IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE THE MARRIAGE OF

ERIKA R. GRIFFIN,
Appellant,

and

LANCE S. GRIFFIN,
Appellee.

No. 2 CA-CV 2024-0129-FC
Filed November 29, 2024

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NOT FOR PUBLICATION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 Maricopa County
No. FC2020001362
The Honorable Monica Edelstein, Judge

AFFIRMED

COUNSEL

Adam C. Rieth P.L.L.C., Mesa
By Adam Rieth
Counsel for Appellant

Udall Shumway PLC, Mesa
By Steven H. Everts
Counsel for Appellee

MEMORANDUM DECISION

Presiding Judge O'Neil authored the decision of the Court, in which Judge Vásquez and Judge Kelly concurred.

O' N E I L, Presiding Judge:

¶1 Erika Griffin appeals from the superior court's order dismissing her petition to modify legal decision-making, parenting time, and child support. Erika challenges the court's determination that her petition alleged no new changed circumstances to warrant a hearing, argues that the court made multiple procedural errors, and contests the court's order awarding attorney fees. We affirm.

Background

¶2 The superior court dissolved Erika and Lance Griffin's marriage by consent decree in 2021. The court awarded Erika and Lance joint legal decision-making for their two minor children and ordered parenting time in accordance with the parties' parenting plan. The parties agreed to attend mediation "to resolve any disputes, problems or proposed changes regarding legal decision-making or parenting time before seeking further relief from the Court." The court also ordered that Lance pay child support to Erika.

¶3 Erika filed a petition to modify legal decision-making and parenting time in 2022. The superior court dismissed her petition after a hearing. In March 2023, she petitioned to modify child support, which the court denied. In December the same year, after the parties attended mediation, Erika filed a petition to modify legal decision-making, parenting time, and child support. Lance moved to dismiss her petition. The court dismissed the petition. It found Erika's allegations "were not new," reminded the parties of the mediation requirement, and awarded Lance attorney fees.

¶4 Erika filed a motion for reconsideration, clarification, attorney fees, and sanctions, which included a request to clarify the basis of the dismissal. The court denied her motion but stated that it had dismissed her petition "for failure to assert new changes in circumstance not already

thoroughly addressed by the Court." Erika appealed.[1] We have jurisdiction to review the court's ruling dismissing Erika's petition.[2] A.R.S. §§ 12-120.21; 12-2101(A)(2).

Dismissal of Petition on the Merits

¶5 Erika argues that the superior court erred in dismissing her petition to modify legal decision-making, parenting time, and child support without a hearing. She contends that she alleged sufficient new changed circumstances to allow her petition to pass the court's initial review.[3]

¶6 A petition to modify child support, legal decision-making, or parenting time must allege facts establishing a change in circumstances to support the modification. *See* A.R.S. §§ 25-320 app. § XIV(B), 25-327(A), 25-411(L); Ariz. R. Fam. Law P. 91.1(b), 91.3(a); *Backstrand v. Backstrand*, 250 Ariz. 339, ¶¶ 1, 14 (App. 2020); *see also Pridgeon v. Superior Court*, 134 Ariz. 177, 180 (1982) (subsequent petition for change of custody cannot rely exclusively on prior allegations but rather must allege additional changed

[1]Erika's notice of appeal identified the court's order denying her December 2023 petition to modify and the court's order denying her motion for reconsideration, clarification, attorney fees, and sanctions. To the extent Erika challenges on appeal the court's dismissal of her March 2023 petition to modify child support, we do not have jurisdiction to review the court's decision. *See Brionna J. v. Dep't of Child Safety*, 255 Ariz. 471, ¶ 39 (2023) ("An appellate court's jurisdiction is limited to a party's notice of appeal.").

[2]Based on the court's stated reason for dismissing Erika's petition in its ruling on her motion for clarification, we view the dismissal as a determination on the merits and conclude it is an appealable judgment. *Compare Roden v. Roden*, 29 Ariz. 549, 553 (1926) ("A judgment of dismissal 'with prejudice' is the same as a judgment for defendant upon the merits."), *and* Ariz. R. Fam. Law P. 91(i)(1) (court can reject petition to modify for "failure to state grounds upon which relief can be granted"), *with McMurray v. Dream Catcher USA, Inc.*, 220 Ariz. 71, ¶ 4 (App. 2009) (dismissal without prejudice is not appealable), *and* Ariz. R. Fam. Law P. 46(b).

[3]To the extent Erika argues that the court erred in dismissing her petition for failure to comply with the mediation requirement, we do not address her argument. The court stated that it dismissed her petition because she failed to assert any "new changes in circumstances."

circumstance). The superior court may summarily reject a petition that fails to state "grounds upon which relief can be granted." Ariz. R. Fam. Law P. 91(i)(1); *see also* § 25-411(L) (court shall deny request to modify legal decision-making or parenting time "unless it finds that adequate cause for hearing the motion is established by the pleadings"); *Pridgeon*, 134 Ariz. at 180-81 & 181 (adequate cause established by "detailed facts which are relevant to the statutory grounds for modification and which are not merely cumulative or impeaching"). "In deciding whether to reject a petition, the court cannot assess credibility or weigh evidence." Ariz. R. Fam. Law P. 91(i)(1); *see also Pridgeon*, 134 Ariz. at 181 (for adequate-cause determination, court can consider all pleadings but must hold hearing when "affidavits are directly in opposition upon any substantial and crucial fact relevant to the grounds for modification"). We review the court's decision to reject a petition for an abuse of discretion. *See Pridgeon*, 134 Ariz. at 182; *Nia v. Nia*, 242 Ariz. 419, ¶ 9 (App. 2017); Ariz. R. Fam. Law P. 91.1(b). We may affirm the court's ruling "if it is correct for any reason apparent in the record." *Forszt v. Rodriguez*, 212 Ariz. 263, ¶ 9 (App. 2006).

¶7 In her December 2023 petition, Erika alleged that Lance had not exercised parenting time with their daughter since an incident during which he had an argument with their daughter and called Erika to tell her that their daughter was "no longer welcome at [his] house." But Erika had already raised that incident in both her 2022 petition to modify legal decision-making and parenting time and her March 2023 petition to modify child support, and in those proceedings, the superior court found that neither the incident itself nor Lance's agreement "to suspend" his parenting time amounted to a material change in circumstance.

¶8 Similarly, Erika's concerns regarding Lance's involvement in their children's therapy, her allegation that Lance was "spiraling out of control," and her concerns regarding his "long-standing issue[s] with anger management and alcohol abuse" were not new. The superior court had addressed each of those matters in the context of Erika's 2022 petition to modify legal decision-making and parenting time, and it found that those concerns "pre-date[d] the Consent Decree."

¶9 The superior court found that Erika had failed to "assert new changes in circumstance not already thoroughly addressed by the Court." The only new allegations in the December 2023 petition were that Erika and Lance had been having communication issues and co-parenting difficulties. We cannot conclude that the superior court abused its discretion in concluding these allegations, in the context of the related allegations the

court had addressed in prior petitions, did not represent adequate changed circumstances to warrant modification. *See* Ariz. R. Fam. Law P. 91(i)(1); *Pridgeon*, 134 Ariz. at 180-81; *Backstrand*, 250 Ariz. 339, ¶¶ 1, 14; *Nia*, 242 Ariz. 419, ¶ 9; *see also Forszt*, 212 Ariz. 263, ¶ 9 (affirming for any correct reason).

Procedural Errors

¶10 Erika argues that the superior court erred in granting Lance's motion to dismiss without providing her an opportunity to respond under Rule 35, Ariz. R. Fam. Law P., violating her due process rights. She also contends that the court erred in dismissing her petition without providing an explanation of the deficiency and an opportunity to cure under Rule 91(i)(1).[4] We review the court's application of rules de novo. *Duckstein v. Wolf*, 230 Ariz. 227, ¶ 8 (App. 2012). "We will reverse only if the complaining party suffers prejudice as a result of the error. Prejudice must appear affirmatively from the record." *Walsh v. Walsh*, 230 Ariz. 486, ¶ 24 (App. 2012) (quoting *In re Marriage of Molloy*, 181 Ariz. 146, 150 (App. 1994)); *see also* Ariz. R. Fam. Law P. 86 (court "must disregard" harmless errors); *Whitt v. Meza*, 257 Ariz. 149, ¶ 28 (App. 2024).

I. Opportunity to Respond

¶11 Due process requires that a party receive notice and an opportunity to be heard. *See Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, ¶ 18 (App. 2005). Generally, after a party requests relief by motion, the non-moving party has a right to respond to the motion "within 10 days after service of the motion," except as otherwise provided by the Rules of Family Law Procedure. Ariz. R. Fam. Law P. 35(a).

¶12 As we have noted, however, a court's decision to reject a petition for failure to state grounds for relief is governed by Rule 91(i)(1). No motion by any party is required for a court to reject a petition, nor does Rule 91(i)(1) contemplate any response by the applicant before rejecting it. Instead, "[i]f the court rejects the petition, the court must provide the applicant with an explanation of the deficiency and provide an opportunity

[4]Lance argues this requirement did not apply here because the court initially ordered the parties to appear for a resolution management conference. We reject this argument because the court vacated the resolution management conference after dismissing Erika's petition.

to correct the deficiency within 30 days after the date of the rejection notice." Ariz. R. Fam. Law P. 91(i)(1).

¶13 Here, although the superior court initially issued an order to appear on Erika's December 2023 petition, Lance filed a motion to dismiss on January 26, 2024, and the court granted his motion on January 30, 2024. Rule 91 permits but does not require a party served with a petition to file a response, and we see no reason why such response may not include a request for the court to exercise its discretion to reject a deficient petition. *See* Ariz. R. Fam. Law P. 91(l). In that case, just as if the court had rejected the petition on its own initiative, due process is preserved by the applicant's opportunity to be heard regarding the deficiency as provided in Rule 91(i)(1). Rule 35(a) does not apply to a court's decision to reject a petition for failure to state grounds for relief.

¶14 In its order dismissing the petition, the superior court here neither explained any deficiency nor provided an opportunity to correct it. Still, at a minimum, the court satisfied procedural due process when it considered Erika's motion for reconsideration. *See Willie G.*, 211 Ariz. 231, ¶ 18. In his motion to dismiss, Lance argued that Erika had raised no new circumstances in her petition and had also not attempted to resolve the issues raised in her petition through mediation. Erika contested his arguments in her motion for reconsideration. She asserted that the parties had attended mediation in May 2023, and she outlined factual allegations that she maintained were changed circumstances warranting modification. The court heard and considered her arguments. We cannot, therefore, conclude that Erika was denied the opportunity to be heard. *See Willie G.*, 211 Ariz. 231, ¶ 18.

II. Opportunity to Cure

¶15 As we have explained, when rejecting a petition to modify, the superior court must provide "an opportunity to correct the deficiency." Ariz. R. Fam. Law P. 91(i)(1). Here, although the court failed to comply with Rule 91(i)(1) when it dismissed Erika's petition, we conclude the error was harmless. *See* Ariz. R. Fam. Law P. 86; *Walsh*, 230 Ariz. 486, ¶ 24.

¶16 Although Erika refers to "additional changes that might have occurred" beyond the facts alleged in her petition, she has not identified any facts that would have enabled her petition to survive dismissal. Instead, she maintains on appeal that the facts alleged in her petition were sufficient to "warrant a hearing." *Cf. Dube v. Likins*, 216 Ariz. 406, ¶¶ 1, 13-14, 22, 25-26, 54 (App. 2007) (affirming dismissal of claim, under Rule

12(b)(6), Ariz. R. Civ. P., without opportunity to cure where claimant failed to state additional facts below and on appeal that would entitle him to relief). Likewise, in her motion for reconsideration, she repeated the allegations from her petition concerning parenting time, therapy, behavior, co-parenting decisions, and communication. Beyond pointing out that her daughter was almost three years older since the parties had filed for divorce, she identified no additional facts that she could have alleged to entitle her to a modification. *Cf. Dube*, 216 Ariz. 406, ¶¶ 13-14, 22, 25-26. Erika was not prejudiced by the error. *See* Ariz. R. Fam. Law P. 86; *Walsh*, 230 Ariz. 486, ¶ 24.

Attorney Fees

¶17 Erika asserts the superior court erred in awarding Lance attorney fees. We review an award of attorney fees for an abuse of discretion. *Engel v. Landman*, 221 Ariz. 504, ¶ 45 (App. 2009).

¶18 In his motion to dismiss, Lance asserted he was entitled to attorney fees because Erika's petition was groundless and she had not attempted to resolve the issues raised in her petition through mediation. In response, Erika challenged the reasonableness of the amount of attorney fees and asserted that the superior court should not award Lance fees because he had made inaccurate allegations in his motion to dismiss. The court awarded Lance attorney fees and costs associated with filing his motion to dismiss.

¶19 On appeal, Erika asserts that the superior court had no basis to award attorney fees because the court did not have the parties' financial information. To award attorney fees under A.R.S. § 25-324(A), the court must first consider the "financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings." That requirement, however, does not apply to an award of attorney fees under § 25-324(B). Lance did not identify the statutory basis for his attorney fee request, arguing instead that Erika's petition was "baseless and nothing short of harassment." Although the court also did not specify the statutory basis for its attorney fee award, under § 25-324(B), "the court shall award reasonable costs and attorney fees to the other party" if it determines that "[t]he petition was not filed in good faith," "was not grounded in fact or based on law," or "was filed for an improper purpose, such as to harass the other party."

¶20 Even assuming the superior court awarded fees under § 25-324(A), Erika did not challenge the statutory basis for Lance's request

below. We generally do not address arguments raised for the first time on appeal, and we decline to do so here. *Englert v. Carondelet Health Network*, 199 Ariz. 21, ¶ 13 (App. 2000).

¶21 Erika also asserts that the superior court erred in failing to sanction Lance for his misstatements in the motion to dismiss. Erika waives this argument by failing to develop it. *See Boswell v. Fintelmann*, 242 Ariz. 52, n.3 (App. 2017) (waiving undeveloped arguments); Ariz. R. Civ. App. P. 13(a)(7)(A) (argument must contain contentions with "supporting reasons" and "citations of legal authorities").

Disposition

¶22 We affirm the superior court's order dismissing Erika's petition to modify legal decision-making, parenting time, and child support. We deny both parties' requests for attorney fees under § 25-324. As the prevailing party on appeal, Lance is entitled to his costs upon compliance with Rule 21, Ariz. R. Civ. App. P. *See* A.R.S. § 12-341.