

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

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IN RE THE MARRIAGE OF:

LUZ MIRIAM CHARETTE,  
*Petitioner/Appellee,*

*and*

PAUL JOHN CHARETTE,  
*Respondent/Appellant.*

No. 2 CA-CV 2013-0082  
Filed May 19, 2014

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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NOT FOR PUBLICATION  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); Ariz. R. Civ. App. P. 28(c).*

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Appeal from the Superior Court in Pima County  
No. D20103405  
The Honorable Margaret L. Maxwell, Judge Pro Tempore

**AFFIRMED**

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COUNSEL

West, Elsberry, Longenbaugh & Zickerman, PLLC, Tucson  
By Anne Elsberry  
*Counsel for Petitioner/Appellee*

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By Chris J. Kimminau  
*Counsel for Respondent/Appellant*

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**MEMORANDUM DECISION**

Presiding Judge Vásquez authored the decision of the Court, in which Judge Miller and Judge Kelly concurred.

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VÁSQUEZ, Presiding Judge:

¶1 In this domestic-relations case, Paul Charette appeals from the trial court’s post-dissolution order authorizing his former spouse, Luz Charette, to accept a third-party offer to purchase their marital residence without his consent. On appeal, he argues the court erred by failing to conduct a formal evidentiary hearing before issuing its order and by not permitting him to purchase Luz’s interest in the home. 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 ruling. *In re Marriage of Yuro*, 192 Ariz. 568, ¶ 3, 968 P.2d 1053, 1055 (App. 1998). The parties’ marriage ended in December 2012 upon entry of a decree of dissolution. In the decree, the trial court ordered the parties to sell their marital residence through a court-appointed realtor.

¶3 In the following months, the parties, the realtor, and the court communicated informally via electronic mail (email) to facilitate the sale. Those efforts began to deteriorate in April 2013, when Paul declined to accept a third-party offer that Luz already had accepted. In subsequent emails, Paul’s counsel stated that Paul had made an offer to purchase Luz’s interest in the home and that a response from the realtor’s office “clearly indicates [Luz] accepted [Paul]’s offer with a contingency which [Paul] is prepared to meet.”

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¶4 Later that month, the trial court held a telephonic conference to discuss the “sale of [the] marital home.” During the conference, Paul asserted “that a full evidentiary hearing needs to be done.” The court allowed Paul’s counsel to cross-examine Luz and ultimately found that Luz had not accepted Paul’s purchase offer. The court also rejected Paul’s request to purchase Luz’s interest in the home and, instead, authorized Luz to accept a third-party offer to purchase the home without Paul’s signature. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(2).<sup>1</sup>

**Post-Decree Procedure**

¶5 Paul argues the trial court “fail[ed] to conduct a proper evidentiary hearing” and therefore violated his “general due process right to present evidence on a contested issue.” We review de novo

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<sup>1</sup>This court has jurisdiction over a special order made after a final judgment, provided that the order disposes of all claims, including attorney fees, raised during the post-judgment action. *See* Ariz. R. Fam. Law P. 78(B); *In re Marriage of Kassa*, 231 Ariz. 592, ¶¶ 4-6, 299 P.3d 1290, 1291-92 (App. 2013). We acknowledge that the post-decree order in this case did not explicitly address Luz’s request for attorney fees made first in an email and then again during the telephonic conference. *See In re Marriage of Flores & Martinez*, 231 Ariz. 18, ¶ 6, 289 P.3d 946, 948 (App. 2012) (we have independent duty to confirm jurisdiction). Nevertheless, we conclude the order is appealable for two reasons. First, Luz’s first post-judgment request for attorney fees, made in an informal email, was not properly raised. *See* Ariz. R. Fam. Law P. 35, 43(E), and 78(D) (requirements for motions, filing papers with court, and raising claim for attorney fees). Second, to the extent Luz attempted to raise the claim again by oral motion during the telephonic conference, the court implicitly denied her request when it replied, “I understand your position about that,” and ended the conference without further discussion or response. *See Pearson v. Pearson*, 190 Ariz. 231, 237, 946 P.2d 1291, 1297 (App. 1997) (holding court’s failure to rule on motions for attorney fees implies denial of motions).

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questions of law, such as due process claims, *Emmett McLoughlin Realty, Inc. v. Pima Cnty.*, 212 Ariz. 351, ¶ 16, 132 P.3d 290, 294 (App. 2006), and issues concerning the application of court rules, *Haroutunian v. Valueoptions, Inc.*, 218 Ariz. 541, ¶ 22, 189 P.3d 1114, 1122 (App. 2008). We will affirm the court's ruling "if the result [i]s legally correct for any reason." *Gen. Elec. Capital Corp. v. Osterkamp*, 172 Ariz. 191, 193, 836 P.2d 404, 406 (App. 1992).

¶6 Generally, "[d]ue process requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner." *Huck v. Haralambie*, 122 Ariz. 63, 65, 593 P.2d 286, 288 (1979); see *Wallace v. Shields*, 175 Ariz. 166, 174, 854 P.2d 1152, 1160 (App. 1992). It also affords a party the opportunity "to offer evidence and confront adverse witnesses." *Curtis v. Richardson*, 212 Ariz. 308, ¶ 16, 131 P.3d 480, 484 (App. 2006).

¶7 During the April telephonic conference, Paul opposed the sale of the home to a third party and, instead, argued that he should be allowed to purchase Luz's interest. However, the trial court stated:

[Paul] raised this exact issue [during the underlying proceedings] and I asked him what he thought the equity would be, and I offered him the house at that amount, cash to [Luz], and he said, no, that's too much.

....

. . . [T]hat was in my under[-]advisement ruling in November, and we are still talking about it in April. So this isn't fair to anybody.

We agree with the trial court's assessment. Any issue prior to the entry of the decree of dissolution about whether Paul should be permitted to purchase the home was clearly resolved against him by the decree:

The real property . . . shall be sold as previously ordered by the Court. Both

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parties shall cooperate in the marketing and sale of the property. [Paul] shall be entitled to reside in the property subject to maintaining the property in a condition to enhance sale. The Court will rule as necessary regarding any issues concerning [the] sale.

¶8 When a decree of dissolution is entered, its “provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.” A.R.S. § 25-327(A); *see Breitbart-Napp v. Napp*, 216 Ariz. 74, ¶ 15, 163 P.3d 1024, 1029 (App. 2007) (even prior to decree, “all separation agreements reflecting property dispositions must be approved by the court”). “The need for finality and stability in marriage and family law is great. Absent express authorization . . . or a finding of ‘extraordinary circumstances’ as contemplated by [R]ule [85(C)(1)(f), Ariz. R. Fam. Law P.], [these provisions] cannot be disturbed.” *In re Marriage of Gaddis*, 191 Ariz. 467, 469, 957 P.2d 1010, 1012 (App. 1997) (first alteration in *Gaddis*), *quoting DeGryse v. DeGryse*, 135 Ariz. 335, 338, 661 P.2d 185, 188 (1983).

¶9 Thus, to the extent Paul argues the trial court failed to give him an opportunity to address the issue of whether or not the property should be sold to a third party, we disagree. As the court pointed out during the telephonic conference, Paul already had received “an opportunity to be heard” and to present evidence on that issue during the underlying dissolution proceedings. *Curtis*, 212 Ariz. 308, ¶ 16, 131 P.3d at 484; *see Wallace*, 175 Ariz. at 174, 854 P.2d at 1160. But Paul also maintains that during the telephonic hearing, the trial court failed to give him an opportunity to support his argument that Luz had accepted his offer, thereby precluding a sale to a third party. Paul contends that he “made it clear he wanted a full evidentiary hearing both in emails exchanged with opposing counsel, the realtor, and the court as well as at the [telephonic conference].”

¶10 First, Paul did not file an objection when he received the court’s notice of an informal telephonic conference even though he

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knew from earlier emails that the trial court intended to “enter an order to provide that [Luz] was entitled to sign the final documents” if necessary. *See In re Marriage of Johnson & Gravino*, 231 Ariz. 228, ¶ 25, 293 P.3d 504, 511 (App. 2012) (errors not raised before trial court cannot be raised on appeal); *see also* Ariz. R. Fam. Law P. 91(N) (“Matters brought before the court . . . may be heard by oral argument without testimony.”). Second, the court accommodated Paul’s request for an evidentiary hearing during the telephonic conference. The parties and the realtor were sworn in, and the court allowed Paul to cross-examine Luz. *See Curtis*, 212 Ariz. 308, ¶ 16, 131 P.3d at 484. Once again, Paul did not object to proceeding in this manner. *See Marriage of Johnson & Gravino*, 231 Ariz. 228, ¶ 25, 293 P.3d at 511. And third, the court permitted him to file as hearing exhibits all of the emails that had preceded the telephonic conference, including the email he claimed constituted an acceptance by Luz. We therefore conclude that the court did not violate Paul’s due process rights by conducting an informal telephonic conference.<sup>2</sup>

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<sup>2</sup>The trial court’s use of email to communicate with the parties contributed to the ambiguity surrounding this proceeding. We discourage this practice where it addresses substantive issues and recommend instead the filing of proper pleadings. For example, the decree clearly ordered the property sold to a third party and appointed a realtor to facilitate the sale. Thus, well before the telephonic hearing, Paul could have filed a petition to modify those provisions of the decree. *See* Ariz. R. Fam. Law P. 91(A) (party seeking modification of decree must “file a petition . . . setting forth with specificity all relief requested”); *see also* Ariz. R. Fam. Law P. 91(H) (petition seeking other post-decree relief must include “detailed facts supporting the requested relief, together with the specific legal authority that . . . authorizes the family court to grant the relief requested”). And to the extent Paul suggests his email correspondence constituted a proper request for an evidentiary hearing, we disagree. *See* Ariz. R. Fam. Law P. 35 and 43(E) (providing requirements for motions and filing papers with court); *cf. State v. Grange*, 130 Ariz. 250, 251, 253, 635 P.2d 843, 844, 846 (1981) (interpreting civil counterpart to Rule 43(E)).

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**Order Enforcing Decree**

¶11 Paul's remaining arguments concern the trial court's reasoning when it authorized Luz to accept a third-party offer over his post-decree offer to purchase her interest in the property. He argues the court committed legal error when it found that Luz had not accepted his offer. He also asserts that, even if the parties had not formed a contract, the court erred by ordering Luz to accept a third-party offer instead of his own. "[W]e review a trial court's order relating to apportionment of community property for an abuse of discretion." *Danielson v. Evans*, 201 Ariz. 401, ¶ 13, 36 P.3d 749, 754 (App. 2001). However, we review questions of law, including contract formation, de novo. *Nickerson v. Green Valley Recreation, Inc.*, 228 Ariz. 309, ¶ 19, 265 P.3d 1108, 1117 (App. 2011).

¶12 "For an enforceable contract to exist, there must be an offer, an acceptance, consideration, and sufficient specification of terms so that obligations involved can be ascertained." *K-Line Builders, Inc. v. First Fed. Sav. & Loan Ass'n*, 139 Ariz. 209, 212, 677 P.2d 1317, 1320 (App. 1983). "An acceptance is ' . . . a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer.'" *Id.*, quoting Restatement (Second) of Contracts § 50 (1981) (alteration in *K-Line Builders, Inc.*). "In order to create a contract, the acceptance of the offer must be unequivocal." *Clark v. Compania Ganadera de Cananea, S. A.*, 94 Ariz. 391, 400, 385 P.2d 691, 697 (1963). "An acceptance must comply exactly with the requirements of the offer, omitting nothing from the promise or performance requested." *Id.*

¶13 As proof of contract formation in this case, Paul admitted into evidence an email sent by the realtor's office:

Paul,

I spoke with Luz regarding your offer to buy the property on an owner carry back contract. She said that if you would put \$50,000 in a neutral account that she could see you have the money to put down on

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the house, she would sign the offer. So I'm relaying her response to you.

The trial court found that Luz's response "was never reduced to a signed counter[.]offer accepted by [Paul]," and therefore found that no contract had been formed.

¶14 Luz argues on appeal that the trial court did not err because Paul "was unequivoca[l] in his inability to refinance the mortgages on the home and assume the associated debt." We agree. Because Luz had proposed a new condition, the email represented a counteroffer. See Restatement (Second) of Contracts § 39(1) (1981). But at the time of the telephonic conference, Paul had not met Luz's demand and, in fact, expressed uncertainty as to whether he would "be able to satisfy the condition." Because Paul had not unequivocally accepted Luz's counteroffer, no contract had been formed. See *Clark*, 94 Ariz. at 400, 385 P.2d at 697; *Gen. Elec. Capital Corp.*, 172 Ariz. at 193, 836 P.2d at 406. Moreover, Paul admitted during the conference that he could not refinance the mortgages in his own name and would need Luz to stay listed on the mortgages for at least eighteen months. Because no contract had been formed, and Luz was unwilling to keep her name on the mortgages, the court had no reason to delay in enforcing the decree and authorizing the sale to a third party. See *Danielson*, 201 Ariz. 401, ¶ 13, 36 P.3d at 754.

**Disposition**

¶15 For the reasons stated above, we affirm. Luz has requested attorney fees and costs on appeal pursuant to A.R.S. § 25-324. In the exercise of our discretion, we deny her request for attorney fees. We do, however, award Luz her costs on appeal upon compliance with Rule 21, Ariz. R. Civ. App. P.