IN THE
# ARIZONA COURT OF APPEALS
DIVISION TWO

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IN RE THE MARRIAGE OF

LORETTA S. LUJAN-RODRIGUEZ,
*Petitioner/Appellant,*

*and*

LEONARDO RODRIGUEZ JR.,
*Respondent/Appellee*.

No. 2 CA-CV 2022-0183-FC
Filed July 26, 2023

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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NOT FOR PUBLICATION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. D20211564
The Honorable Wayne E. Yehling, Judge

**AFFIRMED**

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COUNSEL

The Law Office of Charles Brown PLLC, Phoenix
By Charles W. Brown Jr.
*Counsel for Petitioner/Appellant*

Law Offices of Vescio & Seifert P.C., Tucson
By Theresa L. Seifert
*Counsel for Respondent/Appellee*

## MEMORANDUM DECISION

Judge Sklar authored the decision of the Court, in which Vice Chief Judge Staring and Judge O'Neil concurred.

S K L A R, Judge:

**¶1** Loretta Lujan-Rodriguez appeals the trial court's decree dissolving her marriage with Leonardo Rodriguez Jr. She challenges in particular the trial court's orders concerning parenting time and child support. For the reasons that follow, we affirm the trial court's judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

**¶2** Lujan and Rodriguez were married in 2003 and had a child, E.R., born in July 2005. Both spouses petitioned for a decree of dissolution of marriage in May 2021, and the cases were consolidated.

**¶3** After a trial, the trial court ordered that E.R. would reside primarily with Rodriguez and that Lujan would have four days of overnight parenting time per month. It also ordered Lujan to pay Rodriguez $396 per month in child support, applied as an offset to spousal maintenance owed by Rodriguez.

**¶4** On September 7, 2022, the trial court entered a signed decree of dissolution that lacked adequate finality language under Rule 78(c) of the Arizona Rules of Family Law Procedure. Although we have no record of it, Lujan claims to have attempted to file a notice of appeal on September 29, which was rejected because the clerk of the superior court had not received the required filing fee. Lujan then filed a notice of appeal on November 22 and paid the fee. This court later issued an order revesting jurisdiction in the trial court to allow for the addition of the requisite finality language. On June 23, 2023, that court entered a second decree of dissolution, amended only as to the finality language.

## JURISDICTION

**¶5** Rodriguez argues that we lack jurisdiction because Lujan did not file a timely notice of appeal. Notices of appeal must be filed within thirty days after entry of judgment. Ariz. R. Civ. App. P. 9(a). A timely

notice of appeal is "a prerequisite to appellate jurisdiction." *In re Marriage of Thorn*, 235 Ariz. 216, ¶ 5 (App. 2014) (quoting *Wilkinson v. Fabry*, 177 Ariz. 506, 507 (App. 1992)).

**¶6** Rodriguez's argument is premised on the September 2022 decree being an appealable judgment. If it were, the November 2022 notice of appeal might have been untimely—though Lujan's assertion that she had filed a timely notice in September would complicate the issue. But the September decree was not appealable because it lacked adequate finality language. *See* Ariz. R. Fam. Law P. 78(c) (stating judgment is "not appealable unless the judgment recites [both] that no further matters remain pending and that the judgment is entered under Rule 78(c)").

**¶7** No appealable judgment existed until the finality language was added in June 2023. Under our rules, the November 2022 notice of appeal is treated as filed the same day that judgment was entered. *See* Ariz. R. Civ. App. P. 9(c). This was, of course, within the thirty-day deadline. We therefore have jurisdiction under A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

## MOOTNESS

**¶8** E.R. turned eighteen years old while this appeal was pending. Arizona courts therefore no longer have power to enter parenting-time orders concerning him. *See* A.R.S. §§ 1-215(6) (defining "child" as person "under eighteen years of age"), 25-403(A) (requiring legal decision-making and parenting-time orders to be determined "in accordance with the best interests of the child"). As to parenting time, therefore, the appeal is moot. *See Cardoso v. Soldo*, 230 Ariz. 614, ¶ 5 (App. 2012) ("[G]enerally, we will dismiss an appeal as moot when our action as a reviewing court will have no effect on the parties."). Lujan largely concedes this point.

**¶9** Nevertheless, Lujan argues that we must address parenting time because if the trial court erred, it could retroactively affect the proper child-support award. This argument invokes the "collateral consequences" doctrine, which allows an appellate court to review an otherwise moot order if its consequences will continue to affect one or more of the parties. *See id.* ¶ 9.

**¶10** However, Lujan has cited no authority to suggest that child support can be retroactively modified if an appellate court determines that the trial court erred in awarding parenting time, and we have found none. Nor does Lujan provide any meaningful legal argument. *See* Ariz. R. Civ.

App. P. 13(a)(7)(A). We therefore conclude that Lujan has waived this argument on appeal. *See Ritchie v. Krasner*, 221 Ariz. 288, ¶ 62 (App. 2009).

**¶11** Lujan also argues that we should address parenting time despite it being moot because the case presents an "issue of great public importance." *See Cardoso*, 230 Ariz. 614, ¶ 6 (explaining great-public-importance exception). Specifically, she argues that the trial court infringed her fundamental constitutional right to control her child's upbringing by limiting her parenting time based on the finding that she would stifle E.R.'s independence and maturity. She argues that as long as a parent's actions "do not threaten the health, safety, or welfare of the minor child, the courts of this State cannot interfere with that decision."

**¶12** A parent's fundamental right to direct a child's upbringing is undoubtedly important. But Lujan's arguments are tied to the specific facts and findings in this case, so we see no basis for applying the great-public-importance exception. *See id.*; *see also Phoenix Newspapers, Inc. v. Molera*, 200 Ariz. 457, ¶ 13 (App. 2001) (concluding case did not fall within public-importance exception because issues primarily concerned parties rather than public at large). We also generally do not reach constitutional issues, such as those concerning Lujan's fundamental parental rights, when we can decide cases on other grounds. *See Fragoso v. Fell*, 210 Ariz. 427, ¶ 6 (App. 2005). Mootness is such a ground. We therefore do not address parenting time.

## ATTORNEY FEES AND COSTS

**¶13** Rodriguez requests his attorney fees and costs on appeal under A.R.S. § 25-324 and Rule 21 of the Arizona Rules of Civil Appellate Procedure. Having considered the financial resources of both parties and the reasonableness of the positions they have taken throughout the proceedings, we deny Rodriguez's request for attorney fees in our discretion. *See* § 25-324(A). Nevertheless, as the prevailing party on appeal, Rodriguez is entitled to his costs upon compliance with Rule 21(b).

## DISPOSITION

**¶14** For the foregoing reasons, we affirm the trial court's judgment.