IN THE
# ARIZONA COURT OF APPEALS
DIVISION TWO

---

IN RE THE MARRIAGE OF

CONSTANZA GARCIA,
*Appellant,*

*and*

DONALD LEE CROWELL JR.,
*Appellee*.

No. 2 CA-CV 2016-0140-FC
Filed March 27, 2017

---

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NOT FOR PUBLICATION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)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

---

Appeal from the Superior Court in Pima County
No. D20000264
The Honorable Ken Sanders, Judge Pro Tempore

**AFFIRMED**

---

COUNSEL

Constanza Garcia, Lake Forest, California
*In Propria Persona*

David H. Lieberthal, Tucson
*Counsel for Appellee*

**MEMORANDUM DECISION**

Judge Miller authored the decision of the Court, in which Presiding Judge Staring and Judge Espinosa concurred.

M I L L E R, Judge:

**¶1** Constanza Garcia appeals from the trial court's denial of her motion to set aside the court's ruling domesticating a foreign-country dissolution of her marriage to Donald Crowell. She contends the Arizona ruling was void for lack of personal and subject-matter jurisdiction, the court ignored evidence supporting her argument that the underlying decree was invalid, and the court incorrectly concluded her twelve-year delay in filing her motion was unreasonable. For the following reasons, we affirm.

**Factual and Procedural Background**

**¶2** We view the facts in the light most favorable to sustaining the trial court's ruling.[1] *See Ezell v. Quon*, 224 Ariz. 532, ¶ 2, 233 P.3d 645, 647 (App. 2010). Garcia and Crowell were married in 1991 and had one son. In 2000, Crowell filed a request for domestication of a foreign judgment in Pima County Superior Court, seeking recognition of a 1995 divorce decree from Mexico. He also filed a petition for custody of their son and a petition for temporary orders. After a hearing, the court granted joint legal custody, with Garcia serving as the primary physical custodian, and awarded temporary child support. Garcia filed a response to the

[1]Throughout her briefs on appeal, Garcia cites to an appendix filed with this court that contains documents not offered or admitted below. Because this material was not part of the record, we do not consider it. *See LaWall v. Pima Cty. Merit Sys. Comm'n*, 212 Ariz. 489, n.3, 134 P.3d 394, 396 n.3 (App. 2006).

request to domesticate the decree arguing it was not properly authenticated, but the court did not rule on the request.

**¶3** In 2003, Garcia filed a motion to resolve the domestication request because "[t]he parties are currently in litigation in California and a ruling as to this issue is needed in order for the California Court to proceed further with [its] case." Crowell filed a response, along with an affidavit and a certified copy of the decree. After a March 2004 hearing, the trial court found the divorce valid and the decree properly authenticated, and it ordered the foreign decree domesticated. The court also ordered the matter referred to California for all further rulings.

**¶4** In January 2016, Garcia filed a motion to set aside the 2004 ruling pursuant to Rule 85(C), Ariz. R. Fam. Law P. She argued she had documents showing the divorce decree was invalid because there was no record of the divorce in the Mexican state listed on the decree. Garcia contended this entitled her to relief because the Arizona domestication was void, or in the alternative, due to "any other reason justifying relief from the operation of the judgment." Ariz. R. Fam. Law P. 85(C)(1)(d), (f). Crowell filed a motion to dismiss Garcia's motion, arguing the 2004 decision was res judicata and therefore the trial court lacked jurisdiction.

**¶5** After a hearing at which Garcia testified, the trial court found that it had jurisdiction and denied Garcia's motion.[2] Garcia timely appealed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(2).

---

[2]The trial court concluded its ruling by ordering "the Motion to Dismiss is granted," and the "[Motion to] Set Aside Findings is dismissed," but in the body of its order, it found it did have jurisdiction and addressed the merits of the motion to set aside rather than addressing Garcia's res judicata and jurisdiction arguments. Thus, in substance, the court denied the motion rather than dismissing an action.

**Trial Court Jurisdiction**

**¶6** Garcia contends the trial court's Rule 85(C)(1)(d) ruling was erroneous, reasoning that if the court lacked jurisdiction, then the 2004 domestication of the Mexican decree was void. We review a ruling on a motion filed pursuant to Rule 85(C) for an abuse of discretion. *Alvarado v. Thomson*, 240 Ariz. 12, ¶ 11, 375 P.3d 77, 79 (App. 2016). Issues of law are reviewed de novo. *Id.* "A judgment or order is 'void' if the court entering it lacked jurisdiction: (1) over the subject matter, (2) over the person involved, or (3) to render the particular judgment or order entered." *In re Marriage of Dougall*, 234 Ariz. 2, ¶ 12, 316 P.3d 591, 595 (App. 2013), *quoting Martin v. Martin*, 182 Ariz. 11, 15, 893 P.2d 11, 15 (App. 1994).

**¶7** Garcia first argues the trial court lacked personal jurisdiction over her in 2000 and 2004, but the record shows otherwise. In 2000, Garcia filed responses to Crowell's petitions for custody and temporary orders as well as the request to domesticate the decree, and she appeared at the hearing on custody, all without contesting personal jurisdiction.[3] In 2003, she filed the motion for the ruling on the request for domestication, and she appeared telephonically at the hearing. Garcia's actions resulted in her consent to personal jurisdiction. *See Davis v. Davis*, 230 Ariz. 333, ¶¶ 21-25 & n.7, 284 P.3d 23, 27-28 & n.7 (App. 2012) (husband consented to jurisdiction by making general appearance, appearing at court hearing, and filing requests and motions before contesting personal jurisdiction).

[3]Garcia did argue in her response to the 2000 petition for temporary orders that the trial court should decline jurisdiction because California was the "home state." Determination of the "home state," however, is distinct from personal jurisdiction. *See* A.R.S. § 25-1031(C) (personal jurisdiction over party neither necessary nor sufficient to make child custody determination); *In re Ramirez v. Barnet*, 241 Ariz. 145, ¶ 34 & n.21, 384 P.3d 828, 839 & n.21 (App. 2016) (personal jurisdiction over non-resident party not necessary to adjudicate custody issues).

**¶8** Regarding subject-matter jurisdiction, Garcia appears to argue the Arizona trial court lacked jurisdiction in 2004 because it "seemed to have accepted [her] request to decline jurisdiction" in 2000 and because she filed divorce proceedings in California in 2003. But the Arizona court did not decline jurisdiction in 2000; rather, it ruled on the petitions for custody and temporary orders. And in 2003, when Garcia filed for divorce, the California court required her to return to Arizona for a ruling before it could proceed. In the Arizona court's ruling, it recognized the California domicile of the parties and child, and referred the matter to California "for all further rulings." There is no basis in the record for concluding that the Arizona court lacked jurisdiction to rule on the outstanding request simply because a divorce proceeding had been filed in California.[4] Because the court had jurisdiction to rule on the domestication request, it did not err by denying her motion pursuant to Rule 85(C)(1)(d).

**Timeliness**

**¶9** Garcia next contends the trial court "incorrectly ignore[d] the evidence" that the Mexican divorce decree was invalid, and that her delay in filing her Rule 85(C) motion was reasonable. The court did not address the merits of Garcia's claim that the decree was invalid because it found Garcia's twelve-year delay unreasonable.

---

[4]Garcia also argues the Arizona trial court lacked subject-matter jurisdiction because Crowell filed for divorce again in 1996 and therefore "was estopped from claiming a 1995 divorce." She does not explain how Crowell's alleged admission of marriage in 1996 deprived the Arizona court of jurisdiction over a request to domesticate a judgment. We thus do not consider this argument further. *See* Ariz. R. Civ. App. P. 13(a)(7)(A) (appellate argument must contain supporting reasons for each contention and citation to legal authority).

**¶10** Garcia argued below that she was entitled to relief pursuant to Rule 85(C)(1)(f), which allows relief from a final judgment or order for "any other reason justifying relief from the operation of the judgment." Relief under this rule requires a party show that the reason for setting aside judgment is not one of the other reasons available under Rule 85(C)(1), and that the other reason advanced "must be one that *justifies* relief." *Panzino v. City of Phoenix*, 196 Ariz. 442, ¶ 6, 999 P.2d 198, 201 (2000), *quoting Bickerstaff v. Denny's Rest., Inc.*, 141 Ariz. 629, 632, 688 P.2d 637, 640 (1984) (construing Ariz. R. Civ. P. 60); *see also* Ariz. R. Fam. Law P. 1 cmt. (case law interpreting other statewide rules applies to analogous Rules of Family Law Procedure). A motion for relief under Rule 85(C)(1)(f) must be brought "within a reasonable time." Ariz. R. Fam. Law P. 85(C)(2). That is, the party seeking relief must show that it acted promptly. *See Hilgeman v. Am. Mortg. Sec., Inc.*, 196 Ariz. 215, ¶ 15, 994 P.2d 1030, 1035 (App. 2000). Moreover, we will not find an abuse of discretion if reasonable evidence supports the trial court's conclusion. *Cf. Helland v. Helland*, 236 Ariz. 197, ¶ 22, 337 P.3d 562, 567 (App. 2014).

**¶11** On appeal, Garcia lists the various steps she took between the 2004 ruling and her 2016 motion, arguing her delay was reasonable. The papers Garcia filed, and her own testimony, showed that she received a letter from the Mexican Consulate in May of 2005 indicating that no copy of the divorce decree could be found at the applicable registry office. But Garcia did not contact Legal Aid in California until 2012, when it declined to represent her. She also reached out to her previous attorney and Legal Aid in Arizona at some point, but they could not represent her. Regarding her health, Garcia was briefly hospitalized for uterine surgery in 2009, saw a psychologist for anxiety and stress in 2012, and suffers from arthritis. She also traveled to her native country of Colombia in 2012 for a period of three years to try to "obtain a little bit of money to return to get help from an attorney [in the United States]."

**¶12** Despite Garcia's difficulties, reasonable evidence supports the trial court's conclusion that her financial and health problems did not prevent her from petitioning the court for relief

sometime in the twelve years following the 2004 ruling.[5] The court did not abuse its discretion by finding Garcia's delay was unreasonable and that she failed to show she acted promptly.[6] Because the court did not err in finding Garcia failed to comply with the time constraints of Rule 85(C), we need not address her substantive arguments regarding the validity of the decree.

**Disposition**

**¶13** For the foregoing reasons, we affirm the trial court's ruling. Crowell requests attorney fees pursuant to A.R.S. § 12-349. In our discretion, we decline the request.

[5] Garcia also argues the trial court "ignore[d]" the documentary evidence she presented purporting to show the invalidity of the decree, but nothing in those documents explained her delay in seeking relief. Indeed, they reflected that she obtained information from Mexico in 2005, but failed to take any action for another eleven years after that.

[6] Garcia finally argues she should have been granted relief pursuant to Rule 85(D), Ariz. R. Fam. Law P. Her motion below was pursuant to Rule 85(C), and we therefore do not address this alternative argument on appeal. *See Cont'l Lighting & Contracting, Inc. v. Premier Grading & Utils., LLC*, 227 Ariz. 382, ¶ 12, 258 P.3d 200, 204 (App. 2011) (argument not raised below waived on appeal).