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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

JONATHAN L. CARTER, *Petitioner/Appellant*,

*v.*

MARISA J. CARTER, *Respondent/Appellee*.

No. 1 CA-CV 20-0544 FC  
FILED 7-29-2021

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Appeal from the Superior Court in Maricopa County  
No. FC2010-000141  
The Honorable Mark H. Brain, Judge

**AFFIRMED**

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COUNSEL

Dickinson Wright PLLC, Phoenix  
By Leonce A. Richard, III  
*Counsel for Petitioner/Appellant*

Donaldson Stewart PC, Chandler  
By Heather N. Pelaez  
*Counsel for Respondent/Appellee*

**MEMORANDUM DECISION**

Judge Randall M. Howe delivered the decision of the Court, in which Presiding Judge Jennifer M. Perkins and Judge Maria Elena Cruz joined.

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**H O W E**, Judge:

¶1 Jonathan Carter (“Father”) appeals the family court’s March 2017 order modifying legal decision-making and parenting time and the court’s denial of his August 2020 motion for relief under Arizona Rule of Family Law Procedure 85(a). For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 Father and Marisa Carter (“Mother”) married in 1997 and had two children together, one born in December 1998, and the other born in September 2001. In December 2011, Mother and Father divorced and the court entered legal decision-making, parenting time, and child support orders, whereby the children lived primarily with Mother.

¶3 In December 2016—after the oldest child turned 18 years old—Father moved for a post-decree mediation relating to the remaining minor child. Following mediation in February 2017, Mother and Father agreed to modify legal decision-making and parenting time so that the remaining minor child lived primarily with Father. The agreement also stated that “[a]ll court orders related to Legal Decision-Making and Parenting Time currently in place and not specifically changed in this agreement will remain in full force and effect.” The family court approved the agreement in an order the following month that stated that “[a]ll Court orders currently in place and not specifically changed by this agreement will remain in full force and effect.” Thereafter, Father stopped paying child support—aside from what was withheld from his paychecks pursuant to an income withholding order.

¶4 In May 2020, Father petitioned the court to stop its income withholding order based on his youngest child’s emancipation. Mother objected and argued that Father owed child support because he had stopped paying after the family court approved the March 2017 mediation agreement. Thereafter, Father moved for relief from judgment under Arizona Rule of Family Law Procedure (“Rule”) 85(a). He argued that the

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family court's March 2017 order omitted any modification to child support in violation of A.R.S. § 25-403.09(A).

¶5 The family court denied the motion, finding that "[t]he failure to address child support in these circumstances was not an oversight nor an omission under Rule 85(a)." Instead, the court found that the previous family court judge did not intend to reach out and require the parties "to engage in litigation over issues that they did not raise." Father timely appealed.

**JURISDICTION**

¶6 As a preliminary matter, Mother argues that this Court lacks jurisdiction because Father did not timely appeal from the March 2017 family court order. Mother also argues that this Court lacks jurisdiction because the family court's August 2020 order did not satisfy the post-judgment requirements set forth in *Arvizu v. Fernandez*, 183 Ariz. 224, 226 (1995).

¶7 This Court has an independent duty to determine whether it has jurisdiction. *McDaniel v. Payson Healthcare Management, Inc.*, 250 Ariz. 199, 209 ¶ 30 (App. 2020). To appeal a judgment, a party must file a notice of appeal no later than 30 days after entry of the judgment from which the appeal is taken. ARCAP 9(a). This Court does not have jurisdiction over Father's appeal from the family court's March 2017 order because Father's appeal from that order was made more than 30 days after entry of the order.

¶8 Father argues that this Court does have jurisdiction over the March 2017 order because that order was not appealable when the order was issued. He contends that because the family court did not expressly consider child support, all the rights and liabilities of the parties were not decided as Rule 78(b) required and the order did not contain the required Rule 78(b) certification language to make the order appealable.

¶9 But the family court's March 2017 order was final and appealable for purposes of Rule 78(b) because the order adjudicated all the claims and rights and liabilities raised by Father in his December 2016 petition. The order addressed legal decision-making and parenting time. And the order expressly stated that "[a]ll Court orders currently in place and not specifically changed by this agreement will remain in full force and effect." Because Father did not timely appeal the March 2017 order, this Court lacks jurisdiction to consider any issue resolved in that order.

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¶10 This Court has jurisdiction, however, over Father’s appeal from the family court’s denial of his Rule 85(a) relief from judgment motion under A.R.S. § 12-2101(A)(2), which allows a party to appeal “any special order made after final judgment.” An appeal from the denial of such a motion is proper if the issue raised on appeal “is different from those that could have been raised on appeal from the underlying judgment” and the order affects the judgment or relates to its enforcement. *Vincent v. Shanovich*, 243 Ariz. 269, 271 ¶ 9 (2017).

¶11 Whether the family court addressed child support when it issued its March 2017 order could not have been raised in a timely appeal from the March 2017 order because the error had to first be raised with and decided by the family court. *See id.* at 271 ¶ 10. That did not occur until Father’s Rule 85(a) motion. And the August 2020 order denying Father’s Rule 85(a) motion relates to and affects the enforcement of the March 2017 order because the order upholds his current child support obligation. The August 2020 order finally adjudicated his argument regarding child support for purposes of whether the income withholding order could be terminated. Therefore, this Court has jurisdiction over the trial court’s denial of the Rule 85(a) motion.

DISCUSSION

¶12 Father argues that the family court erred by not modifying his child support payments when it modified the parties’ legal decision-making and parenting time in March 2017. He contends that the family court was required to modify child support in March 2017 pursuant to A.R.S. § 25-403.09(A). “A court must correct a clerical mistake or a mistake arising from oversight or omission if one is found in a judgment, order, or other part of the record.” Ariz. R. Fam. Law P. 85(a). A clerical error occurs when the written judgment fails to accurately set forth the family court’s decision. *Vincent*, 243 Ariz. at 271 ¶ 8. A judgmental error occurs when the family court’s decision is accurately stated but legally incorrect. *Id.*

¶13 Assuming that the family court did not address Father’s child support payments in the March 2017 order, its failure to do so was not a clerical mistake or omission. The March 2017 order accurately sets forth the family court’s decision. Nothing in the record indicates that the family court intended to modify child support. On the contrary, the court expressly stated that “[a]ll Court orders currently in place and not specifically changed by this agreement will remain in full force and effect.” Even if the family court erred by not addressing child support in the March 2017 order, Rule 85(a) cannot be used to correct judicial errors, including the failure to

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consider an issue. *See Egan-Ryan Mech. Co. v. Cardon Meadows Dev. Corp.*, 169 Ariz. 161, 166 (App. 1990). Rule 85(a) was the incorrect avenue for Father to challenge the March 2017 order and the family court properly denied Father's Rule 85(a) motion for relief.

**CONCLUSION**

¶14 For the foregoing reasons, we affirm. Mother requests her attorneys' fees from this appeal under A.R.S. § 25-324. After considering the financial resources and the reasonableness of the positions taken by the parties, we decline to award Mother her attorneys' fees. As the prevailing party, however, Mother is entitled to her costs incurred on appeal upon compliance with ARCAP 21.



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