest on the support judgment after May 1, 2009. In its minute entry order, the court said the statute does not permit suspension of "interest that has already accrued by operation of law on past support judgments."

**DISCUSSION**

*I. Suspension of Interest*

**¶5** Valentine first argues the superior court should have used the version of A.R.S. § 25-327 in effect in 2000 and thus granted his motion to suspend all interest that had accrued on the child support judgment since its entry or at least since 2000.[1] Because this is a question of statutory interpretation,

[1]In his "Petition to Suspend the Imposition of Intrest [sic]," Valentine requested the court use the current version of A.R.S. § 25-327(D) but apply it "retroactivly [sic] to all intrest [sic] accrued to this day because of Respondents [sic] incarceration and stop all future intrest [sic] accruements to such time this Respondents [sic] criminal case has been resolved." Though somewhat similar, Valentine's argument on appeal is the court should have applied the 2000 version of the statute and suspended all interest that accrued since entry of the judgment or at least since 2000. The State argues Valentine waived this argument because he raised a different argument in the superior court. Although Valentine's argument on appeal may have been waived, we exercise our discretion to consider the merits. *See Larsen v. Nissan Motor Corp. in U.S.A.*, 194 Ariz. 142, 147, ¶ 12, 978 P.2d 119, 124 (App. 1998) ("Although

we review de novo. *Dressler v. Morrison*, 212 Ariz. 279, 281, ¶ 11, 130 P.3d 978, 980 (2006).

**¶6** Originally promulgated in 1973, A.R.S. § 25-327 governs the modification and termination of spousal maintenance and child support. In 2000, the legislature amended the statute and added subsection (D), which allows a court, "pursuant to a petition filed pursuant to this section," to suspend interest that accrues while the petitioner is incarcerated.[2] In 2001, the legislature amended subsection (D)[3] and inserted the word "future" so courts could not suspend interest that had accrued prior to the petition.[4]

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appellate courts generally do not consider issues not raised in the trial court, that rule is procedural rather than jurisdictional.").

[2]After the 2000 amendment, which became effective July 18, 2000, A.R.S. § 25-327(D) read as follows: "Notwithstanding any other law, pursuant to a petition filed pursuant to this section the court may suspend the imposition of interest that accrues on a judgment for support issued pursuant to this article for the period of time that the petitioner is incarcerated . . . ." 2000 Ariz. Sess. Laws, ch. 312, § 8 (2d Reg. Sess.).

[3]After the 2001 amendment, which became effective August 9, 2001, A.R.S. § 25-327(D) read as follows: "Notwithstanding any other law, pursuant to a petition filed pursuant to this section the court may suspend the imposition of future interest that accrues on a judgment for support issued pursuant to this article for the period of time that the petitioner is incarcerated . . . ." 2001 Ariz. Sess. Laws, ch. 81, § 2 (1st Reg. Sess.).

[4]A House of Representatives Fact Sheet stated the amendment would "[r]estrict[] the court from suspending

**¶7** Although subsection (D) did not exist in 1999 when the court ordered Valentine to pay child support, he argues the superior court "could and should have applied the 2000 version . . . and not the ARS 25-327(D) version in 2009, and should of [sic] taken into account [Valentine] was incarcerated at the time." We disagree; the statute requires a petition to be filed first in order to suspend interest. A.R.S. § 25-327(D). Valentine did not file a petition to suspend interest until 2009, which means the statute in effect in 2009 -- when he filed his petition -- controls.[5] Nothing in the plain language of the current statute indicates interest already accrued should be suspended or the statute has retroactive effect. *See* A.R.S. § 1-244 (2002) ("No statute is retroactive unless expressly

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**previously** accrued interest on support arrearages when a petitioner is incarcerated . . . . Current law allows the court to suspend **all** interest from accruing for the period of time that the petitioner is incarcerated . . . . SB 1057 solely limits the imposition of **future** interest if the petitioner is incarcerated . . . ." *Ariz. House of Representatives Fact Sheet for S.B. 1057*, 45th Leg., 1st Reg. Sess. (Apr. 16, 2001).

[5]In his "Reply to States [sic] Response to Petition for Modifaction [sic] and/or Termination of Child Support" filed April 21, 2009, Valentine stated he "is not an attorney and does not have all the resources to know that ARS 25-327 [allows] the court upon petition to suspend the imposition of intrest [sic]." However, Valentine could have known of this statute earlier –- and thus filed his petition earlier -- if he had read the court's minute entry filed July 15, 2008, which stated "[a]lthough a court has discretion to suspend future interest on a judgment while an obligor is incarcerated if a petition has been filed pursuant to A.R.S. § 25-327, that has not been done in this case."

declared therein.”). The statute authorized the superior court to grant Valentine’s motion to suspend future interest as of the first day of the month following the filing of the petition, A.R.S. § 25-327(A), but prohibited any retroactive suspension of interest.

*II. Motion to Transport*

**¶8** Valentine next argues the superior court violated his due process rights because it did not order the sheriff’s office to transport him to the modification hearing, instead providing a choice between calling or transporting. He argues there were no security concerns or extra transportation costs to prevent him from attending the hearing, he was unable to present documents to the court because he was not physically present, the telephone connection was poor, and the telephone the sheriff’s office provided for him was in the noisy visitation area. We review this question of law de novo. *Hall v. Lalli*, 194 Ariz. 54, 57, ¶ 5, 977 P.2d 776, 779 (1999).

**¶9** Valentine knows the law regarding a prisoner’s right to be present at a child support hearing because he was the appellant in a case directly on point: *State, Department of Economic Security v. Valentine*, 190 Ariz. 107, 945 P.2d 828 (App. 1997). In that case, the Department of Corrections was not required to transport Valentine to the hearing in person; it

was required, however, to provide him access to a telephone at the time of the hearing so he could appear by telephone. *Valentine*, 190 Ariz. at 110, 945 P.2d at 831.

**¶10** Valentine's complaints do not amount to due process violations. The superior court's order complied with *Valentine*, and the sheriff's office provided Valentine with a telephone. This court will not substitute its own judgment about court security or transportation costs for that of the sheriff's office absent compelling reasons, and Valentine fails to provide such reasons in his briefing. Valentine's opening brief fails to specify exhibits or documents he planned to present to the court, and nothing in the record explains what reversible error occurred as a result of Valentine's asserted difficulty hearing the proceedings. Valentine alleges in his briefing that he objected during the hearing to the poor telephone connection, but nothing in the court's minute entry mentions these objections[6] and the record contains no support for his assertions. Without such proof, we hold no due process violation occurred because Valentine appeared by telephone rather than in person.

[6]The minute entry simply states Valentine was sworn and "Valentine present[ed] statements to the Court."

*III. Failure to Rule on Motion*

**¶11** Valentine finally argues the superior court should have ruled on his "Petition for Modifaction [sic] and/or Termination of Child Support" instead of simply ruling on his "Petition to Suspend the Imposition of Intrest [sic]." We review this question of law de novo. *Lalli*, 194 Ariz. at 57, ¶ 5, 977 P.2d at 779.

**¶12** Courts may not modify or terminate past arrearage judgments under A.R.S. § 25-503(E).[7] Because Valentine's arrearage had been a judgment since 1999, the superior court was not authorized by § 25-503 to modify or terminate it.[8] Thus, the court committed no error in ruling only on Valentine's motion to suspend the imposition of interest. *See State v. Hill*, 174 Ariz. 313, 323, 848 P.2d 1375, 1385 (1993) ("A motion that is not ruled on is deemed denied by operation of law.").

[7]The first sentence of A.R.S. § 25-503(E) reads: "Any order for child support may be modified or terminated on a showing of changed circumstance that is substantial and continuing, except as to any amount that may have accrued as an arrearage before the date of notice of the motion or order to show cause to modify or terminate."

[8]Even a final judgment can be reopened if a petitioner can meet the requirements of Arizona Rule of Civil Procedure 60(c). Here, Valentine did not seek relief under Rule 60(c).

## CONCLUSION

**¶13** For the foregoing reasons, we affirm the order of the superior court.

/s/
_____
PATRICIA K. NORRIS, Judge

CONCURRING:

/s/
_____
LAWRENCE F. WINTHROP, Presiding Judge

/s/
_____
PATRICK IRVINE, Judge