

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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IN RE THE MARRIAGE OF:

KIM L. SCARMOZZINO,  
*Petitioner/Appellant,*

*and*

JAMES N. SCARMOZZINO,  
*Respondent/Appellee.*

No. 2 CA-CV 2013-0150  
Filed June 16, 2014

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See Ariz. R. Sup. Ct. 111(c); Ariz. R. Civ. App. P. 28(c).*

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Appeal from the Superior Court in Pinal County  
No. S1100DO200701146  
The Honorable Steven J. Fuller, Judge

**AFFIRMED**

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Kim Scarmozzino, Mesa  
*In Propria Persona*

IN RE THE MARRIAGE OF SCARMOZZINO  
Decision of the Court

James Scarmozzino, San Tan Valley  
*In Propria Persona*

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**MEMORANDUM DECISION**

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Howard and Judge Miller concurred.

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V Á S Q U E Z, Presiding Judge:

¶1 In this domestic-relations action, Kim Scarmozzino appeals from the trial court’s ruling on her petition to enforce a decree of legal separation against appellee James Scarmozzino. She argues the court erred by entering orders beyond her request to enforce spousal maintenance. For the following reasons, we affirm.

**Factual and Procedural Background**

¶2 We view the facts in the light most favorable to upholding the trial court’s ruling. *In re Marriage of Downing*, 228 Ariz. 298, ¶ 2, 265 P.3d 1097, 1098 (App. 2011). Kim and James legally separated in November 2007. In the decree of legal separation, the court ordered James to pay Kim \$5,100 per month in spousal maintenance from January 2008 through November 2011.<sup>1</sup> Kim and James also entered into a separation agreement that was incorporated into the decree. The agreement provided that Kim would act as chief financial officer of their classic-car business “and its affiliates” (collectively the “business”), while Jim would serve as president. It further stated that, after four years, Jim would obtain complete ownership of the business and Kim would receive the marital residence.

¶3 In January 2013, Kim filed a petition to enforce the decree of legal separation, pursuant to Rule 91, Ariz. R. Fam. Law P.

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<sup>1</sup>The parties later agreed to modify the dates of the spousal maintenance to April 2008 through April 2012.

IN RE THE MARRIAGE OF SCARMOZZINO  
Decision of the Court

She claimed that James had failed to pay any spousal maintenance and requested that he be required to pay “immediately” or else “face civil arrest” and that interest begin accruing on the amount due. Kim also requested an order that James “be solely responsible for all amounts owed to creditors as assigned to hi[m] within the Decree,” a lien against James’s personal property and business interests until he paid the spousal maintenance and debts, and an order that she be granted control of the business. Finally, she asked the trial court to convert the legal separation to dissolution of marriage. At a hearing on Kim’s petition, James requested, and the court ordered, that the matter be set for trial.

¶4 A bench trial was held in August 2013, but James failed to appear. At trial, Kim asked the court to order the relief requested in her petition with the exception of her request to convert the legal separation to dissolution of marriage, which she withdrew. The following month, the court issued its under-advisement ruling, addressing three overarching issues: “enforcement of spousal maintenance,” “transfer of ownership of business,” and “community debts/injunction.” As to spousal maintenance, the court found James in contempt, ordered him to pay \$10,000 within two months, and ordered interest to accrue on the past-due amount. The court denied Kim’s “request to transfer ownership” of the business but granted her request for an “equitable lien in [her] favor” against the business. Regarding the debt, the court denied Kim’s “request for reimbursement of community debts/business expenses.” The court also denied Kim’s “request for [an] injunction” to keep James from competing with the business. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 12-2101(A)(2).

**Discussion**

¶5 Kim contends the trial court erred by entering orders beyond her request to enforce spousal maintenance.<sup>2</sup> Generally, we

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<sup>2</sup>James did not file an answering brief in this court. Although we may consider his failure to do so an admission of error, in our discretion, we decline to do so. See *In re Marriage of Diezsi*, 201 Ariz. 524, ¶ 2, 38 P.3d 1189, 1190 (App. 2002).

IN RE THE MARRIAGE OF SCARMOZZINO  
Decision of the Court

review a trial court's ruling on a post-decree petition filed pursuant to Rule 91 for an abuse of discretion. *See In re Marriage of Priessman*, 228 Ariz. 336, ¶ 7, 266 P.3d 362, 364 (App. 2011); *Strait v. Strait*, 223 Ariz. 500, ¶ 6, 224 P.3d 997, 999 (App. 2010); *see also Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶¶ 5, 14, 972 P.2d 676, 679, 681 (App. 1998) (we review apportionment of community property and award of spousal maintenance for abuse of discretion). However, we review questions of law, such as a court's authority to act, de novo. *See Clark v. Campbell*, 219 Ariz. 66, ¶ 16, 193 P.3d 320, 325 (App. 2008).

¶6 Rule 91 provides the process for “[a] party seeking to modify or enforce a prior family court order.” Ariz. R. Fam. Law P. 91(A); *see also Cohen v. Frey*, 215 Ariz. 62, n.5, 157 P.3d 482, 486 n.5 (App. 2007). Under this rule, a party can seek enforcement of a prior order for payment of spousal maintenance, Ariz. R. Fam. Law P. 91(C), or can request other post-decree relief, Ariz. R. Fam. Law P. 91(H). *See In re Marriage of Johnson & Gravino*, 231 Ariz. 228, ¶ 4, 293 P.3d 504, 506 (App. 2012) (petition to enforce community-property provisions of decree); *Harris v. Harris*, 195 Ariz. 559, ¶ 3, 991 P.2d 262, 263 (App. 1999) (petition to enforce decree by requiring husband to pay retirement benefits).

¶7 As we understand her argument, Kim is challenging the trial court's orders regarding the “transfer of ownership of business” and the “community debts/injunction.” She seems to suggest the court lacked authority to enter these orders because she withdrew her request to convert the legal separation to dissolution of marriage. But, Kim raised these issues in her petition to enforce the decree, pursuant to Rule 91. As noted above, Kim requested an order affirming James's responsibility for debts assigned to him in the decree of legal separation. She also requested a lien against James's personal property and business interests and sought control of the business because of James's failure to pay spousal maintenance and debts assigned to him. Although they were contained in the same petition, these requests were independent from her request to convert the legal separation to dissolution of marriage. *Cf. A.R.S. § 25-325(B)* (petition for dissolution filed under same case number as legal separation but treated as new, separate action).

IN RE THE MARRIAGE OF SCARMOZZINO  
Decision of the Court

¶8 At trial, although Kim withdrew her request to convert the legal separation to dissolution of marriage, she nonetheless reasserted her other requests. Kim declared, “[a]t this point[,] I want 100 percent interest in the business[,]” and she asked that the court enjoin James “from engaging in any activity that may be seen as competing” with the business. She also stated that she wanted the court to affirm the debt allocation in the decree and to further order that the parties split any business debts, including any tax debt, incurred since its entry.<sup>3</sup> Because Kim made these requests and did not later withdraw them, the court did not err by addressing them. *See Clark*, 219 Ariz. 66, ¶ 16, 193 P.3d at 325.

¶9 And, contrary to Kim’s suggestion, the trial court’s orders regarding these issues did not “void” provisions in the decree of legal separation. To the extent Kim wanted the court to affirm the allocation of debts in the decree of legal separation, the court stated during trial that “there[ i]s really no reason for me to do that [be]cause that would be affirming an order that[ i]s already in place.” The court granted Kim’s request to impose a lien against the business for the past-due spousal maintenance. The court’s remaining orders were in direct response to the relief Kim had requested in her petition and at trial. The court declined her request to transfer ownership of the business because she failed to present evidence of “the value of said business[.]” And, the court denied Kim’s requests concerning James’s failure to pay various debts because she “provided no specifics as to how much money is owed” and failed to present sufficient evidence and authority supporting the relief she sought. Kim was responsible for providing the court with records documenting her requested relief and the pertinent supporting legal authority. *See Ariz. R. Fam. Law P. 91(C), (H).*

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<sup>3</sup>The trial court’s under-advisement ruling states that the court denied Kim’s “request for reimbursement of community debts/business expenses,” but Kim appears to have never requested reimbursement and, instead, asked the court to affirm the orders in the decree and to split the business debts incurred since then. Despite the imprecise language, we interpret the court’s order as denying these requests.

IN RE THE MARRIAGE OF SCARMOZZINO  
Decision of the Court

After reviewing the record, we cannot say the court abused its discretion. See *Priessman*, 228 Ariz. 336, ¶ 7, 266 P.3d at 364; *Strait*, 223 Ariz. 500, ¶ 6, 224 P.3d at 999.

**Disposition**

¶10 For the foregoing reasons, we affirm.