

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

DUSTIN MATTHEWS, *Petitioner/Appellant*,

*v.*

ROSEANN ROBLES, *Respondent/Appellee*.

No. 1 CA-CV 23-0300 FC

FILED 1-30-2024

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Appeal from the Superior Court in Maricopa County

No. FC2012-093973

The Honorable Christopher A. Coury, Judge

**VACATED AND REMANDED**

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COUNSEL

Dustin Matthews, Tempe  
*Petitioner/Appellant*

Roseann Robles, Avondale  
*Respondent/Appellee*

**MEMORANDUM DECISION**

Vice Chief Judge Randall M. Howe delivered the decision of the court, in which Presiding Judge Anni Hill Foster and Judge Brian Y. Furuya joined.

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**H O W E**, Judge:

¶1 Appellant Dustin Matthews (“Father”) appeals the trial court’s April 2023 order clarifying his and ex-spouse Roseann Robles’s (“Mother”) child support rights and obligations. Because an order entered pursuant to Ariz. R. Fam. Law P. (“Rule”) 84 does not allow for modification of a prior judgment, we vacate the court’s order and remand for further proceedings.

**FACTS AND PROCEDURAL HISTORY**

¶2 Father and Mother are the biological parents of a child born in December 2011. The following year, Father petitioned to establish child custody and parenting time. The superior court imposed joint legal decision-making, implemented a parenting time schedule, and established child support. Father and Mother have since vigorously engaged in litigation over child support issues, resulting in several amendments to the court’s original order (and five separate decisions from this court). Before this court currently is Father’s contention that the court erred in its clarification of which years each party may claim the child as a deduction for income tax purposes.

¶3 The most recent order containing specific designations for tax deduction years was filed in March 2019, designating 2019 and 2021 as Mother’s deduction years and 2020 as Father’s deduction year. The child support order has since been amended in 2020 and 2021. Neither amending order references 2019, but both state “[see] previous order” in their deduction designations for 2020 and 2021. All three orders state “[f]or any years following those listed above while this Child Support Order remains in effect, the parties shall repeat the above pattern of containing tax deductions for the child.”

¶4 Each party interpreted this language differently, leading both Mother and Father to attempt to claim an income tax deduction in 2022. Upon rejection of his tax return, Father moved for clarification of prior

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orders under Rule 84. Father argued that by omitting the 2019 designation, the 2020 and 2021 child support orders implicitly created an alternating two-year cycle for claiming the tax deduction. Mother responded that the omission did not reflect a change in the court's intent from the 2019 child support order, which granted her the deduction two out of every three years.

¶5 The court stated in its order that neither Father nor Mother were correct. Instead, the court relied on the most recent child support worksheet to set forth a schedule of deductions.<sup>1</sup> The worksheet attached to the 2020 and 2021 orders displays that Mother earns approximately 60%, and Father 40%, of income for child support purposes. Thus, the court reasoned that the order effected a repeating five-year cycle in which Mother could claim deductions in three of the five years, and Father the other two. Father, unsatisfied with this result, timely filed this appeal. We have jurisdiction pursuant to A.R.S. § 12-2101.

#### DISCUSSION

¶6 At issue in this case is whether the family court's order impermissibly modified the controlling order. Father moved for clarification pursuant to Rule 84, and on such a motion, "the court may not open the judgment or accept additional evidence as it can under Rule 83." Rule 84(d).

¶7 Here, the judgment sought to be clarified is the current controlling child support order, entered in 2021. While the 2021 order incorporates the child support worksheet relied on by the family court in setting forth a five-year deduction cycle, the key provision of the order relating to deductions does not reference the worksheet. Instead, Provision 10, "Tax Deductions," directs the parties to follow the previous order. That "previous order" is the 2020 order, which in turn directs the parties to follow the order previous. This leads to the 2019 child support order, setting forth a repeating "Mother – Father – Mother" three-year cycle.

¶8 While changes in the parties' financial circumstances may indeed merit the change to a five-year deduction cycle, none of the three relevant judgments set forth a five-year cycle. Thus, rather than clarify the

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<sup>1</sup> This worksheet was filed on October 15, 2020, as Appellant correctly points out. The court's reference to an October 15, 2023 worksheet was a clerical error.

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most recent order, the family court modified it – impermissible under Rule 84(d). The court had the authority on its own motion to alter or amend the judgment under Rule 83(a)(1) to account for the change in financial circumstances, but the court did not rely on that rule in its order, and this court cannot presume that it was doing so.

**CONCLUSION**

¶9 For the foregoing reasons, we vacate the clarifying order and remand for further proceedings.



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