IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

ADRIANA VALLE-RODRIGUEZ, *Petitioner/Appellee*,

v.

GABRIEL PABLO RODRIGUEZ, *Respondent/Appellant*.

No. 1 CA-CV 18-0711 FC
FILED 10-31-2019

Appeal from the Superior Court in Maricopa County
No. FN2015-001372
The Honorable Scott Minder, Judge

VACATED AND REMANDED

COUNSEL

Law Office of Jose De La Luz Martinez Esq., Phoenix
By Jose De La Luz Martinez
Counsel for Petitioner/Appellee

Gabriel P. Rodriguez, Phoenix
Respondent/Appellant

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Michael J. Brown and Chief Judge Peter B. Swann joined.

C A T T A N I, Judge:

¶1 Gabriel Rodriguez ("Husband") appeals from the superior court's denial of his motion to set aside the default decree dissolving his marriage to Adriana Valle-Rodriguez ("Wife"). For reasons that follow, we vacate that denial and remand for the superior court to consider the merits of the motion to set aside.

FACTS AND PROCEDURAL BACKGROUND

¶2 Husband and Wife married in September 1987. On June 25, 2015, Wife obtained an order of protection against Husband that prohibited Husband from contacting Wife or visiting the marital home. Wife filed a petition for dissolution of marriage five days later, and Husband was personally served with the order of protection, a petition for dissolution, and a summons at his place of employment on August 8. Because Husband did not file a response to the petition, Wife filed an application for default and mailed it to Husband's last known home address—the marital home that the order of protection prohibited him from accessing.

¶3 Rather than proceeding to default, Wife filed an amended petition for dissolution in October 2015, and the case was dismissed and then reinstated due to an unrelated procedural issue. On March 19, 2016, Husband was personally served with the now-amended petition and summons at his place of employment. He failed to file a response, and Wife again filed an application for default and mailed it to Husband's last known home address—the marital home from which Husband remained barred.

¶4 The default became effective after Husband did not respond to the petition within the 10-day grace period, *see* Ariz. R. Fam. Law P. ("Rule") 44(A)(3)–(4),[1] and the court entered a final default decree in April

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[1] The Arizona Supreme Court significantly revised the Arizona Rules of Family Law Procedure, effective January 1, 2019. *See* Ariz. R. Fam. Law

2016. Among other provisions, the default decree awarded Wife the marital home, assigned to Husband substantial tax debt, and awarded Wife spousal maintenance of $5,000 per month for 80 months.

¶5 A few weeks later, Husband filed a request for relief, stating that the spousal maintenance award exceeded his monthly income. In June 2016, he filed an amended motion for relief from judgment under Rule 85(C), arguing that his failure to respond to the dissolution petition (and the resulting entry of the default decree) was attributable to mistake, inadvertence, and excusable neglect. After oral argument, the superior court denied relief. Husband initiated an appeal from that ruling, but the appeal was deemed abandoned after Husband failed to pay a filing fee.

¶6 In July 2018 (after other post-judgment proceedings not relevant here), Husband filed a motion to set aside the default judgment, arguing that his due process rights had been violated and the judgment was void because Wife mailed the application for default to the marital home, which Wife knew he could not access because of the order of protection. Wife opposed, arguing that this issue was precluded by res judicata because the same issues had been raised unsuccessfully in Husband's 2016 motion for relief from judgment. The superior court denied Husband's motion to set aside, finding that "this precise argument on these precise facts was already briefed, argued, and ruled upon by [the previous judge] in this matter," and that the issue could not be relitigated.

¶7 Husband timely appealed, and we have jurisdiction under A.R.S. § 12-2101(A)(2).

DISCUSSION

¶8 Husband challenges the denial of his motion to set aside, arguing that his due process/void judgment argument was neither raised nor resolved in the 2016 proceedings. Wife counters that Husband's argument was fully litigated and resolved against him in 2016, and she asserts that the issue is therefore barred by res judicata. We review issues of law, such as questions of due process and the applicability of doctrines of preclusion, de novo. *See Carlson v. Ariz. State Personnel Bd.*, 214 Ariz. 426, 430, ¶ 13 (App. 2007); *Better Homes Const., Inc. v. Goldwater*, 203 Ariz. 295, 298, ¶ 10 (App. 2002).

P., Prefatory Cmt. to the 2019 Amendments. Because the changes are significant, we cite to the version of the Rules in place at the time of the superior court proceedings.

¶9 Wife characterizes this case as a matter of claim preclusion. But claim preclusion (and issue preclusion) apply only to preclusion in *subsequent lawsuits*. *See Kadish v. Ariz. State Land Dep't*, 177 Ariz. 322, 327 (App. 1993); *see also Chaney Bldg. Co. v. City of Tucson*, 148 Ariz. 571, 573 (1986). Although these post-dissolution proceedings arose after entry of the default decree, they remain part of the same underlying lawsuit. For this reason (among others), neither claim preclusion nor issue preclusion apply.

¶10 Law of the case doctrine may, in certain circumstances, effectively give preclusive effect to prior rulings within the same case. *See Dancing Sunshines Lounge v. Indus. Comm'n*, 149 Ariz. 480, 482–83 (1986); *Kadish*, 177 Ariz. at 327. But law of the case only pertains, if at all, to questions that were in fact decided in the prior ruling. *See Kadish*, 177 Ariz. at 327–28; *Powell-Cerkoney v. TCR-Montana Ranch Joint Venture, II*, 176 Ariz. 275, 279 (App. 1993); *see also Dancing Sunshines Lounge*, 149 Ariz. at 482–83. Here, Husband never before raised and the superior court never resolved the issue presented in Husband's motion to set aside the default judgment.

¶11 Husband's motion to set aside presented a single basis for relief: Wife deprived Husband of notice by mailing the application for default to the marital residence—a place Wife knew Husband could not access—despite knowing Husband's whereabouts—his place of employment, where he was personally served twice—rendering the resulting default judgment void. *See Ruiz v. Lopez*, 225 Ariz. 217, 221–23, ¶¶ 15, 21 (App. 2010); *see also* Rule 44(A)(1), (3)–(4), (C), 85(C)(1)(d). Husband's earlier motion for relief from judgment, in contrast, was premised on *his own* mistake in failing to file a responsive pleading, which he argued was attributable to excusable neglect. Although the 2016 motion relied on some of the same *facts* (i.e., Husband never received the application for default because Wife sent it somewhere she knew he could not access), it used those facts in the context of arguing an entirely distinct issue: that his neglect was excusable in part because, had he received the application for default, he would have learned that he needed to file a response and would in fact have done so. The legal issues presented in the two motions were fundamentally different: excusable neglect versus deprivation of notice yielding a void judgment.

¶12 Husband's motion to set aside the default judgment presented a new issue that had not been resolved, and because it implicated a void judgment, it could not be waived by failure to raise it previously. *See Duckstein v. Wolf*, 230 Ariz. 227, 233, ¶ 18 (App. 2012) (stating that the court has no discretion but to vacate a void judgment); *see also Martin v. Martin*, 182 Ariz. 11, 14 (App. 1994) ("[T]he court must vacate a void judgment or

order 'even if the party seeking relief delayed unreasonably.'"). Accordingly, the superior court erred by denying Husband's motion to set aside the default judgment without addressing the merits of the motion.

CONCLUSION

¶13 We vacate the denial of Husband's motion to set aside and remand for the superior court to consider that motion on the merits. Having considered the relevant factors under A.R.S. § 25-324, we deny Wife's request for an award of attorney's fees on appeal.

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