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: 06/14/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:	1 CA-CV 11-0091
KIMBERLY LEWIS, Petitioner/Appellee,	DEPARTMENT A
v.	**MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)
WILLIAM ANDREW REHKOW, Respondent/Appellant.	

Appeal from the Superior Court in Maricopa County

Cause No. FC2002-004726

The Honorable Pamela S. Gates, Judge

AFFIRMED

Kimberly Lewis, *In Propria Persona* Petitioner/Appellee — Phoenix

William Andrew Rehkow, *In Propria Persona* Respondent/Appellant — Scottsdale

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N O R R I S, Judge

¶1 William Andrew Rehkow ("Father") timely appeals the family court's order which, first, found him in contempt for failing to pay Kimberly Lewis ("Mother") attorneys' fees and costs after he agreed to do so, second, denied his petition for

"make-up" parenting time as a sanction for Mother's alleged contempt of parenting-time orders, and third, denied his request that it hold Mother in contempt for "manufacturing" their child's school records. For the following reasons, we affirm the family court's order.

FACTS AND PROCEDURAL BACKGROUND

¶2 As this court noted in a previous decision, "[s]ince 2002, [Father] and [Mother] have been engaged in contentious litigation over their divorce and custody of their minor child." *Lewis v. Rehkow*, 1 CA-CV 09-0569, 2011 WL 1536416, at * 1, ¶ 2 (Ariz. App. April 21, 2011) (mem. decision). As relevant here, between 2003 and 2007, the family court and this court ordered Father to pay Mother $32,617.87 in attorneys' fees and costs resulting from the parties' numerous disputes (the "underlying judgments").

¶3 Pursuant to Arizona Rule of Family Law Procedure 69(A), on May 22, 2007, the family court entered on the record an agreement the parties reached that required Father to pay Mother the underlying judgments in $750-per-month payments (the "2007 Rule 69 agreement"). Pursuant to the parties' agreement, Father started making monthly payments to Mother and did so for ten months, *see infra* ¶ 14.

¶4 At the beginning of 2008, however, Mother began refusing to accept Father's monthly checks because they were endorsed to her personally. Mother insisted Father endorse them to her counsel. As Mother testified at the evidentiary hearing, she learned Father had been going through her personal materials, including bank ledgers, and became "scared to death" he would "copy [her] signature and forge things."[1]

¶5 On February 21 2008, for reasons discussed below, *see infra* ¶ 26, the family court entered another judgment ordering Father to pay Mother $49,392 in attorneys' fees and costs (the "February 2008 judgment").

¶6 Then, in July 2008, Mother garnished $1,872.63 from Father's bank account as payment towards the underlying judgments and the February 2008 judgment. According to Father's former counsel's testimony,[2] he agreed to resume making monthly payments shortly thereafter and to write his checks to Mother's counsel. Father, however, did not make any further payments.

¶7 In July 2009, Mother moved to enforce the 2007 Rule 69 agreement. Father did not respond to her motion, and the court

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[1]Mother's former counsel, who no longer represented her by the time of the evidentiary hearing, also testified she read emails from Father "bragging about copying [Mother's] signature."

[2]Father's counsel no longer represented him by the time of the evidentiary hearing.

granted the motion on July 21, 2009, ordering Father to "re-commence the monthly payments of $750, pursuant to his Rule 69 Agreement" and make his payments "payable directly to" Mother's counsel (the "July 2009 enforcement order"). Father challenged this order, as discussed below, but still did not make any further payments.

¶8 Finally, in November 2009, Mother asked the family court to hold Father in contempt for failing to make the payments required by the 2007 Rule 69 agreement and the July 2009 enforcement order. Father then asked the court to find Mother in contempt for "interfering" with his parenting time on Thanksgiving 2009 and to order her to allow him "make-up" parenting time.

¶9 Before the court held its evidentiary hearing on these requests, the parties filed further pleadings. Each alleged the other had violated the court's orders regarding their child's school records.

¶10 After briefing and an evidentiary hearing, on August 24, 2010, the court found Mother's concerns about the check endorsements were "reasonable," but Father had nevertheless "attempted to satisfy his payments," and did not find either party in contempt of the 2007 Rule 69 agreement for their actions before July 2008 (the "August 2010 ruling"). It

found, however, Father in contempt of the 2007 Rule 69 agreement for failing to make payments after he agreed through counsel to do so in July 2008. The court further "affirm[ed]" the February 2008 judgment, but did not find Father in contempt "for actions or inactions related to" that judgment.

DISCUSSION

¶11 For clarity and brevity, we reorganize and rephrase Father's arguments on appeal.[3]

I. Jurisdiction

¶12 As an initial matter, we note Father has appealed the court's ruling on the parties' various requests for contempt findings and sanctions. Although "[t]his court lacks jurisdiction over an appeal from a civil contempt adjudication . . . [i]n the exercise of our discretion . . . we elect to treat [his] appeal . . . as a petition for special action and accept special action jurisdiction." *State ex rel. Dep't of Econ. Sec. v. Burton*, 205 Ariz. 27, 30, ¶ 18, 66 P.3d 70, 73 (App. 2003) (citations omitted).

[3]Father asserts on appeal "Mother and her attorney have lied to law enforcement in order to influence this custody case. They have also repeatedly lied to several trial judges and Mother's attorney has clearly committed fraud upon the court." These claims and Father's efforts to obtain a change of custody were addressed in this court's memorandum decision issued April 21, 2011. *Lewis*, 1 CA-CV 09-0569, 2011 WL 1536416. These allegations and claims were not involved in the ruling Father now challenges (the August 2010 ruling), and are not properly before us. We express no opinion on those issues.

¶13 Father argues the family court did not have jurisdiction to find him in contempt of the 2007 Rule 69 agreement because he had appealed the July 2009 enforcement order, which directed him to perform his obligations under the 2007 Rule 69 agreement. We disagree. Although Father had appealed the July 2009 enforcement order and that appeal was pending (although subsequently dismissed[4]) when the family court entered its August 2010 ruling, it did not stay its July 2009 enforcement order and it retained jurisdiction to enforce the 2007 Rule 69 agreement. *See Carp v. Superior Court*, 84 Ariz. 161, 164, 325 P.2d 413, 416 (1958) ("[W]here the proceedings are not stayed the court may enforce a judgment theretofore entered.").

II. The 2007 Rule 69 Agreement

¶14 As explained, the family court found Father was obligated to pay Mother pursuant to the 2007 Rule 69 agreement. The family court also found that after Father had paid her for ten months, she stopped accepting his checks and garnished his bank account. At that point, as Father's former counsel testified, the parties agreed Father would resume paying. On appeal, Father challenges the court's findings regarding both the 2007 Rule 69 agreement and the parties' subsequent

[4]This court dismissed the appeal in December 2010, because Father did not pay the filing fee.

clarification he would resume paying and write his checks to Mother's counsel.

¶15 First, Father seems to argue the 2007 Rule 69 agreement was invalid because it did not contain a "contingent provision." We disagree. The family court "set forth on the record before a judge" the terms of the agreement as required by Rule 69(A)(2), and the record reflects the parties entered the agreement voluntarily. Indeed, Father argued to the family court that he and Mother made the agreement on the record "in the spirit of cooperation." Further, Father made payments for at least ten months pursuant to the agreement. On this record, we reject Father's argument the 2007 Rule 69 agreement was invalid.

¶16 Father next seems to argue Mother "waived her right to enforce" the 2007 Rule 69 agreement by waiting until July 2009 to ask the court to order him to resume making payments. Father did not raise this argument in the family court and has waived it. *Odom v. Farmers Ins. Co. of Ariz.*, 216 Ariz. 530, 535, ¶ 18, 169 P.3d 120, 125 (App. 2007) (citation omitted) ("[G]enerally, arguments raised for the first time on appeal are untimely and deemed waived."). Even if not waived, Mother has consistently asserted her right to payment and has not relinquished any rights related to the 2007 Rule 69 agreement.

¶17 Father next argues the court "abused its discretion" in finding he remained obligated to pay because Mother "breached" the 2007 Rule 69 agreement by garnishing his bank account.[5] Although the court did not explicitly find Mother breached the agreement, it did find she "prematurely" garnished the $1,872.63. It also found, however, that any "arguably contemptuous conduct" in doing so was "*de minimis* when weighed against Father's various obligations to pay," and she would have nevertheless been entitled to pursue garnishment after he continued to refuse to pay after agreeing through counsel to do so in July 2008. On this record, the family court did not abuse its discretion in making these findings. *See Federoff v. Pioneer Title & Trust Co. of Ariz.*, 166 Ariz. 383, 388, 803 P.2d 104, 109 (1990) (citation omitted) ("[W]e will sustain [factual] findings unless they are clearly erroneous or unsupported by any credible evidence.").

¶18 Father next challenges the court's finding he agreed through counsel in July 2008 to resume paying under the 2007 Rule 69 agreement, arguing "there was no record of the parties agreeing that all payments would be sent directly" to Mother's former counsel and the "court did not confirm the agreement['s]

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[5]Under the 2007 Rule 69 agreement, Mother was entitled to "execute on the various judgments" if he did not pay within a "7-day grace period" after the monthly payments were due.

terms on the record pursuant to Rule 69." We disagree. Father's former counsel testified he believed the check endorsement issue "was a matter that could easily be addressed" and he resolved it "by agreeing in writing that checks made payable to [Mother's counsel] would be accepted and applied to the [underlying judgments]." He further testified, "I consulted [Father] with it. I told [him] about it . . . . [and] believe[d he] agreed to it. [He was] not very happy about it, is my recollection." Mother's former counsel also confirmed the agreement in writing. Thus, the court did not abuse its discretion in finding Father had agreed through counsel in 2008 to resume making payments.

¶19 Father next argues the court abused its discretion because it did not "make a finding that the agreement [made through his counsel in 2008 to resume making payments] was fair as required by" Arizona Revised Statutes ("A.R.S.") section 25-317(B) (2007). Father raised this issue for the first time in his "motion to reconsider," and thus waived it. *See Ramsey v. Yavapai Family Advocacy Ctr.*, 225 Ariz. 132, 137, ¶ 18, 235 P.3d 285, 290 (App. 2010) ("Generally, we do not consider arguments raised for the first time in a motion for reconsideration."). Even if not waived, A.R.S. § 25-317(B) governs "written separation agreement[s]" and has no application to Father's

agreement through counsel he would write his checks to Mother's counsel.

¶20 In sum, the court did not abuse its discretion in finding Father was obligated to pay Mother under the 2007 Rule 69 agreement and agreed through counsel in 2008 to resume paying by writing checks to her counsel.

III. Contempt Findings

A. Father's Contempt of the 2007 Rule 69 Agreement

¶21 Father next argues the court should not have found him in contempt of the 2007 Rule 69 agreement because its finding "Mother had reasonable concerns regarding the potential for Father to use her signature for an improper purpose" was "extremely illogical and not supported by any testimony of Mother." We disagree. Mother testified he had gone through her trash and collected her personal materials, and her former counsel testified he had bragged about using her signature.[6] The record amply supported the court's findings Mother's concerns were reasonable. *See Federoff*, 166 Ariz. at 388, 803 P.2d at

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[6]To the extent Father argues it was "highly inappropriate for the [family] court to believe Mother," we "defer to the [family] court's determination of witnesses' credibility." *Gutierrez v. Gutierrez*, 193 Ariz. 343, 347, ¶ 13, 972 P.2d 676, 680 (App. 1998) (citation omitted).

109 (appellate court will sustain findings unless "unsupported by any credible evidence").

B. Parenting Time

¶22 Father also challenges the court's findings regarding his allegations Mother interfered with his Thanksgiving parenting time in 2009. The court found, "in the past, Father failed to notify Mother in a reasonable fashion to inform her that he was not exercising his Thanksgiving parenting time, . . . [and] the child would wait on Thanksgiving for Father to appear for his parenting time." The court also found "Mother's trip [over Thanksgiving 2009] did not 'preclude Father's full parenting time,'" because he never confirmed he intended to use the time and "Mother credibly testified had Father notified her [he wanted parenting time] . . . she would not have taken the trip with the minor child."

¶23 Father argues these findings were not supported by the evidence, and he was not required to confirm his visits in advance. We disagree. The court's findings were abundantly supported by both Mother's testimony and her former counsel's testimony at trial, including statements that Father had "never" used his Thanksgiving time and could have used it by responding to Mother after she repeatedly asked whether he wished to do so.

C. School Records

¶24 Father next argues the court "abused its discretion by failing to hear testimony of Mother's attorney" regarding "doctoring the child's school records." We disagree; the parties had fully briefed the dispute, and nothing would have been served by holding an evidentiary hearing.

¶25 Father alleged Mother redacted their child's school records before giving him copies, in contempt of prior court orders. Mother responded, arguing her former counsel had redacted the records, and also alleged Father contacted the child's school in contempt of prior court orders. The fact her counsel redacted or, as Father argued, "doctored" the records was plainly admitted in both parties' filings. The court later ruled "the matter [was] fully briefed" and there was "no good cause to proceed." It then found "neither party acted reasonably" and denied their requests for contempt findings. After reviewing the record, we hold the court did not abuse its discretion in making these findings and conclusions after considering the parties' briefing and without hearing testimony from Mother's former counsel on this issue. *See Andrews v. Blake*, 205 Ariz. 236, 252, 69 P.3d 7, 23 (2003) ("trial court may deem an evidentiary hearing necessary or helpful. We leave that option to the trial court's sound discretion.").

IV. The February 2008 Judgment

¶26 Father next argues the family court should not have affirmed the February 2008 judgment, *see supra* ¶ 5, because, among other matters, it was "unconstitutional because it restricted 'free speech'" and was "void . . . due to fraud upon the court" by Mother's former counsel. As background, on November 8, 2007, the family court found Father in contempt of a prior ruling (entered on December 18, 2006), which essentially directed the parties "to ensure that there was no dissemination of information related to this case in any fashion to any third party." In the November 8, 2007 ruling, the court sanctioned Father by ordering him to pay Mother's attorneys' fees and costs. Then, on February 21, 2008, the court entered its judgment awarding Mother these fees and costs, which totaled $49,392. Mother appealed the November 8, 2007 ruling for reasons not relevant here, and Father cross-appealed, challenging the November ruling and the resulting February 2008 judgment. This court, however, dismissed Father's cross appeal because he failed to pay the filing fee, and we affirmed the family court's November 8, 2007 ruling, rejecting Mother's challenges. *See Lewis v. Rehkow*, 1 CA-CV 08-0401, 2009 WL 387751 (Ariz. App. Feb. 12, 2009) (mem. decision). Although Father argues the family court should not have affirmed the

February 2008 judgment because it was, among other things, "unconstitutional," that judgment merely awarded attorneys' fees. His arguments are actually directed to the November 2007 ruling.

¶27 Although the family court "affirm[ed]" the February 2008 judgment in its August 2010 ruling, the parties never contested the November 2007 ruling or the February 2008 judgment in their petitions giving rise to this appeal. Thus, the February 2008 judgment did not need to be affirmed. Furthermore, because this court affirmed the November 2007 ruling (which imposed the fees assessed in the February 2008 judgment), it is too late for Father to attack either ruling on appeal.

V. Due Process

¶28 Father next argues the family court "violated due process" because it "prejudged the case" and denied his motion to enlarge the hearing time. We disagree. The court heard testimony for two hours, admitted 17 exhibits, reviewed the parties' filings, and even noted it had "gone through [the] extremely voluminous file and pulled out every single order" and would "review any and all relevant orders along with the pleadings" before ruling. Nothing in the record indicates the court "prejudged" Father's case, and it did not abuse its

discretion in limiting the hearing to two hours. *See* Ariz. R. Fam. L.P. 22(1) (court may "impose reasonable time limits on all proceedings or portions thereof and limit the time to the scheduled time"); *Gamboa v. Metzler*, 223 Ariz. 399, 402, ¶ 13, 224 P.3d 215, 218 (App. 2010) (citation omitted) (court "has broad discretion over the management of a trial").

¶29 Finally, Father argues the family court improperly prevented him from testifying at the evidentiary hearing. Again, we disagree. Both parties were permitted equal time to call witnesses. There is no evidence the court "refus[ed]" to allow Father to testify; it allowed him to present the witnesses of his choice and he elected to use his time questioning his former counsel and Mother. The record amply supports the court's finding "Father had a full and fair opportunity to present evidence."

CONCLUSION

¶30 For the foregoing reasons, we affirm the court's August 2010 ruling finding Father in contempt of the 2007 Rule 69 agreement and denying his request it hold Mother in contempt. We award Mother her costs on appeal subject to her compliance with Arizona Rule of Civil Appellate Procedure 21(c).

/s/
PATRICIA K. NORRIS, Judge

CONCURRING:

/s/
ANN A. SCOTT TIMMER, Presiding Judge

/s/
DONN KESSLER, Judge