IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE THE MARRIAGE OF

INEZ GABRIELA MEDINA, FKA INEZ MEDINA VASQUEZ,
Petitioner/Appellant,

and

ALEXANDER VASQUEZ,
Respondent/Appellee.

No. 2 CA-CV 2019-0213-FC
Filed October 29, 2020

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NOT FOR PUBLICATION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 Pinal County
No. D201800579
The Honorable Karen F. Palmer, Judge Pro Tempore

AFFIRMED

COUNSEL

Crider Law Firm PLLC, Mesa
By Brad J. Crider
Counsel for Petitioner/Appellant

Suzette Lorrey-Wiggs PC, Tempe
By Suzette Lorrey-Wiggs
Counsel for Respondent/Appellee

MEMORANDUM DECISION

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

E C K E R S T R O M, Judge:

¶1 Inez Medina appeals from the trial court's October 2019 decree of dissolution of her marriage to Alexander Vasquez. For the reasons that follow, we affirm.

Factual and Procedural Background

¶2 "We view the facts in the light most favorable to upholding the trial court's decree." *In re Marriage of Foster*, 240 Ariz. 99, ¶ 2 (App. 2016). Medina filed a "Petition for Dissolution of a Non-Covenant Marriage with Minor Children" in April 2018. Vasquez filed his response shortly thereafter. In early September 2018, the parties and their attorneys met for a settlement conference. Later that month, Medina's attorney emailed Vasquez's attorney, providing what she called "Meeting Notes regarding the Parties' settlement discussions and agreements," asking Vasquez's counsel to identify anything that had been missed or inaccurately recorded. Nothing in the record suggests Vasquez or his attorney objected to any portion of the writing circulated by Medina's attorney.

¶3 In February 2019, Vasquez's attorney emailed to follow up, stating the parties had "agreed on all issues" at the September 2018 settlement conference except medical bill reimbursement and the language to be utilized regarding the parties' youngest child. Medina's attorney responded, disagreeing that the parties had "reached full agreement" except for those two issues, but nonetheless agreeing that "[t]he Parties did reach agreements at the time of the informal settlement conference." She proceeded to refer again to "the agreement reached at the informal settlement conference," including with regard to a parenting plan, child support, and refinancing of a house, arguing that both parties had failed to adhere to what they had agreed in September 2018.

¶4 In September 2019, over a year after the settlement conference, the trial court held a non-jury trial, at which both Medina and Vasquez testified. During her testimony, Medina confirmed that the parties

had reached certain agreements at the settlement meeting the year before, including with regard to legal decision-making and parenting time.[1]

¶5 In October 2019, the court issued a decree of dissolution. It concluded that, although no consent decree "or even a partial, formalized Rule 69 document" was ever prepared, the "Meeting Notes regarding the Parties' settlement discussions *and agreements*" sent by Medina's attorney in September 2018 and discussed in subsequent email correspondence between the parties' attorneys "constituted a writing as required under the former Rule 69," Ariz. R. Fam. Law P., such that a valid and binding agreement existed on a range of issues.[2] The court adopted the parties' agreements on those issues and incorporated them into the decree, "mak[ing] extra provisions where necessary to facilitate compliance with the orders." It then proceeded to decide additional issues on which no agreement could be ascertained.[3] This appeal followed. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(1). *See also* Ariz. R. Fam. Law P. 78(b).

Rule 69 Agreement

¶6 Medina contends the trial court erred in concluding a binding agreement existed because "there was never a written agreement that purported to be a settlement agreement" and neither she nor Vasquez "ever signed any written agreement." Medina focuses, in particular, on the fact that Rule 69 was amended, effective January 1, 2019, to require that any

[1] Vasquez argues that Medina's "trial testimony as to what she believed the trial court should order regarding legal decision-making, parenting time, vehicles, medical, tax exemptions, parties' incomes, [and] bank accounts was consistent" with the agreements reached in September 2018 as laid out in her attorney's write-up of those agreements.

[2] In particular, the trial court concluded the parties had "reached Rule 69 agreements" on the issues of legal decision-making, parenting time, child support, medical and tax deduction, real property at a particular address, vehicles, retirements, financial accounts, and credit cards and debts. The court found that, although the September 2018 writing listed spousal maintenance and student loans, it was ambiguous regarding what, if any, agreements had been reached at the settlement conference on those issues.

[3] These issues were spousal maintenance, student loans, uncovered medical expenses, and paternity regarding the youngest child.

agreement not only be in writing, but also signed by the parties personally or by counsel on a party's behalf. Ariz. Sup. Ct. Order R-17-0054 (Aug. 30, 2018). She contends that the rule in effect at the time of the trial should govern and that the court erred in instead applying the version of the rule in effect at the time of the settlement conference, under which no signature was required.

¶7 The retroactivity of an amendment to a rule is a question of law, which we review *de novo*. *See DeVries v. State*, 219 Ariz. 314, ¶ 9 (App. 2008). Our supreme court has stipulated that the amended version of Rule 69 applies "to all actions filed on or after January 1, 2019"—not the case here—and to actions pending on that date, "except to the extent that the court in an affected action determines that applying the amended rule would be infeasible or work an injustice, in which event the former rule or procedure applies." Ariz. Sup. Ct. Order R-17-0054.

¶8 Here, the trial court concluded, albeit without explanation, that "the former Rule 69" applies. We agree. The agreements in question were reached by the parties in 2018 and subject to the version of Rule 69 in effect at that time. It would "work an injustice" to strip a binding agreement of its binding effect through the retroactive application of a change to our state's rules of family law procedure. *See Halt v. Gama*, 238 Ariz. 352, ¶ 17 (App. 2015) (rule changes not applied retroactively if they "'alter or affect earlier established substantive rights,'" nor applied in pending proceedings if amended rule "[a]ffects or impairs vested rights") (quoting *City of Tucson v. Clear Channel Outdoor, Inc.*, 209 Ariz. 544, ¶ 11 (2005))); *see also In re Herbst*, 206 Ariz. 214, ¶ 14 (App. 2003) (when material facts undisputed, appeals court "will affirm the decision if it is legally correct on any basis").

¶9 Medina's challenge to the trial court's determination that a Rule 69 agreement existed in this case is premised on her incorrect legal argument that the current version of Rule 69 should have been applied.[4] Thus, the challenge fails.

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[4]Medina also contends on appeal that the trial court erred in relying on emails exchanged by the parties' attorneys as proof of a written settlement agreement, which she argues constitutes a violation of Rule 408, Ariz. R. Evid. However, as the court noted, "[t]here were no objections raised at trial regarding the admissibility of the attorneys' correspondence." Having failed to make the argument before the trial court, Medina has waived it on appeal. *In re Marriage of Johnson & Gravino*, 231 Ariz. 228, ¶ 25 (App. 2012) ("Absent extraordinary circumstances, errors not raised in the

Attorney Fees and Costs

¶10 Both parties requested an award of attorney fees and costs at trial. The trial court granted Vasquez's request and denied Medina's request for two reasons. First, the court found that Medina "acted unreasonably in the litigation," specifically by "refusing to follow through with the agreements the parties reached back in September of 2018," resulting in significant delay and unnecessarily increased attorney fees and costs, meriting an award of fees and costs under A.R.S. § 25-324(A). The court further found that an award of attorney fees and costs was appropriate under A.R.S. § 25-415 because Medina "knowingly presented a false claim." In particular, her pretrial statement indicated that "the parties did not reach agreements back in September 2018," when such agreements were clear from her attorney's September 2018 email to opposing counsel and even her own testimony at trial, which "lined up" with the agreements outlined in writing by her attorney. On appeal, Medina challenges only the second prong of this ruling, contending the trial court "improperly found [Medina] knowingly presented a false claim" and erred in awarding attorney fees and costs to Vasquez pursuant to § 25-415.[5]

¶11 Section 25-415(A)(1) requires a trial court to sanction a litigant for costs and reasonable attorney fees if it finds that the litigant has "[k]nowingly presented a false claim under § 25-403 . . . with knowledge that the claim was false." Section 25-403, A.R.S., in turn, relates to the court's determination of legal decision-making and parenting time. Here, the trial court found that Medina's "own testimony at trial was that they reached agreements on legal decision-making and parenting time," contrary to her pretrial statement, which "gave no hint that these were uncontested facts and issues at trial" and instead "gave different positions

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trial court cannot be raised on appeal because the court and opposing counsel should have the opportunity to correct any asserted errors or defects."). Regardless, the trial court correctly concluded the emails in question were admissible "to prove a settlement resolving a claim." *Murray v. Murray*, 239 Ariz. 174, ¶ 16 (App. 2016) (where writings offered to "prove the parties reached an agreement" on particular issue).

[5]As to Medina's passing claim that the trial court "failed to consider the reasonableness of the parties' positions and financial resources" as required for an award of attorney fees under § 25-324(A), this is flatly contradicted by the decree, in which the court expressly addressed both issues.

than what she requested at trial." These conclusions are supported by the record. Moreover, § 25-403(A)(7) requires the court to consider, *inter alia*, "[w]hether one parent intentionally misled the court to cause an unnecessary delay [or] to increase the cost of litigation," which the court reasonably concluded was the case here. Thus, the court correctly sanctioned Medina by awarding Vasquez his attorney fees and costs under § 25-415(A)(1).

¶12 Both parties have requested attorney fees and costs on appeal. Vasquez grounds his request, in part, on § 25-324. That statute requires us to consider the respective resources of the parties and the reasonableness of the positions they have taken on appeal. § 25-324(A). The trial court determined that there is a disparity of financial resources, with Vasquez having "more resources to contribute to attorneys' fees/costs." Moreover, we cannot conclude that Medina has taken unreasonable positions on appeal, particularly given the trial court's lack of explanation for its determination that the former version of Rule 69 applies to the parties' agreements in this case. Thus, we decline to award Vasquez his attorney fees on appeal under § 25-324. For the same reasons, we reject Vasquez's request that we award such fees as a sanction under Rule 25, Ariz. R. Civ. App. P. However, we grant him, as the successful party, his costs on appeal, pursuant to A.R.S. § 12-341, upon his compliance with Rule 21, Ariz. R. Civ. App. P. We deny Medina's request.

Disposition

¶13 For all the foregoing reasons, we affirm the ruling of the trial court.