IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

MARCUS HARRISON,
Petitioner/Appellant,

v.

LARNELL SIMS,
Respondent/Appellee.

No. 2 CA-CV 2017-0082
Filed December 7, 2017

Appeal from the Superior Court in Pima County
No. SP20130445
The Honorable James E. Marner, Judge

AFFIRMED

COUNSEL

Marcus Harrison, Tucson
In Propria Persona

Cheryl C. Cayce, Tucson
Counsel for Respondent/Appellee

MEMORANDUM DECISION

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

E S P I N O S A, Judge:

¶1 Marcus Harrison appeals from rulings entered on January 23, 2017, and March 6, 2017. For the reasons that follow, we affirm.

¶2 Harrison and Larnell Sims are parents of a minor child and were subject to parenting time and legal decision-making orders. In December 2016, after Sims had pled guilty to aggravated driving under the influence with their minor child in the car, Harrison filed a request for temporary orders without notice. The trial court denied the request in an unsigned minute entry filed on January 23, 2017, and subsequently revised certain aspects of the first Saturday parenting time in a signed final judgment filed on March 6, 2017. Harrison timely appealed; we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).[1]

¶3 Under Rule 48(A)(1), Ariz. R. Fam. Law P., a temporary order without notice may be granted only if "it clearly appears from specific facts shown . . . that irreparable injury will result to the moving party or a minor child of the party." On appeal, Harrison appears to contend the temporary order request was improperly denied because the trial court did not apply the rebuttable presumption, codified at A.R.S. § 25-403.04, that sole or joint legal decision-making by a parent convicted of aggravated driving under the influence is not in the best interests of the child.[2] But Harrison did not file a motion requesting modification under A.R.S. § 25-411 or Rule 91(D),

[1] *See Gutierrez v. Gutierrez*, 193 Ariz. 343, ¶¶ 29-30 (App. 1998) (suggesting when signed judgment resolves last remaining issue, appellant can include previous non-final orders in the same action).

[2]Harrison's opening and reply briefs suffer from many procedural defects, including a failure to provide citations to the record, an absence of meaningful development of his arguments, and a lack of legal authority supporting his positions. *See* Ariz. R. Civ. App. P. 13. In our discretion, we nevertheless address his arguments. *See Varco, Inc. v. UNS Elec., Inc.*, 242 Ariz. 166, n.5 (App. 2017).

(F), Ariz. R. Fam. Law P., which would have been the proper procedure for seeking a modification of the parenting plan under changed circumstances. Rather, he requested a temporary order under Rule 48, which, as described above, may be granted "only if" it is clear that "irreparable injury will result." The court found Harrison had not met that burden.

¶4 Section 25-404(A), A.R.S., provides that the court "may award temporary [custody]" upon a motion "supported by pleadings as provided in § 25-411" if in the best interests of the child, but does not require that the denial of a request for temporary orders be accompanied by a best interests finding. *Cf.* A.R.S. § 25-403(A) (trial court considers child's best interests when "determin[ing] [custody], either originally or on petition for modification"). Harrison offers no support, nor do we find any, for the proposition that denial of a request for temporary orders must be found to be in the best interests of the child. We therefore conclude the trial court's January 23 order finding Harrison had "not met the burden of proof required . . . to grant temporary emergency orders without notice pursuant to Rule 48" was not in error.

¶5 Harrison additionally appeals the March 6, 2017, order modifying his parenting time on the first Saturday of each month. The minute entry filed that date indicates that the parties agreed upon the modification. Harrison's opening brief does not explain how he was aggrieved by a modification he agreed to, and we note that a person not aggrieved by a final judgment lacks standing to appeal that judgment. *See* Ariz. R. Civ. App. P. 1(d); *Douglas v. Governing Bd. of Window Rock Consol. Sch. Dist. No. 8*, 221 Ariz. 104, ¶¶ 7, 9 (App. 2009) (party not aggrieved by or which consented to judgment lacks standing on appeal).

¶6 In his reply brief, Harrison alleges "when it became a modification by [the trial court] chang[]ing the parenting time from [M]ondays at 8:30am . . . until [T]hursdays at 2:30pm," "this was no longer a matter for temporary orders but a change in parenting time and should be viewed as a matter of a modification of parenting time as such orders were given."[3] But the March 6 order he appeals does not address weekday parenting time—it only modified the exchange location and authorized certain people to go in Harrison's stead if he was "unable to be present for the exchange." And, as discussed above, that is a modification he agreed

[3]Although we generally do not address arguments raised for the first time in a reply brief, in our discretion we do so in this case. *Duwyenie v. Moran*, 220 Ariz. 501, n.3 (App. 2009).

to, and thus he cannot challenge the related ruling on appeal. *See Cofield v. Sanders*, 9 Ariz. App. 240, 242 (1969) ("It is well settled that ordinarily a consent judgment is not subject to appellate review."). Accordingly, we do not address his claim further.

Disposition

¶7 For the foregoing reasons, the trial court's judgment is affirmed.