

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

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IN RE THE MARRIAGE OF

JEFFREY SMITH,  
*Petitioner/Appellee,*

*and*

MARYLEA SMITH,  
*Respondent/Appellant.*

No. 2 CA-CV 2019-0172-FC  
Filed May 21, 2020

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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NOT FOR PUBLICATION  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 Pinal County  
No. S1100DO201802088  
The Honorable Karen F. Palmer, Judge Pro Tempore

**APPEAL DISMISSED**

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COUNSEL

Gregan Law Office P.C., Apache Junction  
By Maureen E. Gregan  
*Counsel for Petitioner/Appellee*

Marylea Smith, Apache Junction  
*In Propria Persona*

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**MEMORANDUM DECISION**

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

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V Á S Q U E Z, Chief Judge:

¶1 Marylea Smith appeals from the trial court’s denial of her motion for the court to reconsider its distribution of her retirement account in the decree of dissolution of her marriage to Jeffrey Smith. For the reasons stated below, we dismiss this appeal for lack of jurisdiction.

**Factual and Procedural Background**

¶2 In 1976, Jeffrey and Marylea were married in New York. Marylea retired during the marriage and began receiving monthly payments from her retirement account. In 2018, Jeffrey filed a petition in the Pinal County Superior Court to dissolve the marriage. As relevant here, Jeffrey alleged during the proceedings that Marylea’s pension was community property and should be divided “equally.” Marylea maintained that Jeffrey had chosen “not to take any interest in [her] pension” and that the parties should each “retain the retirement account(s) in their own name[s]” with no claim by the other. After a trial, the trial court entered a signed, formal order on June 18, 2019, in which it divided Marylea’s retirement account equally. The formal order included Rule 78(c), Ariz. R. Fam. Law P., finality language.

¶3 On July 5, 2019, Marylea filed a motion for reconsideration, urging the trial court to “reconsider its ruling . . . with regard to the issue and division of [her] retirement account.” She argued that the pension forms attached to her motion included a definition of “joint and survivor annuity,” which proved that “[c]ontrary to what was discussed during the trial,” Jeffrey had completely waived his interest in the account by signing the spousal consent form. Marylea also contended that New York law should have applied because she earned the account in that state. She claimed that New York is not a “community property state” and that the account would not have been divided between the parties under New York’s “equitable distribution” laws because “property acquired during the marriage belongs to the spouse who earned it.” She also argued that in this instance her retirement was not subject to equitable distribution due to Jeffrey’s signature on the spousal consent form. On July 31, 2019, the court

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denied the motion, and on August 30, 2019, Marylea filed a notice of appeal challenging only the order denying her “Motion for Reconsideration.”

**Discussion**

¶4 Although Jeffrey has not raised the issue, this court has an independent duty to determine whether it has jurisdiction over an appeal. See *In re Marriage of Flores & Martinez*, 231 Ariz. 18, ¶ 6 (App. 2012). Our jurisdiction is derived from statute, and we must dismiss an appeal over which we lack jurisdiction. See *In re Marriage of Johnson & Gravino*, 231 Ariz. 228, ¶ 5 (App. 2012); *Robinson v. Kay*, 225 Ariz. 191, ¶ 4 (App. 2010).

¶5 Generally, only final judgments are appealable. *Ghadimi v. Soraya*, 230 Ariz. 621, ¶ 7 (App. 2012). And in a civil case, a notice of appeal must be filed within thirty days after entry of the judgment being appealed. See Ariz. R. Civ. App. P. 9(a). However, “any special order made after final judgment” may also be appealed under A.R.S. § 12-2101(A)(2), if the order satisfies two conditions. See *Arvizu v. Fernandez*, 183 Ariz. 224, 226-27 (App. 1995). First, the issues raised on an appeal of the special order must differ from those that could be raised on an appeal from the judgment. *Id.* at 226. Second, the order must either affect or relate to the judgment by either enforcing it or staying its execution. *Id.* at 227; see also *Williams v. Williams*, 228 Ariz. 160, ¶ 14 (App. 2011) (appealable special order “itself, without need for later court action, alters the legal rights or responsibilities of the parties”).

¶6 On appeal, Marylea argues “the trial [c]ourt err[ed] in granting [Jeffrey] a community interest in [her] retirement plan.” This appeal raises issues that could have been raised on a direct appeal from the final judgment. The July 31, 2019 order denying Marylea’s motion for reconsideration did not independently alter the legal rights or responsibilities of the parties, as it merely confirmed the distribution under the final judgment. The order denying the motion is therefore not independently reviewable, and we lack jurisdiction over it.<sup>1</sup> See *Williams*, 228 Ariz. 160, ¶ 14; *Arvizu*, 183 Ariz. at 226-27.

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<sup>1</sup>Even if this court had jurisdiction, Marylea would not be entitled to relief. Marylea has not supported her arguments with citations to legal authority or the portions of the record on which she relies. See Ariz. R. Civ. App. P. 13(a)(7)(A) (requiring appellant to include “contentions concerning each issue presented for review, with supporting reasons for each contention, and with citations of legal authorities and appropriate

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¶7 Our review is limited to those rulings identified within the notice of appeal. *See* Ariz. R. Civ. App. P. 8(c)(3) (requiring notice of appeal to “[d]esignate the judgment or portion of the judgment from which the party is appealing”); *Ruesga v. Kindred Nursing Ctrs., L.L.C.*, 215 Ariz. 589, ¶ 38 (App. 2007) (limiting issues to those listed in notice of appeal). But even if Marylea’s notice of appeal had listed the final judgment, we would lack jurisdiction because the notice was not filed within thirty days after the judgment was entered. *See* Ariz. R. Civ. App. P. 9(a). A motion for reconsideration “does not extend the time within which a notice of appeal must be filed.”<sup>2</sup> Ariz. R. Fam. Law P. 35.1(c); *see* Ariz. R. Civ. App. P. 9(e)(1) (listing motions that extend time to appeal).

¶8 Jeffrey requests his attorney fees on appeal pursuant to A.R.S. § 25-324 and Rule 21, Ariz. R. Civ. App. P. Reasonable attorney fees may be awarded pursuant to § 25-324(A) after considering the parties’ financial resources and the reasonableness of their positions. After reviewing the record, including the parties’ financial resources and the positions taken, in our discretion, we deny the request for attorney fees. As the prevailing party, however, Jeffrey is entitled to his costs on appeal, upon compliance with Rule 21(b). *See* A.R.S. § 12-341.

**Disposition**

¶9 For the reasons stated above, we dismiss this appeal.

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references to the portions of the record on which the appellant relies” in opening brief). Accordingly, in the absence of a properly developed argument, Marylea would have waived any issue related to the July 31, 2019 order. *See Sholes v. Fernando*, 228 Ariz. 455, ¶ 16 (App. 2011) (waiving issues not properly presented in opening brief); *see also In re Marriage of Williams*, 219 Ariz. 546, ¶ 13 (App. 2008) (self-representing parties, such as Marylea, are “entitled to no more consideration than if they had been represented by counsel’ and are held to the same standards as attorneys with respect to ‘familiarity with required procedures and . . . notice of statutes and local rules.’” (quoting *Smith v. Rabb*, 95 Ariz. 49, 53 (1963))).

<sup>2</sup>Although Marylea’s motion for reconsideration states that it is filed under Rule 85, Ariz. R. Fam. Law P., that rule applies to motions for relief from judgment and Marylea did not allege any of the grounds for relief under Rule 85. *See Hegel v. O’Malley Ins. Co., Agents & Brokers*, 117 Ariz. 411, 412 (1977) (considering substance of motion when determining if it extends time to appeal, not title of motion).