

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**  
*See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.*

**FILED BY CLERK**

**MAY 21 2013**

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

In re the Marriage of:	)	
	)	
DONALD RAY FEATHERSTONE,	)	2 CA-CV 2012-0104
	)	DEPARTMENT A
Petitioner/Appellee,	)	
	)	<u>MEMORANDUM DECISION</u>
and	)	Not for Publication
	)	Rule 28, Rules of Civil
DEBRA LYNN FEATHERSTONE,	)	Appellate Procedure
	)	
Respondent/Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. D20032195

Honorable Dean Christoffel, Judge Pro Tempore

AFFIRMED

\_\_\_\_\_  
Khalidi & Hinderaker  
By Thabet Khalidi

Tucson  
Attorneys for Respondent/Appellant

\_\_\_\_\_  
E C K E R S T R O M, Presiding Judge.

¶1 This appeal arises from a post-dissolution action between appellant Debra Featherstone and appellee Donald Featherstone. Debra appeals from the trial court’s order setting aside Donald’s quitclaim deed that purportedly relinquished his interest in former marital property the two held as tenants in common after the dissolution. Finding no error, we affirm the court’s order.

### **Factual and Procedural Background**

¶2 Donald filed for dissolution in 2003. The decree was entered that year, with issues concerning property division and spousal maintenance being decided in a marital settlement agreement that was incorporated into the decree. Pursuant to that agreement, Donald and Debra “transfer[red] ownership of the marital residence . . . from community property to tenants in common so that each shall have a one-half ownership interest therein.” Debra was granted exclusive possession of the house until her remarriage or cohabitation with a man, at which time the parties agreed the house would be sold and each would be entitled to half of any proceeds. Debra was to pay the mortgage while she possessed the property.

¶3 In 2012, Donald filed a “motion to enforce decree of dissolution of marriage.” In his motion, he contended Debra had been cohabiting with her boyfriend, thereby triggering the provisions of the settlement agreement requiring the house to be sold and spousal maintenance to terminate.<sup>1</sup> Debra responded that Donald no longer had an interest in the property “as he quit-claimed it to [Debra] several years ago.” She

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<sup>1</sup>The spousal maintenance depended partly on the mortgage payments due on the residence, and maintenance would terminate if Debra “encumber[ed] the marital residence.” Donald invoked this provision in his motion.

attached to her response a quitclaim deed Donald had signed in 2008, purportedly releasing all interest in the property. After a hearing on the motion, the court found that Debra had not cohabited, so the sale provision had not been triggered. It further found that Donald had “filed the quitclaim deed under a mistaken impression of a requirement to do so” and that by signing the deed he “did not intend to convey any greater interest in the property to [Debra]” or to relinquish “his rights under the property settlement agreement to be entitled to one-half of the proceeds at the time of the sale of the residence.” Accordingly, the court set aside the quitclaim deed and “declare[d] that the parties continue to own the property as tenants in common per their previous deed.” This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(2). *See In re Marriage of Dorman*, 198 Ariz. 298, ¶ 3, 9 P.3d 329, 331 (App. 2000).

### **Discussion**

¶4 Debra argues the “trial court lacked jurisdiction over the nonmarital property of the parties.” Specifically, she contends that the court “did not have subject matter jurisdiction to alter, affirm, or review property rights of the parties acquired following their Decree of Dissolution.” We find no such limitation on the trial court’s authority.

¶5 In the context of enforcing a dissolution decree, our legislature has provided courts with broad powers. The “[t]erms of [an] agreement set forth or incorporated by reference in [a] decree are enforceable by all remedies available for enforcement of a judgment, including contempt.” A.R.S. § 25-317(E). Section 25-

311(A), A.R.S., further provides that “the superior court is vested with original jurisdiction to hear and decide all matters arising pursuant to” a dissolution action.

¶6 Here, the property at issue was disposed of in the decree of dissolution. The settlement agreement that was incorporated into the decree specified the parties’ rights to the property and set forth conditions and obligations related to it. The agreement further provided that it could be “enforced by either party against the other by appropriate remedy in any proper jurisdiction” and that “each of the parties . . . [would] be ordered to perform the conditions” in the agreement. When the trial court ruled on Donald’s enforcement motion, therefore, it properly exercised its authority under both § 25-317(E) and under the agreement itself to determine whether a term of the agreement (the sale provision) remained in effect and required the court’s enforcement. In order for the court to resolve these questions relating to the decree, the court had to address the validity of the quitclaim deed concerning the property, and the court was authorized to do so under § 25-311(A).

¶7 Although Debra suggests the trial court’s actions were unauthorized because they affected a post-decree transaction of separate property, the separate character of the property is irrelevant to the question of enforcement presented in this case. All property becomes separate upon dissolution. *See* A.R.S. § 25-318(A), (D). And a court in an enforcement action cannot, consistent with § 25-317(E), be broadly precluded from addressing separate property. While we can certainly imagine scenarios where a post-decree property transaction would be entirely unrelated to a decree, thereby giving a trial court no authority under title 25 to dispose of claims related to the property,

*e.g.*, *Thomas v. Thomas*, 220 Ariz. 290, ¶¶ 1-3, 15-16, 205 P.3d 1137, 1138, 1141 (App. 2009), this is clearly not the situation before us. As noted, the post-decree transaction here involved only the parties to the decree, and the transaction concerned property that was included in the decree and subject to conditions specified therein. The transaction at issue, had it been valid, would have affected the terms of the decree. Under these circumstances, we find no jurisdictional defect in the trial court addressing the post-decree transaction.

¶8 Besides raising a jurisdictional challenge, Debra has not argued the trial court otherwise erred in setting aside the deed. And because Debra has not provided a transcript of the hearing, we must presume the trial court's factual findings about Donald's intent are correct. *See Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995).

¶9 Finding no error, we affirm.

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Judge