

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

LORI M. CECIL, *Petitioner/Appellee*,

v.

RICARDO RAMIREZ, *Respondent/Appellant*.

No. 1 CA-CV 16-0649 FC
FILED 4-24-2018

Appeal from the Superior Court in Maricopa County
No. FC2008-006414
The Honorable Frank W. Moskowitz, Judge

AFFIRMED

COUNSEL

Walston Law Group, Mesa
By Caitlin L. Andrade, J. Robert Walston, Jennifer L. Walston
Counsel for Petitioner/Appellee

Ricardo Ramirez, Florence
Respondent/Appellant

MEMORANDUM DECISION

Chief Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Jennifer M. Perkins joined.

CECIL v. RAMIREZ
Decision of the Court

T H U M M A, Chief Judge:

¶1 Ricardo Ramirez filed appeals from multiple post-dissolution orders. This court lacks jurisdiction to consider some of the orders he challenges. For those this court has jurisdiction to consider, because Ramirez has shown no error, the orders are affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 Lori Cecil filed for divorce from Ramirez in 2008 after discovering that Ramirez was sexually abusing one of their minor children.¹ In a 2010 default order, the superior court divided the couple's marital assets, including funds in an annuity. In addressing parenting time, the 2010 order awarded Cecil sole care, custody and control of the couple's children, and added that telephone contact by Ramirez with the minor children "will be dictated by the conditions of [his] incarceration and/or the criminal judge's orders."

¶3 Several years later, while he in prison, Ramirez petitioned to enforce the 2010 order's parenting time provisions and to hold Cecil in contempt. Ramirez argued Cecil was required but failed to "apply for visits/calls" with the Arizona Department of Corrections (ADC), so that Ramirez could have contact with the minor children. The court denied the petition, noting ADC policy (not Cecil) "is dictating the conditions of [Ramirez'] incarceration with regard to" his telephone contact with the minor children. After considering the reasonableness of the parties' positions and their financial resources, the court granted Cecil's request for attorneys' fees and costs totaling \$23,283.15. *See* Ariz. Rev. Stat. (A.R.S.) § 25-324 (2018).²

¶4 Ramirez moved for clarification asking, as relevant here, that the 2010 order be clarified to specify "who is the sole and separate owner of [the annuity] and its gains." An August 2015 signed final judgment clarified that Cecil owed Ramirez \$55,115.17 (representing the balance of the annuity and an equalization payment of \$34,616.94) and that Cecil "shall retain any gains in the account." Ramirez then made repeated filings

¹ In April 2011, after a jury returned guilty verdicts on 10 charges, Ramirez was sentenced to consecutive prison terms the longest of which is life in prison with the possibility of parole after 35 years.

² Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

CECIL v. RAMIREZ
Decision of the Court

seeking to hold Cecil in contempt to enforce the judgment for the equalization payment. The court denied the petitions, noting contempt proceedings are not the proper mechanism to enforce a money judgment.

¶5 In October 2016, Ramirez filed a notice of appeal seeking to challenge various orders issued in 2015 and 2016. This court has jurisdiction over this matter pursuant to the Arizona Constitution, Article 6, Section 9, and A.R.S. §§ 12-2101(A)(1) and -120.21(A)(1).

DISCUSSION

¶6 Ramirez argues the superior court erred in (1) ruling on his motion to clarify regarding the annuity; (2) lowering the equalization payment owed to him; (3) denying his petition to enforce parenting time and to hold Cecil in contempt; (4) awarding Cecil attorneys' fees and costs; (5) refusing "to consider or investigate" his "claim of extortion and perjury allegations against" Cecil and (6) not granting his requests to find Cecil in contempt regarding the equalization payment.

I. This Court Lacks Appellate Jurisdiction Over Several Of Ramirez' Arguments.

¶7 Because Ramirez did not timely appeal from the August 2015 signed final judgment (addressing his motion to clarify and the equalization payment), this court lacks jurisdiction to address Ramirez' first two arguments. Ramirez filed his notice of appeal in October 2016, long after the 30-day time limit to appeal had passed. *See* Ariz. R. Civ. App. P. 9(a). Moreover, Ramirez's post-August 2015 filings did not extend the time for filing a notice of appeal, meaning this court lacks jurisdiction to consider the August 2015 final judgment. *See In re Marriage of Thorn*, 235 Ariz. 216, 219 ¶ 10 (App. 2014).

¶8 This court also lacks jurisdiction over Ramirez' claims that the superior court improperly failed to hold Cecil in contempt. Contempt rulings may only be challenged through special action proceedings. *See Danielson v. Evans*, 201 Ariz. 401, 411 ¶ 35 (App. 2001).

¶9 As a result, the issues Ramirez raises that are within this court's appellate jurisdiction are his challenges to the denial of his petition to enforce parenting time, the award of attorneys' fees and costs to Cecil and his arguments regarding his "claim of extortion and perjury allegations against" Cecil.

II. Ramirez Has Shown No Error In The Denial Of His Petition To Enforce Parenting Time.

¶10 Ramirez argues the superior court erred by denying his petition to enforce parenting time, an issue this court reviews for an abuse of discretion. *Nold v. Nold*, 232 Ariz. 270, 273 ¶11 (App. 2013). Ramirez asserts Cecil violated the 2010 order by not putting the children on the ADC visitation list, a prerequisite for Ramirez being allowed to call the children from prison. As relevant here, the 2010 order states that such access “will be dictated by the conditions of [his] incarceration.” The record before the superior court demonstrates that, pursuant to written policies, ADC has discretion to permit visitation, including by telephone. But if a visitor is a minor, “the decision of the parent or legal guardian shall always be the determining factor.” Thus, if Cecil did not place the minor children on a visitation list, that decision is consistent with ADC policy and, as a result, the 2010 order. Moreover, Ramirez did not show that the children were “evaluated by a mental health expert . . . [who] determined that the children would suffer no emotional harm by visiting with” him, or that his “parole officer has deemed it appropriate” for him “to visit with the children,” both of which were required by the 2010 order before parenting time could occur. For these reasons, Ramirez has not shown the superior court erred in denying his petition to enforce parenting time.

III. Ramirez Has Shown No Error In How The Superior Court Addressed His Allegations Of Extortion And Perjury.

¶11 Ramirez argues the superior court erred by failing to investigate his allegations that Cecil committed perjury and extortion, based on claimed inconsistent affidavits of financial information she provided. Those affidavits, however, are from different time periods, meaning differences would be expected, and nothing else in the record substantiates his claim. Nor has Ramirez shown that Cecil committed extortion by limiting his relatives’ visits with the children or by urging him to give up his criminal appeal.

¶12 Similarly, Ramirez has not shown the superior court was required to investigate and pursue a perjury or extortion claim. Pressing such a claim is an executive, prosecutorial function, not a judicial function. *See* Ariz. Const. Art. III. Although superior court judges are charged with presiding over disputes (including criminal cases), they do not conduct criminal investigations or file criminal charges. *See generally* Ariz. Code of Jud. Conduct. Ramirez has provided no authority that would compel a different conclusion.

CECIL v. RAMIREZ
Decision of the Court

IV. Ramirez Has Shown No Error In The Superior Court Awarding Cecil Attorneys' Fees And Costs.

¶13 Ramirez argues that the superior court erred by awarding Cecil her attorneys' fees and costs, an issue this court reviews for an abuse of discretion. *Murray v. Murray*, 239 Ariz. 174, 179 ¶ 20 (App. 2016). As applicable here, the court may order payment of reasonable attorneys' fees and costs after "considering the financial resources of both parties and the reasonableness of the positions" taken throughout the litigation. A.R.S. § 25-324(A). In awarding Cecil fees and costs, the court found Ramirez took unreasonable positions, and considered the parties' financial resources, in particular the funds awarded to Ramirez as part of the division of marital property. In awarding Cecil \$23,283.15 in fees and costs, the court offset that amount against the judgment Ramirez had against Cecil for \$34,616.94. Although Ramirez claims on appeal that he "was not attempting to harass or waste the court's time," that is not the applicable standard. On this record, Ramirez has not shown the court abused its discretion in awarding Cecil attorneys' fees and costs.

CONCLUSION

¶14 This court lacks jurisdiction to consider some of the arguments Ramirez presses on appeal. For those issues this court has jurisdiction to consider, because Ramirez has shown no error, the superior court's orders are affirmed. Cecil's claim for an award of reasonable attorneys' fees and costs on appeal pursuant to A.R.S. § 25-324 is granted, contingent upon her compliance with Ariz. R. Civ. App. P. 21.



AMY M. WOOD • Clerk of the Court
FILED: AA