

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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*In re the Marriage of:*

GAYLA HALL, *Petitioner/Appellant,*

*v.*

BRADLEY W. HALL, *Respondent/Appellee.*

No. 1 CA-CV 19-0200 FC  
FILED 3-3-2020

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Appeal from the Superior Court in Maricopa County  
No. FC2015-092530  
The Honorable Joan M. Sinclair, Judge

**AFFIRMED**

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COUNSEL

Adam C. Rieth, PLLC, Mesa  
By Adam C. Rieth  
*Counsel for Petitioner/Appellant*

Cawood & McKindles, PC, Mesa  
By Harry E. Cawood

Jaburg & Wilk, PC, Phoenix  
By Kathi M. Sandweiss, Roger L. Cohen  
*Co-Counsel for Respondent/Appellee*

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**MEMORANDUM DECISION**

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Paul J. McMurdie and Judge Jennifer B. Campbell joined.

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**C A T T A N I**, Judge:

¶1 Gayla Hall (“Wife”) appeals the superior court’s denial of her motion to correct her marriage dissolution decree. For reasons that follow, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Wife married Bradley Hall (“Husband”) in 1996. In 2015, after Wife filed a petition for dissolution, the parties resolved several issues by stipulation, and the superior court conducted an evidentiary hearing to address the remaining disputed issues. One of the pre-hearing stipulations provided that “[a]ny retirement accounts shall be split 50/50 between the parties,” and the court’s final decree of dissolution included a finding that each party “shall receive 50% of the community portions” of all retirement accounts.

¶3 Over two years after the court entered the decree, Wife filed a motion under Arizona Rule of Family Law Procedure (“Rule”) 85(A) to correct the decree, referring to the provision for dividing the retirement accounts as a “clerical mistake,” because it specified a split of only the “community’s” interest in retirement accounts, rather than “any” retirement accounts. The superior court denied Wife’s motion, noting that it would have been unusual for the parties to agree to split all retirement accounts, particularly retirement accounts that were the separate property of either of the spouses. The court further opined that the proper resolution for such a discrepancy would have been to appeal the decree or file a request for clarification at that time, and that “two years later” the court was not in a position to clarify what the parties meant in their initial stipulation.

¶4 Wife timely appealed, and we have jurisdiction under A.R.S. § 12-2101(A)(2). *Vincent v. Shanovich*, 243 Ariz. 269, 270, ¶ 1 (2017).

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DISCUSSION

¶5 Wife argues that the superior court erred by denying her motion to correct the parties' decree of dissolution. Wife relies on Rule 85(A), which provides that "[c]lerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on motion of any party."<sup>1</sup> We review the denial of a Rule 85 motion for relief from judgment for abuse of discretion. *Quijada v. Quijada*, 246 Ariz. 217, 220, ¶ 7 (App. 2019).

¶6 Rule 85(A) permits a court to correct inadvertent misstatements and omissions at any time. *Vincent*, 243 Ariz. at 271, ¶ 8. But "[t]he power to correct clerical error does not extend to the changing of a judgment, order, or decree which was entered as the court intended." *Ace Auto. Prods., Inc. v. Van Duyne*, 156 Ariz. 140, 142-43 (App. 1987).

¶7 Clerical errors are distinct from judicial errors. *Id.* Whether an error is judicial or clerical "turns on the question [of] whether the error occurred in rendering judgment or in recording the judgment rendered." *Id.* In contrast to a clerical error, under Rule 85(C), a judicial error may be corrected within six months "after the judgment or order was entered" upon a showing of "mistake, inadvertence, surprise, or excusable neglect."

¶8 Here, Wife has not established clerical or judicial error. There was no clerical error in recording the judgment rendered because, in context, the parties' pretrial agreement that any retirement accounts would "be split 50/50," is entirely consistent with the decree. Wife's initial petition for dissolution acknowledged that the parties had sole and separate assets, and she requested "her share" of Husband's retirement accounts. And in her pretrial statement filed January 18, 2016, Wife specifically noted Husband's retirement accounts, and expressly proposed that she be awarded "her share of the community interest in said accounts."

¶9 Husband's resolution statement similarly included separate sections addressing "Separate Property" and "Community Property" and stated that "each [party] should retain and be confirmed to any property

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<sup>1</sup> The Arizona Supreme Court revised the Arizona Rules of Family Law Procedure, effective January 1, 2019. See Ariz. R. Fam. Law P., Prefatory Cmt. to the 2019 Amendments. We cite to the version of the Rules in place at the time of the superior court proceedings, while noting that our conclusion would be the same under the revised rule.

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owned prior to the marriage.” And under the section labeled “Community Property,” Husband stated, “[t]he parties have various retirement deferred compensation or investment accounts, including Respondent’s Allianz Contract, which should be equally divided.” Thus, given what appears to have been the parties’ agreement that the decree would address a division of only *community property* retirement accounts, the superior court’s order confirming that agreement cannot be said to be a “clerical error” correctable under Rule 85(A).

¶10 To the extent Wife is asserting that it was judicial error for the court to reference the “community portions” of the parties’ retirement accounts, she waived any such error by not objecting at the time the decree was entered. *Van Duyne*, 156 Ariz. at 143. And the only avenue for seeking relief in this context would have been by appeal or by a motion for relief from judgment under Rule 85(C), which requires that the motion be filed no more than six months after entry of judgment. Accordingly, any such request for relief would be untimely.

¶11 Furthermore, waiver notwithstanding, the superior court properly treated as separate property pension rights acquired prior to marriage, and confirmed as community property pension rights acquired during marriage. See *Johnson v. Johnson*, 131 Ariz. 38, 41 (1981). Accordingly, Wife has not established that the superior court erred by denying her motion to “correct” the decree of dissolution.

¶12 Both parties request an award of attorney’s fees under A.R.S. § 25-324. Having considered the relevant financial resources of the parties and the reasonableness of the positions asserted on appeal, we deny Wife’s request and grant Husband his reasonable attorney’s fees and costs on appeal, subject to compliance with ARCAP 21.

CONCLUSION

¶13 For the foregoing reasons, we affirm.



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