IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

ROBERT J. NEE,
Petitioner/Appellee,

v.

JULIE A. JAMARTA,
Respondent/Appellant.

No. 2 CA-CV 2017-0006-FC
Filed August 16, 2017

Appeal from the Superior Court in Pima County
No. SP20100555
The Honorable Christopher C. Browning, Judge

APPEAL DISMISSED

COUNSEL

Arthur B. Alexander, Scottsdale
Counsel for Petitioner/Appellee

Wyland Law, P.C., Tucson
By Dawn Wyland
Counsel for Respondent/Appellant

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Staring and Judge Kelly[1] concurred.

E S P I N O S A, Judge:

¶1 Julie Jamarta appeals from the trial court's ruling upholding her selection of school for the minor child she shares with Robert Nee. Specifically, Jamarta argues the court (1) abused its discretion in denying her motion to dismiss Nee's petition for lack of subject matter jurisdiction and failure to state a claim, (2) "vitiated [her] specific grant of final legal decision-making authority without notice or due process," and (3) erred by stating it had "*inherent* power" to examine legal decision-making for the best interests of the child. Because we lack jurisdiction over this appeal, we dismiss.

Factual and Procedural Background

¶2 In March 2010, Nee filed a petition to establish paternity in the Pima County Superior Court. In July of that year, the parties filed a stipulation and parenting agreement providing that they were the natural parents of their minor child and would share "joint legal custody." The agreement also stated they would "each consult with the other on all major decisions concerning the minor child and take into account the thoughts and ideas of both parents," but Jamarta would have "final decision-making authority with respect to all educational decisions" subject to certain conditions not at issue here. The trial court subsequently adopted the parenting agreement.

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[1]The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

¶3 In May 2016, Nee filed a petition for order to appear, asserting the parties' discussions regarding where their daughter would start middle school "were pro forma, and only for the purpose of appearing to satisfy the provisions of the Parenting Plan." He further stated he did not believe the school Jamarta had selected was in their child's best interests and asked the trial court to allow a parenting coordinator who had discussed the issue with the child to express the child's preference.

¶4 After the trial court scheduled a hearing, Jamarta filed a motion to dismiss, arguing the parenting agreement gave her "final say in education" such that the court "lack[ed] subject matter jurisdiction" and Nee's petition failed to state a claim because he "failed to file a Motion to Modify Legal Decision Making." In October, the court held a consolidated hearing on Jamarta's motion to dismiss and the merits of Nee's underlying petition.

¶5 The trial court subsequently issued a ruling finding it had subject matter jurisdiction over Nee's petition and stating it had "the *inherent* power to always review any issue related to look behind child custody, parenting time, legal decision-making, or other similar issues to ensure that the child's best interests are being met." The court further stated it had "the legal authority to examine the agreement of the parties and determine whether or not it is in the best interests of the minor child."

¶6 The trial court then addressed whether Jamarta's chosen school was "in the best interests of the child." On consideration of the evidence presented at the October hearing, the court stated it "d[id] not believe that it [wa]s its province to opine on which particular school [wa]s best suited for this child" and found the school chosen by Jamarta was not contrary to the child's best interests. The court further stated, "Because the Court finds that the . . . school is not thwarting the best interests of [the child], the inquiry must end there." It also noted, however, that its ruling only applied to the then-current school year and that "[i]f the parties continue to litigate this issue, the Court is highly inclined to give significant consideration to the voice of the child." Jamarta appealed.

Jurisdiction

¶7 Jamarta asserts we have jurisdiction over this appeal pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1). Although § 12-2101(A)(1) states that "[a]n appeal may be taken to the court of appeals from the superior court . . . [f]rom a final judgment entered in an action . . . commenced in a superior court," Rule 1(d), Ariz. R. Civ. App. P., provides that only a "party aggrieved by a judgment may appeal as provided under Arizona law and by these Rules." Our "jurisdiction is confined to appeals taken by a 'party aggrieved by the judgment.'" *Kondaur Capital Corp. v. Pinal Cty.*, 235 Ariz. 189, ¶ 6, 330 P.3d 379, 382 (App. 2014), *quoting* Ariz. R. Civ. App. P. 1(d).

¶8 We have previously identified the requirement that the appellant be "an 'aggrieved party' with standing to appeal" as "a second hurdle" to receiving appellate review. *Douglas v. Governing Bd. of Window Rock Consol. Sch. Dist. No. 8*, 221 Ariz. 104, ¶ 7, 210 P.3d 1275, 1279 (App. 2009). "Generally, when a court enters judgment in favor of a party, that party is not 'aggrieved' and thus has no standing to appeal." *Id.* ¶ 8. Any aggrievement "must flow directly from the judgment, and not merely from applying the legal principle established in the judgment to another proceeding." *Kerr v. Killian*, 197 Ariz. 213, ¶ 10, 3 P.3d 1133, 1136 (App. 2000).

¶9 Jamarta argues the trial court's judgment "vitiated" her "authority on final legal decision-making without notice or procedural due process." She bases her conclusion on the court's statement that, if the parties could not agree in the future about the choice of school, the court would be "highly inclined to give significant consideration to the voice of the child" although the child would "not be empowered" to select which school she would attend.

¶10 Jamarta's interpretation, however, is without merit. First, she clearly is not aggrieved by the trial court upholding her school-choice decision for the then-current school year. Second, we are unpersuaded the court's comments, and in particular any admonitions about factors it might consider if the parties continue to disagree, were modifications of Jamarta's legal decision-making authority. Moreover, statements about what a court might do in the

future do not constitute present harm. *Cf. Kerr*, 197 Ariz. 213, ¶ 10, 3 P.3d at 1136. Jamarta essentially seeks what amounts to an advisory opinion. Indeed, she "asks this Court to define precisely the trial court's jurisdiction over a final legal [decision-]making agreement, and remand the matter back for a New Trial." But that is something our jurisprudence generally forbids. *See Home Builders Ass'n of Cent. Ariz. v. Kard*, 219 Ariz. 374, ¶ 9, 199 P.3d 629, 632 (App. 2008) (appellate court does not issue advisory opinions or address moot cases). Jamarta simply has made no showing she is a party aggrieved by the court's ruling.

¶11 Furthermore, to the extent Jamarta seeks this court's review of the denial of her motion to dismiss, our jurisdiction remains absent. The "denial of a motion to dismiss is not a final judgment." *State ex rel. Dep't of Econ. Sec. v. Powers*, 184 Ariz. 235, 236, 908 P.2d 49, 50 (App. 1995). Although we may review that denial as part of an appeal from a final judgment, *see Sanchez v. Coxon*, 175 Ariz. 93, 94, 854 P.2d 126, 127 (1993), we must nevertheless have jurisdiction over the underlying appeal in order to do so. The fact that Jamarta challenges the trial court's subject matter jurisdiction does not change this analysis. *Cf. State v. Perez*, 172 Ariz. 290, 292, 836 P.2d 1000, 1002 (App. 1992) (finding appellate court lacked jurisdiction to hear premature appeal challenging trial court's jurisdiction).

¶12 Nor do we have jurisdiction to entertain Jamarta's final contention that the trial court erred by stating it had "*inherent* power" to review parental decision-making for the best interests of the child. This issue is directly related to the court's denial of her motion to dismiss as well as its review of, and ultimate deference to, her choice of school. But Jamarta remains a non-aggrieved party for the reasons already discussed, and her argument does not afford jurisdiction in this court.

Disposition

¶13 For the foregoing reasons, Jamarta's appeal is dismissed.