

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

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IN RE THE MARRIAGE OF

MELINDA ABIGAIL TOVAR,  
*Appellant,*

*and*

RAMON RAFAEL MORALES TOVAR,  
*Appellee.*

No. 2 CA-CV 2019-0031-FC  
Filed September 19, 2019

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NOT FOR PUBLICATION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

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Appeal from the Superior Court in Pima County  
No. D20061213

The Honorable Jane A. Butler, Judge Pro Tempore

**APPEAL DISMISSED**

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COUNSEL

Melinda Abigail Tovar, Corona de Tucson  
*In Propria Persona*

The Higgins Law Group P.L.L.C., Tucson  
By Maggie Higgins Schmidt  
*Counsel for Appellee*

IN RE MARRIAGE OF TOVAR  
Decision of the Court

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**MEMORANDUM DECISION**

Judge Espinosa authored the decision of the Court, in which Presiding Judge Eppich and Judge Eckerstrom concurred.

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ESPINOSA, Judge:

¶1 Melinda Abigail Tovar seeks review of the trial court’s ruling denying her request to enforce child and spousal support against Ramon Rafael Morales Tovar and the court’s denial of her motion to reconsider that ruling. Because we lack jurisdiction, her appeal must be dismissed.

**Discussion**

¶2 Although neither party has raised the issue, we have “an independent duty to examine whether we have jurisdiction over matters on appeal.” *Camasura v. Camasura*, 238 Ariz. 179, ¶ 5 (App. 2015). “[W]e have no authority to entertain an appeal over which we do not have jurisdiction.” *In re Marriage of Johnson & Gravino*, 231 Ariz. 228, ¶ 5 (App. 2012).

¶3 “[T]he timely filing of a notice of appeal is a jurisdictional prerequisite to appellate review.” *In re Marriage of Dougall*, 234 Ariz. 2, ¶ 7 (2012) (alteration in *Marriage of Dougall*) (quoting *In re Marriage of Gray*, 144 Ariz. 89, 90 (1985)). In family law cases, a notice of appeal must be filed within thirty days after entry of the judgment or order being appealed. Ariz. R. Civ. App. P. 9(a). Under Rule 9(e), Ariz. R. Civ. App. P., the time for filing a notice of appeal is extended if certain motions are “timely and properly file[d]” with the trial court. Although a motion for reconsideration may be filed within thirty days after entry of the relevant ruling, it does not “suspend or extend the deadline for filing a notice of appeal from the relevant ruling.” Ariz. R. Fam. Law P. 84(D), (E).<sup>1</sup>

¶4 Following a hearing on Melinda’s post-decree request to enforce child and spousal support, the trial court denied the request in a September 28, 2018 ruling. That signed ruling resolved all outstanding

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<sup>1</sup>We cite the version of the rule in effect at the time of the trial court’s September ruling. Rule 84 has since been amended. *Compare* Ariz. Sup. Ct. Order No. R-17-0054 (Aug. 30, 2018), *with* Ariz. Sup. Ct. Order No. R-13-0055 (Sept. 2, 2014).

IN RE MARRIAGE OF TOVAR  
Decision of the Court

claims, including attorney fees, and thus was a final, appealable ruling.<sup>2</sup> Melinda’s subsequent motion for reconsideration did not “suspend or extend the deadline for filing [the] notice of appeal.” *See* Ariz. R. Fam. Law P. 84(E). Consequently, her January 2019 notice of appeal was untimely, and we lack jurisdiction to review the September 28 ruling.

¶5 We additionally lack jurisdiction over the trial court’s denial of Melinda’s motion for reconsideration.<sup>3</sup> Although the order contains language pronouncing it “a final, appealable order,” it was not separately appealable under A.R.S. § 12-2101(A)(2) because it raised only issues that would have been raised in an appeal of the final judgment. *See Williams v. Williams*, 228 Ariz. 160, ¶ 11 (App. 2011) (to be appealable, issues raised must be different from those that would arise from underlying order).

**Attorney Fees on Appeal**

¶6 Rafael requests his attorney fees on appeal based on Melinda’s “misrepresentations and frivolous filing” pursuant to A.R.S. § 25-324 and Rule 21, Ariz. R. Civ. App. P. but points to no recent information in the record regarding the parties’ financial resources. In our discretion, we deny Rafael’s request. *See Clark v. Clark*, 239 Ariz. 281, ¶ 14 (App. 2016) (attorney fees pursuant to A.R.S. § 25-324 subject to appellate court’s discretion); *Coburn v. Rhodig*, 243 Ariz. 24, ¶ 16 (App. 2017) (denying attorney fees on appeal in part due to lack of current information regarding parties’ relative financial resources). However, pursuant to A.R.S. § 12-341, we grant Rafael his costs on appeal upon his compliance with Rule 21, Ariz. R. Civ. App. P.

**Disposition**

¶7 For the foregoing reasons, Melinda’s appeal is dismissed.

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<sup>2</sup>Although Rule 78, Ariz. R. Fam. Law P., has since been amended such that a ruling as to all claims, issues, and parties is not final unless it contains finality language, the rules in effect when the ruling here was entered had no such requirement. *Compare* Ariz. Sup. Ct. Order No. R-17-0054 (Aug. 30, 2018), *with* Ariz. Sup. Ct. Order No. R-05-0008 (Jan. 1, 2006).

<sup>3</sup>Melinda also moved “for a new trial” pursuant to Rule 83, Ariz. R. Fam. Law P. But the motion was not timely filed, and the trial court correctly declined to address it. This untimely motion did not extend the time for appeal. *See Marriage of Dougall*, 234 Ariz. 2, ¶ 7.