IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE THE MARRIAGE OF

DANIEL A. TOPOROWYCH,
Petitioner/Appellant,

and

KIMBERLY TOPOROWYCH,
Respondent/Appellee.

No. 2 CA-CV 2022-0117-FC
Filed December 5, 2023

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NOT FOR PUBLICATION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. S1100DO202000567
The Honorable Karen F. Palmer, Judge

AFFIRMED IN PART; DISMISSED IN PART

COUNSEL

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MEMORANDUM DECISION

Judge Gard authored the decision of the Court, in which Presiding Judge Eppich and Chief Judge Vásquez concurred.

G A R D, Judge:

¶1 In this marriage-dissolution proceeding, Daniel Toporowych ("Husband") appeals from the trial court's orders denying his motion for relief from judgment. He also challenges certain property-division orders, as well as an order finding him in contempt and awarding attorney fees to Kimberly Toporowych ("Wife") based on his failure to comply with one of those orders. For the following reasons, we affirm in part and dismiss in part.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the trial court's findings and orders. *Hefner v. Hefner*, 248 Ariz. 54, n.2 (App. 2019). Husband and Wife were married in 2002. In February 2021, following a trial, the court entered a decree dissolving the marriage and disposing of the parties' property. Included in this property was Husband's account with the Ohio Police and Fire Pension Fund ("the Account"), which is the only property at issue in the present appeal.

¶3 Husband maintained that the Account was a disability payment and, as such, his sole-and-separate property.[1] In its decree, the trial court presumed that property acquired during the marriage belonged to the community unless proven otherwise by clear-and-convincing evidence.[2] The court noted that the parties had not disputed that Husband

[1]*See* A.R.S. § 25-318(A) (requiring court to award spouse's sole-and-separate property to that spouse and to divide community property equitably); *Davies v. Beres*, 224 Ariz. 560, ¶ 14 (App. 2010) (recognizing that pure disability payments are separate property of disabled spouse but semi-retirement disability payments based on years of service and percentage of disability may be community property).

[2]*See* A.R.S. § 25-211(A) (subject to limited exceptions, "[a]ll property acquired by either husband or wife during the marriage is the community

had acquired the Account and had accumulated service years during the marriage. But the court was unable to determine from the evidence presented whether the Account was "a retirement account, straight disability account, or . . . a disability retirement account calculated based on years of service." The court therefore found that Husband had failed to prove by clear-and-convincing evidence that the Account was his sole-and-separate property and ordered the parties to prepare any necessary qualified domestic relations orders to divide it as community property.

¶4 Shortly thereafter, Husband filed two substantially similar pleadings entitled "motion/pro se," referring to his counsel's claimed refusal to move to alter or amend the judgment under Rule 83, Ariz. R. Fam. Law P. In the motions, Husband asserted that the Account was a disability payment and not a pension. Wife also filed a separate and unrelated Rule 83 motion, involving, among other things, debt owed on the marital home. In addition, on February 26, 2021, Husband filed a notice of appeal from the trial court's "division of disability award."

¶5 The trial court thereafter denied the latter of Husband's two pro se motions, observing that he had failed to cite any subsection of Rule 83 and had failed to sufficiently explain his request and position. The court granted Husband leave to file a procedurally appropriate post-decree motion.[3]

¶6 Two months later, the trial court became aware of Wife's pending Rule 83 motion, which had not previously been brought to its attention. The court observed that a notice of appeal had been filed, stated its intention to order Husband to respond to Wife's motion, and advised the parties that Wife's motion had to be resolved before there could be "a final and appealable order." The same day, Husband filed a Rule 83 motion, again challenging the Account's division on various grounds. *See*

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property of the husband and wife"); *see also Sommerfield v. Sommerfield*, 121 Ariz. 575, 577-78 (1979); *Larchick v. Pollock*, 252 Ariz. 364, ¶ 25 (App. 2021).

[3]The trial court did not expressly rule on Husband's earlier-filed pro se motion. However, as noted above, that motion was substantially similar to the one the court denied with leave to refile.

Ariz. R. Fam. Law P. 83(a)(1)(A), (E), (H).[4] The court issued a minute entry advising the parties that it lacked jurisdiction to rule on the motion in light of the pending appeal and that the record had already been transmitted to this court.

¶7 In June 2021, this court observed that the order from which Husband had attempted to appeal lacked the finality language required by Rule 78(c), Ariz. R. Fam. Law P. Accordingly, this court stayed the appeal and revested jurisdiction in the trial court for the "limited" purpose of permitting the parties to apply for a final judgment.

¶8 Wife thereafter moved for revestment, noting the limiting language in this court's prior order and advising this court that the trial court had yet to enter a division-of-property order required by Ohio law, which governed the Account. This court then entered an additional order "[p]ursuant to" Wife's motion, again staying the appeal and revesting jurisdiction for the "limited purpose" of permitting the parties to apply for "an appropriate final judgment." We thereafter extended the stay, following status reports from the parties advising us of matters pending in the trial court.

¶9 During the stay period, Husband asked the trial court to enter a final judgment and, in the same pleading, asked the court to recognize the Account as his sole-and-separate property and to reverse its order to the contrary. He also moved for relief from the decree under Rule 85, Ariz. R. Fam. Law P., again arguing that the Account was a disability payment and thus not community property. Conversely, Wife asked the court to enter a division-of-property order governing how the Account's plan administrator was to divide the Account and an order for direct payments from Husband to Wife until the administrator assumed payments.

¶10 The trial court resolved all pending motions on November 2, 2021. The court granted in part Wife's Rule 83 motion, ordering Husband to refinance the marital residence to remove Wife's name. The court denied Husband's Rule 83 motion as untimely. The court further denied Husband's Rule 85 motion, making extensive factual findings and reaffirming its prior determination that Husband had not established the Account was his sole-and-separate property. And the court granted Wife's

[4]Unless otherwise noted, we cite the current version of applicable statutes or rules when no revision material to this case has occurred. *See Bobrow v. Bobrow*, 241 Ariz. 592, n.2 (App. 2017).

request for division-of-property and direct-payment orders. The court signed its minute entry resolving the motions, expressly certifying that no issues remained pending and that the judgment was final and appealable. *See* Ariz. R. Fam. Law P. 78(c).

¶11 This court thereafter lifted the stay on the appeal and set the opening brief's due date. But before filing that brief, Husband voluntarily dismissed the appeal. This court issued its mandate on March 8, 2022.

¶12 Within a month of the mandate, the parties resumed litigation in the trial court. In April 2022, Wife petitioned the court for an order directing Husband to show cause why he should not be held in contempt for failing to comply with the direct-payment order. In June 2022, Husband filed another Rule 85 motion, in which he again sought relief from the court's orders dividing the Account; requested an evidentiary hearing; and argued, among other things, that the court lacked subject-matter jurisdiction over the Account because it was his sole-and-separate property, making the orders dividing the Account void.[5] *See* Ariz. R. Civ. P. 85(b)(4). The court denied Husband's motion in a summary order.

¶13 The trial court conducted an evidentiary hearing on Wife's contempt petition, at the outset of which Husband again challenged the court's subject-matter jurisdiction. Husband cited Rule 12(i), Ariz. R. Civ. P., to argue that he was entitled to a hearing on the jurisdictional issue.[6] The court denied the request, noting that it had already resolved Husband's challenge to the Account's division, which he had raised in numerous post-decree motions, and finding that Husband had, in his most recent motion, merely raised the previously litigated claim under a different provision of Rule 85. The court likewise refused to permit Husband to revisit the trial evidence concerning whether the Account was a disability payment.

¶14 In July 2022, the trial court issued a written ruling finding Husband in contempt for failing to comply with its direct-payment order.

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[5]Husband's motion appeared to be directed at both the February 2021 decree and the November 2021 property-division and direct-payment orders.

[6]Rule 12(i) is entitled "Preliminary Hearings" and provides, "[i]f a party so moves, any defense listed in Rule 12(b)(1) through (7)," which includes subject-matter jurisdiction, "must be heard and decided before trial unless the court orders a deferral until trial."

The court entered judgment against Husband in the amount of almost $39,000 and awarded attorney fees and costs to Wife in an amount to be determined. The court also elaborated on its reasons for denying Husband's June 2022 Rule 85 motion, reaffirming its finding that Husband had merely repackaged the same core claim he had litigated in his previous post-decree motions—a challenge to the court's finding that he had failed to meet his burden of proving the Account was his sole-and-separate property—into different subsections of Rule 85.

¶15 The trial court certified its order as a partial final judgment under Rule 78(b), Ariz. R. Fam. Law P., noting that it still had to determine the appropriate amount of attorney fees and costs. Husband filed a notice of appeal, identifying both the court's July 2022 written ruling and its June 2022 summary order denying his Rule 85 motion. The court thereafter finalized the fees award and included Rule 78(c) language in its order.

Discussion

¶16 Husband contends that the trial court's various orders dividing the Account are void for lack of subject-matter jurisdiction. As a result, he continues, the court erred by denying his June 2022 motion to be relieved of those orders. Husband further contends that the court's November 2021 orders, including the direct-payment order, are void because they exceeded the scope of this court's order revesting jurisdiction in the trial court following his February 2021 notice of appeal. Finally, Husband contends that, because the direct-payment order is void, the court erred by finding him in contempt for violating it and by awarding Wife attorney fees.[7] We address each issue in turn.

I. Motion for Relief from Judgment

¶17 We review for an abuse of discretion a trial court's order denying a motion for relief from judgment, *In re Marriage of Dougall*, 234 Ariz. 2, ¶ 11 (App. 2013), deferring to the court's factual findings unless clearly erroneous but drawing our "own legal conclusions from facts found or implied in the judgment," *Nash v. Nash*, 232 Ariz. 473, ¶ 5 (App. 2013). However, we review de novo claims that an order is void, as well as

[7]Husband additionally challenges the trial court's February 2021 determination that the Account was community property. In light of our resolution of Husband's voidness claim, we do not address this argument.

challenges to a court's subject-matter jurisdiction. *Duckstein v. Wolf*, 230 Ariz. 227, ¶ 8 (App. 2012).

¶18 Rule 85(b)(4) permits a trial court to relieve a party from a void judgment. A void judgment has no legal effect, and may be set aside at any time. *See Shinn v. Ariz. Bd. of Exec. Clemency*, 254 Ariz. 255, ¶ 26 (2022). One reason a judgment may be void is that the court entering it lacked subject-matter jurisdiction.[8] *Id.* ¶ 27; *Marriage of Dougall*, 234 Ariz. 2, ¶ 12. Subject-matter jurisdiction, in turn, is "a 'court's statutory or constitutional power to hear and determine a particular type of case.'" *The Spaulding LLC v. Miller*, 250 Ariz. 383, ¶ 12 (App. 2020) (quoting *State v. Maldonado*, 223 Ariz. 309, ¶ 14 (2010)).

¶19 In addition, if a court lacks "authority to render a particular order or judgment," that order or judgment may be void. *Shinn*, 254 Ariz. 255, ¶ 35 (emphasis omitted). As our supreme court recently clarified, this theory of voidness does not turn on jurisdiction but on whether the controlling rule or statute empowers the court to take the challenged action. *See id.* ¶¶ 25-35 (acknowledging confusion from appellate courts' use of the word "jurisdiction" to describe a court's power to act and directing courts instead to use the word "authority" in this context); *see also In re Marriage of Thorn*, 235 Ariz. 216, ¶ 17 (App. 2014) (recognizing supreme court's prior use of "the term 'jurisdiction' in a broader, now antiquated, sense actually referring to courts' authority under the specific controlling statute rather than subject-matter jurisdiction"); *State v. Bryant*, 219 Ariz. 514, ¶ 14 (App. 2008) ("Our supreme court has recognized that the word 'jurisdiction,' like the word 'void,' has frequently been misused by our courts.").

¶20 A court may therefore have subject-matter jurisdiction over a case, but nonetheless issue a void order by exceeding the scope of its authority. For example, in *Shinn*, our supreme court concluded that the trial court had subject-matter jurisdiction over a criminal case but lacked authority to modify the defendant's sentence nunc pro tunc under Rule 24.4, Ariz. R. Crim. P., making its order doing so void. 254 Ariz. 255, ¶¶ 28-39.

[8]A court's judgment may also be void if the court lacks jurisdiction over the parties. *Shinn*, 254 Ariz. 255, ¶ 27. Husband does not challenge the trial court's personal jurisdiction here.

¶21 When a court has jurisdiction and authority to act but errs in its decision-making, the resulting order is not void but voidable. *See id.* ¶¶ 26-27; *Bryant*, 219 Ariz. 514, ¶ 14. A voidable order is binding and enforceable, even if erroneous, unless it is vacated or reversed on direct appeal or through a timely and procedurally appropriate post-judgment motion. *Shinn,* 254 Ariz. 255, ¶ 26; *see Bryant*, 219 Ariz. 514, ¶ 13 ("[A] judgment 'that is voidable is binding and enforceable and has all the ordinary attributes of a valid judgment until it is reversed or vacated.'" (quoting *State v. Cramer*, 192 Ariz. 150, ¶ 16 (App. 1998))). In short, "'void' is not synonymous with 'wrong' or 'erroneous.'" *Cockerham v. Zikratch*, 127 Ariz. 230, 235 (1980).

¶22 Here, Husband contends that the trial court's orders dividing the Account are void because the court lacked subject-matter jurisdiction over his sole-and-separate property.[9] Husband specifically relies on A.R.S. § 25-318(A), which provides that, in a dissolution proceeding, "the court shall assign each spouse's sole and separate property to such spouse," and A.R.S. § 25-312(E), which directs a court to dispose of the parties' property "[t]o the extent it has jurisdiction to do so."[10] In response, Wife asserts that

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[9]Although his briefs are unclear on this point, Husband appears to challenge as void both the February 2021 decree and the November 2021 division-of-property and direct-payment orders.

[10]Husband also argues the trial court erred by not allowing him to present additional testimony or evidence to support his motion for relief from judgment. But Husband cites no authority requiring evidentiary development in this context, including either Rule 12(i), Ariz. R. Civ. P., or Rule 85, Ariz. R. Fam. Law P., on which he based his requests below. Nor does he articulate how the claimed error prejudiced him in resolving his voidness challenge, which, as our analysis shows, is a legal issue that does not turn on disputed facts. *See* Ariz. Const. art. VI, § 27 ("No cause shall be reversed for technical error in pleadings or proceedings when upon the whole case it shall appear that substantial justice has been done."). Likewise, Husband contends he "could have asserted" that he was entitled to be relieved from the judgment under Rule 85(b)(6), which permits a court to enter such an order for "any other reason justifying relief." Husband in fact cited Rule 85(b)(6) as a basis for relief in his motion below, but he does not develop an argument under that subsection on appeal. Husband has thus waived these arguments, and we do not address them. *See Ritchie v. Krasner*, 221 Ariz. 288, ¶ 62 (App. 2009) (failure to present sufficient

the court had jurisdiction over the dissolution proceeding, that Husband's challenge to the Account's division is barred by res judicata, and that Husband's Rule 85 motion was, in effect, an untimely appeal of the February 2021 decree.[11]

¶23 As a preliminary matter, Husband conflates the distinct concepts of jurisdiction and authority, reflecting the confusion our supreme court sought to remedy in *Shinn*. Although he professes to challenge the trial court's "subject-matter jurisdiction," Husband does not contend that the court lacked statutory or constitutional power to hear the dissolution action or dispose of the parties' property. *See Maldonado*, 223 Ariz. 309, ¶ 14; *The Spaulding LLC*, 250 Ariz. 383, ¶ 12. In fact, he concedes—correctly—that the court had such power. *See* Ariz. Const. art. VI, § 14(9) ("The superior court shall have original jurisdiction of . . . [d]ivorce and for annulment of marriage."); A.R.S. § 25-311(A) ("The superior court is vested with original jurisdiction to hear and decide all matters arising pursuant to this chapter . . . ."). Despite labeling the alleged error as a jurisdictional one, Husband asserts, in substance, that the court lacked statutory *authority* to divide the Account. *See Shinn*, 254 Ariz. 255, ¶¶ 25-35. We address the issue accordingly. *See Marriage of Thorn*, 235 Ariz. 216, ¶ 17 ("Because the family court had subject-matter jurisdiction to divide [the parties'] marital property in a dissolution proceeding, we limit consideration of [Husband's] argument to whether it had the authority to order return of [erroneously divided separate property].").

¶24 If a court has personal and subject-matter jurisdiction in a dissolution action, as the trial court did here, "it has the authority to determine all questions concerning the divorce, including property rights." *Auman v. Auman*, 134 Ariz. 40, 42 (1982); *see generally* § 25-311(A). To be sure, a court must comply with statutory guidelines when disposing of property and, as Husband correctly observes, § 25-318(A) requires a court to assign a spouse's sole-and-separate property to that spouse. *See Fenn v.*

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argument, supported by authority, in opening brief may result in waiver of issue).

[11]Wife also asserts that Husband's July 25, 2022, notice of appeal was untimely as to the June 29, 2022, summary order denying the Rule 85 motion. But the notice of appeal was timely as to the trial court's July 21, 2022, partial final judgment. And even assuming the June 29 order was independently appealable, Husband timely filed his notice of appeal within thirty days of that ruling. *See* Ariz. R. Civ. App. P. 9(a).

Fenn, 174 Ariz. 84, 87 (App. 1993) ("Every power that the superior court exercises in a dissolution proceeding must find its source in the supporting statutory framework."). But the court's orders here complied with these mandates. *See Walker v. Davies*, 113 Ariz. 233, 235 (1976) ("[A] collateral attack on a judgment . . . can be maintained only if the former judgment was void upon its face."). In its February 2021 decree, the court simply determined, based on the trial evidence, that Husband had not rebutted the presumption of community property attached to the Account and ordered it divided, as § 25-318(A) requires. *See* A.R.S. § 25-211(A); *Sommerfield v. Sommerfield*, 121 Ariz. 575, 577-78 (1979); *Larchick v. Pollock*, 252 Ariz. 364, ¶ 25 (App. 2021). In its November 2021 orders, the court set forth specific procedures to govern the Account's division.

¶25 Even assuming, without deciding, the trial court erred by determining the Account was community property, that error did not divest it of authority to dispose of the Account. *See Martin v. Martin*, 182 Ariz. 11, 15 (App. 1994) (error in calculating past-due child support could have led to relief on timely appellate or post-judgment application but did not divest court of authority to enter order). To the contrary, the court maintained such authority and Husband's remedy for its alleged error in exercising that authority was on direct appeal or through an appropriate and timely post-judgment motion; Husband voluntarily abandoned the first avenue for relief and repetitiously and unsuccessfully pursued the second. *See Auman*, 134 Ariz. at 42 ("[A]ppellant should have pursued his position by timely direct appeal. His present attempt to relitigate the judgment of the trial court is barred by the res judicata effect of the original divorce decree."); *In re Ramirez v. Barnet*, 241 Ariz. 145, n.10 (App. 2016) (emergency temporary legal decision-making and parenting time order not void, "albeit arguably erroneous," where statute authorized court to issue the order but statutory conditions for doing so may not have been met); *Porter v. Est. of Pigg*, 175 Ariz. 194, 197 (App. 1993) (although trial court's failure to dispose of property before entering dissolution decree may have been erroneous, decree was not void but was subject to correction on appeal); *Kenyon v. Kenyon*, 5 Ariz. App. 267, 270 (1967) (when spouse failed to timely appeal property-division order that was not facially void, order became final and was "[r]es judicata and conclusive upon" that spouse). The disputed orders were at best voidable, not void. *See Shinn,* 254 Ariz. 255, ¶ 26; *Bryant*, 219 Ariz. 514, ¶ 14.

¶26 "[T]here is a 'compelling interest in the finality of judgments' which should not lightly be disregarded." *City of Phoenix v. Geyler*, 144 Ariz. 323, 328 (1985) (quoting *Rodgers v. Watt*, 722 F.2d 456, 459 (9th Cir. 1983)).

Though styled as a voidness argument based on the trial court's perceived lack of authority, Husband truly challenges the merits of the court's fact-bound initial determination that the Account was community, not sole-and-separate, property. In fact, his voidness argument depends on a threshold decision that, contrary to the court's conclusion, the Account did not belong to the community. The court appropriately refused Husband's efforts to relitigate this final issue under the cloak of voidness, particularly when he had already unsuccessfully challenged the same alleged error in multiple prior post-decree motions. *See Ariz. Dep't of Econ. Sec. v. Mahoney*, 24 Ariz. App. 534, 536 (1975) (motion for relief from judgment "is not designed to be a substitute for appeal, . . . nor is it designed to be a vehicle for relitigating issues"). The court did not err by denying Husband's June 2022 motion for relief from judgment.

II. Trial Court's Jurisdiction to Enter November 2021 Orders

¶27 Husband next contends that the trial court lacked jurisdiction to enter "any of the orders" it entered in November 2021, including the property-division and direct-payment orders. He reasons that jurisdiction transferred to this court when he filed a notice of appeal in February 2021, and that our subsequent orders staying the appeal and revesting jurisdiction in the trial court contained limiting language that permitted that court to do no more than enter a final judgment.

¶28 Although a void order may be set aside at any time, *see Shinn*, 254 Ariz. 255, ¶ 26, a party must nonetheless raise a voidness challenge in a procedurally appropriate manner. *See Dowling v. Stapley*, 221 Ariz. 251, n.13 (App. 2009) (although subject-matter jurisdiction is generally not waivable, "[w]hen an appellant fails to properly appeal or loses her right to appeal . . . we cannot address an issue of whether the superior court lacked jurisdiction because the failure to timely appeal deprives this Court of jurisdiction to review the superior court's decision"); *see also Kenyon*, 5 Ariz. App. at 270. Husband failed to do so here.

¶29 As previously discussed, Husband abandoned his direct appeal involving the November 2021 orders and, with it, his chance to challenge directly the trial court's jurisdiction to enter those orders. To the extent Husband seeks belated appellate review of the alleged jurisdictional defect now, we lack jurisdiction to entertain his request. *See Dowling*, 221 Ariz. 251, n.13; *Kenyon*, 5 Ariz. App. at 270. And although Rule 85(b)(4) provided Husband with a procedural vehicle to challenge the orders as void, and Husband invoked that vehicle to raise the voidness argument we rejected above, he did not include in his Rule 85 motion the argument he

now presents on appeal. Specifically, he did not assert that the November 2021 orders were void because the trial court exceeded the limitations he perceives us to have set on its revested jurisdiction. Husband has thus waived this argument. *See State v. Long*, 119 Ariz. 327, 328 (1978) ("[R]aising one objection at trial does not preserve another objection on appeal."); *Odom v. Farmers Ins. Co. of Ariz.*, 216 Ariz. 530, ¶ 18 (App. 2007) ("Generally, arguments raised for the first time on appeal are untimely and deemed waived.").

¶30 But even if we were to overlook Husband's waiver, his argument would fail. *See Mitchell v. Gamble*, 207 Ariz. 364, ¶ 16 (App. 2004) (rule that party may not raise issue for first time on appeal is procedural, not jurisdictional, and may be suspended in court's discretion). A judgment resolving all matters in a dissolution proceeding is "not final unless the judgment recites that no further matters remain pending and that the judgment is entered under Rule 78(c)." Ariz. Sup. Ct. Order R-17-0054 (Aug. 30, 2018).[12] A properly filed notice of appeal divests the trial court of jurisdiction to take any action other than to further the appeal, and any other orders the court enters are void. *In re Marriage of Johnson & Gravino*, 231 Ariz. 228, ¶ 6 (App. 2012). But a notice of appeal filed prematurely from a non-final order is a nullity and has no legal effect. *Craig v. Craig*, 227 Ariz. 105, ¶ 13 (2011). And after a notice of appeal has been filed, "[a]n appellate court for good cause may suspend an appeal and revest jurisdiction in the superior court to allow the superior court to consider and determine specified matters." Ariz. R. Civ. App. P. 3(b).

¶31 Here, the trial court's February 2021 decree, from which Husband initially attempted to appeal, lacked the finality language required to make it appealable under Rule 78; this defect initially prompted us to stay the appeal and revest jurisdiction in the trial court for the purpose of entering a final judgment. Our language revesting jurisdiction, however, was arguably unnecessary because Husband's notice of appeal was premature and, as such, could not have divested the trial court of jurisdiction. *See Craig*, 227 Ariz. 105, ¶ 13.

¶32 And even assuming jurisdiction transferred to this court, our orders revesting jurisdiction in the trial court necessarily authorized that court to resolve all pending matters that would have prevented a final judgment's entry. *See Madrid v. Avalon Care Center-Chandler, L.L.C.*, 236

[12]Because the rule has since changed, we cite the version of Rule 78(c) in effect when Husband filed his notice of appeal.

Ariz. 221, ¶ 6 (App. 2014) (statement that judgment is final under Rule 54(c), Ariz. R. Civ. P., does not make it appealable when claims remain pending); *Fields v. Oates*, 230 Ariz. 411, ¶ 17 (App. 2012) ("For purposes of appeal, a judgment must resolve the issues in the pleadings and fix the parties' rights and liabilities as to the controversy between them."). Although Husband highlights our orders' limiting language, he overlooks our awareness, through the parties' pleadings, of various pending trial court matters. In fact, we issued our second order staying the appeal and revesting jurisdiction "[p]ursuant to" Wife's specific request that we expand the revestment's scope to allow the court to enter the requested property-division order. The trial court thus had jurisdiction to enter its November 2021 orders, and they are not void.

III. Trial Court's Order Finding Husband in Contempt

¶33 Husband next argues that, because the November 2021 property-division orders are void, the trial court erred by holding him in contempt for violating them. Although we have concluded that the orders are not void, we nonetheless may not consider Husband's challenge to the contempt order because we lack appellate jurisdiction to review civil contempt findings. *See Gish v. Greyson*, 253 Ariz. 437, ¶ 20 (App. 2022); *In re Marriage of Chapman*, 251 Ariz. 40, ¶ 8 (App. 2021).

¶34 Husband acknowledges the jurisdictional defect for the first time in his reply brief, but he asks us to treat this matter as a special action and accept jurisdiction. *See Eans-Snoderly v. Snoderly,* 249 Ariz. 552, ¶ 8 (App. 2020) (accepting special action jurisdiction over contempt citation); *see generally Catalina Foothills Unified Sch. Dist. No. 16 v. La Paloma Prop. Owners Ass'n, Inc.*, 229 Ariz. 525, ¶ 20 (App. 2012) ("In certain cases where we lack appellate jurisdiction, we have nevertheless elected to assume special-action jurisdiction over a matter brought as a direct appeal."). Husband contends that the trial court violated the Arizona constitution by holding him in contempt for failing to pay a debt and by ordering his incarceration and that this issue is sufficiently important to warrant special-action review.[13] *See* Ariz. Const. art. II, § 18 ("There shall be no imprisonment for debt, except in cases of fraud."); *Proffit v. Proffit*, 105 Ariz.

[13]Husband does not direct us to any portion of the record containing the trial court's order that he be incarcerated as part of the contempt citation. Our review of the record reveals only the court's warning that Husband's failure to appear for any future enforcement proceeding could result in a bench warrant's issuance.

222, 224-25 (1969) (contempt order that included possibility of incarceration violated Article 2, Section 18 of the Arizona Constitution).

¶35 We decline to accept special-action jurisdiction here. First, to the extent Husband suggests that *Eans-Snoderly* requires appellate courts to accept special-action jurisdiction to review allegations of constitutional error in contempt citations, we disagree. In *Eans-Snoderly*, this court exercised its discretion to accept special-action jurisdiction but did not impose such a mandate for other cases. 249 Ariz. 552, ¶ 8.

¶36 Second, Husband did not raise his state constitutional claim in the trial court or in his opening brief on appeal, resulting in its waiver. *See Ritchie v. Krasner*, 221 Ariz. 288, ¶ 62 (App. 2009); *see also Romero v. Sw. Ambulance*, 211 Ariz. 200, ¶ 7 & n.3 (App. 2005) ("[W]e are not required to address issues raised for the first time in a reply brief."); *Englert v. Carondelet Health Network*, 199 Ariz. 21, ¶ 13 (App. 2000) ("This issue was not raised below, and we generally do not consider issues, even constitutional issues, raised for the first time on appeal."). Special-action review is discretionary, and we reserve it for extraordinary circumstances. *Stapert v. Ariz. Bd. of Psych. Exam'rs*, 210 Ariz. 177, ¶ 21 (App. 2005). There are no extraordinary circumstances here, where Husband failed to properly raise and argue the issue he now asks us to address. *See State ex rel. Thomas v. Schneider*, 212 Ariz. 292, ¶ 36 (App. 2006) (finding issue waived where special-action petitioner failed to raise it in trial court). We thus decline to exercise our discretion to accept special-action jurisdiction to review the contempt citation.

IV. Trial Court's Award of Attorney Fees

¶37 In July 2022, the trial court entered partial final judgment under Rule 78(b) as to the contempt finding and Rule 85 motion, found that Wife was entitled to attorney fees, and noted that it "still must decide the amount of attorney fees and costs to be awarded." Husband filed a notice of appeal before the court had resolved the amount of attorney fees. In August 2022, the court finalized the fees award and certified its order as final under Rule 78(c). Husband did not amend his notice of appeal to include the fees award or separately appeal from that award. He now challenges the award on appeal.

¶38 Although the parties do not question our jurisdiction to examine the fees award, we have "an independent duty to examine whether we have jurisdiction over matters on appeal." *Ochoa v. Bojorquez*, 245 Ariz. 535, ¶ 2 (App. 2018) (quoting *Camasura v. Camasura*, 238 Ariz. 179,

¶ 5 (App. 2015)). Under Rule 78(b), "a claim for attorney fees is considered a separate claim from the related judgment regarding the merits of the action," and a fees award is not final until the trial court resolves the award's amount. *See Ghadimi v. Soraya*, 230 Ariz. 621, ¶¶ 13-14 (App. 2012).

¶39 As the trial court expressly advised the parties here, its July 2022 order was not a final judgment as to the fees award. *See id.*; *Craig*, 227 Ariz. 105, ¶ 13. After the court finalized the award, Husband did not amend his already-filed notice of appeal to include the final order on attorney fees, nor did he separately appeal that order. *See Lee v. Lee,* 133 Ariz. 118, 124 (App. 1982) ("The court of appeals acquires no jurisdiction to review matters not contained in the notice of appeal."). As a result, we lack jurisdiction to review the attorney fees award. *See Moreno v. Beltran*, 250 Ariz. 379, ¶ 16 (App. 2020) (court lacked jurisdiction to review attorney fees award where appellant filed notice of appeal from order of protection but did not appeal from fees award entered at a later date).

V. Attorney Fees on Appeal

¶40 Both parties have requested their attorney fees on appeal. Husband argues that Wife took unreasonable positions in this litigation, while Wife does not explain the basis for her request. We do not consider Wife's conduct unreasonable, and we decline to award attorney fees against Husband where Wife offers no reason for doing so. We therefore exercise our discretion to deny an award of attorney fees to either party. *See* A.R.S. §§ 12-349, 12-350. However, as the successful party, Wife is entitled to her costs on appeal upon compliance with Rule 21(b), Ariz. R. Civ. App. P. *See* A.R.S. § 12-342(A); *Doherty v. Leon*, 249 Ariz. 515, ¶ 24 (App. 2020).

Disposition

¶41 For the foregoing reasons, we affirm the trial court's ruling denying Husband's June 2022 motion for relief from judgment. However, we dismiss for lack of jurisdiction Husband's appeal as to the court's contempt finding and award of attorney fees.