

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

In re the Marriage of:

MATTHEW RAY SHIELDS, *Petitioner/Appellee*,

v.

MICHELLE L. OGDEN-SHIELDS, *Respondent/Appellant*.

No. 1 CA-CV 19-0520 FC

FILED 11-19-2020

Appeal from the Superior Court in Maricopa County

No. FC 2016-094699

The Honorable Laura M. Reckart, Judge

VACATED AND REMANDED

COUNSEL

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MEMORANDUM DECISION

Judge Michael J. Brown delivered the decision of the Court, in which Presiding Judge Jennifer M. Perkins and Judge David B. Gass joined.

B R O W N, Judge:

¶1 Michelle L. Ogden-Shields (“Mother”) appeals from several rulings in the proceedings dissolving her marriage to Matthew Ray Shields (“Father”). For the following reasons, we vacate the superior court’s order striking Mother’s motion to amend the decree and remand with directions for the court to consider the merits of the motion.

¶2 The parties married in 2000 and have two children. Father petitioned for dissolution in August 2016. After a trial in March 2019, the superior court entered a decree addressing legal decision-making authority, parenting time, child support, spousal maintenance, allocation of community property and debts, and attorneys’ fees. Mother filed a motion to amend the decree under Arizona Rule of Family Law Procedure (“Rule”) 83. Father moved to strike the motion to amend on the grounds it contained insufficient, redundant, immaterial, and impertinent claims; he also argued Mother’s motion was untimely and incomplete. The superior court summarily granted Father’s motion to strike and later sanctioned Mother’s attorney when he failed to release funds held in his trust account to Father as ordered in the decree. Mother filed a notice of appeal from the decree and the order striking her motion to amend.

¶3 We review the superior court’s decision to strike a pleading under an abuse of discretion standard. *Birth Hope Adoption Agency, Inc. v. Doe*, 190 Ariz. 285, 287 (App. 1997). An abuse of discretion occurs when the evidence does not support the court’s ruling or if the court commits an error of law in reaching a discretionary decision. *Hurd v. Hurd*, 223 Ariz. 48, 52, ¶ 19 (App. 2009).

¶4 Under Rule 29(e), the superior court may strike “an insufficient claim or defense or any redundant, immaterial, impertinent, or scandalous matter.” Motions to strike filed outside a trial or evidentiary hearing are also limited by Arizona Rule of Civil Procedure 7.1(f)(1) to allegations that the pleading is prohibited or not authorized by a specific

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statute, rule, or court order. Under these parameters, there was no basis to strike the motion to amend the decree.

¶5 Mother's motion to amend was not prohibited or unauthorized by statute, rule, or court order, *see* Ariz. R. Civ. P. 7.1(f)(1), and it raised arguments that were appropriate under Rule 83. Father argued the motion to amend was incomplete because Mother requested leave to supplement the motion when she obtained the transcript. However, the first 18 pages of the motion raised appropriate legal objections and arguments, albeit without citation to specific transcript pages. The lack of page citations and the request to supplement did not render the entire motion incomplete.

¶6 Father also argued Mother's motion to amend was untimely because it relied on arguments she made in her untimely pretrial statement and other arguments in the motion were inconsistent with the assertions in the pretrial statement. Father contends, in essence, that Mother waived these arguments. However, the waiver issue constitutes a challenge to the merits of the Rule 83 motion and was therefore an inappropriate basis to strike the motion.

¶7 In considering the timeliness of the motion to amend, we note that the original decree did not contain Rule 78(c) language, and this court stayed the appeal to allow Mother to obtain a signed order with Rule 78(c) certification. Thus, Mother's motion to amend was premature because it was not filed "within 25 days after the entry of judgment under Rule 78(b) or (c)." Ariz. R. Fam. Law P. 83(c)(1). However, because the court subsequently entered an order with Rule 78(c) certification, the premature nature of the motion is harmless. This is analogous to the limited exception to the final judgment rule recognized in *Craig v. Craig*, 227 Ariz. 105, 107, ¶ 13 (2011), which allows a premature notice of appeal filed after the superior court makes its final decision, but before it has entered a formal judgment, when no decision of the court could change and only a ministerial task remains. Here only a ministerial task remained, *i.e.*, entry of Rule 78(c) certification. Thus, the premature filing of the motion to amend is harmless.

¶8 Finally, Father contends the order granting the motion to strike is the legal equivalent of a summary denial of the underlying motion. But Father concedes that a motion to strike challenges the "propriety" and not the merits of the motion. Striking the motion to amend did not require the superior court to consider the merits of the legal arguments raised therein, and nothing in the order granting the motion to strike indicates that

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the court did so. Thus, the court erred by striking the motion to amend, and we vacate that order.

¶9 On remand, the superior court, as provided in Rule 83(c), may direct Father to file a response, or the court may summarily deny the motion. Our disposition of this matter does not reflect any opinion regarding the merits of Mother’s motion to amend. As such, we do not address the challenges to other rulings in the decree because those issues are also raised in the motion to amend, and the court must first consider the merits of the motion.

¶10 In equalizing the community real property, the superior court ordered Mother to pay Father \$44,574.50 for his half of the equity in the marital residence. Mother had refinanced the residence, withdrawn the equity from the house, and her attorney held Father’s share of the equity in cash in his trust account. The decree ordered Mother’s attorney to immediately release these funds to Father.

¶11 When Father had not received the funds after several weeks, he filed an expedited request for immediate release and sanctions if Mother’s attorney failed to release the funds within 24 hours. The superior court granted the request and ordered Mother’s attorney to release the funds within 72 hours. The funds were not released, and Father filed a second request to sanction Mother’s attorney personally. Before the court ruled on the second request, Mother filed a notice of appeal. The next day, the court ordered Mother’s attorney to pay “a reasonable amount” of Father’s attorneys’ fees and costs for trust-account noncompliance and directed Father’s counsel to submit a fee affidavit. The court later ordered Mother’s attorney to pay \$2,000 to Father as a sanction. Because Mother did not amend the notice of appeal to include the sanction order, we lack jurisdiction to consider it. *See China Doll Rest., Inc. v. Schweiger*, 119 Ariz. 315, 316–17 (App. 1978) (holding that an appellate court lacks jurisdiction over issues not included in the notice of appeal and orders issued after the notice of appeal).

¶12 Each party requests attorneys’ fees on appeal under A.R.S. § 25-324. In our discretion, we decline both requests. Neither party was entirely successful on appeal; therefore, we also decline to award costs under A.R.S. § 12-342.

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¶13 We vacate the superior court's order striking Mother's motion to amend and remand for further proceedings consistent with this decision.



AMY M. WOOD • Clerk of the Court
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