

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF:

PETRA ROMERO,
Petitioner/Appellee,

v.

ISMAEL ROMERO,
Respondent/Appellant.

No. 2 CA-CV 2014-0003
Filed October 21, 2014

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Not For Publication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).

Appeal from the Superior Court in Pinal County
No. S1100DO201200141
The Honorable Daniel A. Washburn,
Judge Pro Tempore

VACATED AND REMANDED

COUNSEL

Law Offices of Jose De La Luz Martinez, PLLC
By Jose De La Luz Martinez, Phoenix
Counsel for Respondent/Appellant

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MEMORANDUM DECISION

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

M I L L E R, Presiding Judge:

¶1 Ismael Romero appeals from the family court’s denial of his motion to set aside a consent dissolution decree. Because the consent decree did not have the requisite signatures of the parties and counsel, we vacate the decree and remand the case to the family court for further proceedings.

Factual and Procedural Background

¶2 Ismael Romero and Petra Romero were married in 1988. In January 2012, Petra filed a petition for dissolution of marriage. In May 2013, Petra lodged a decree of dissolution that purported to contain all the parties’ stipulated agreements as well as their signatures. The family court entered a consent decree of dissolution of marriage in June 2013. Notably, the consent decree did not contain the signatures of the parties or counsel.

¶3 In August 2013, Ismael moved to set aside the decree pursuant to Rule 85, Ariz. R. Fam. Law P.¹ In his motion, Ismael contended he was misrepresented by his counsel and never agreed to the terms of the consent decree signed by the family court. After hearing oral argument on Ismael’s motion, the court affirmed the consent decree as a final order, finding it had been “appropriately lodged” by the court. Ismael timely appealed the court’s order and we have jurisdiction pursuant to A.R.S. § 12-2101(A)(2). *See Bateman v. McDonald*, 94 Ariz. 327, 329, 385 P.2d 208, 210 (1963) (post-

¹ Rule 85(C)(1)(d) provides a moving party relief from judgment when a judgment is void.

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judgment ruling on motion to set aside judgment is special order after final judgment).

Consent Decree of Dissolution

¶4 Ismael argues on appeal that the family court lacked the authority to enter the consent decree because neither the parties nor counsel signed it, in violation of Rule 45(B)(5), Ariz. R. Fam. Law P.² Petra has filed no appearance in this court and has submitted no answering brief, which we may deem a confession of reversible error, but in our discretion we address the merits of Romero’s arguments. *See DeLong v. Merrill*, 233 Ariz. 163, ¶ 9, 310 P.3d 39, 42 (App. 2013). We otherwise review a claim that a judgment is void de novo. *Duckstein v. Wolf*, 230 Ariz. 227, ¶ 8, 282 P.3d 428, 432 (App. 2012).

¶5 A consent decree of dissolution must comply with the requirements set forth in Rule 45(B). The consent decree “shall be dated and signed by both parties, and the signature of each party shall be subscribed and sworn to . . . before a notary public.” Ariz. R. Fam. Law P. 45(B)(5). When a party is represented by counsel, “counsel also shall sign the Consent Decree.” Ariz. R. Fam. Law P. 45(B)(5).

¶6 Here, the consent decree lacked signatures from the parties and their counsel. The decree failed to comply with the requirements of Rule 45(B) and is therefore voidable. *See In re the Marriage of Dougall*, 234 Ariz. 2, ¶ 12, 316 P.3d 591, 595 (App. 2013)

²To the extent Ismael contends the family court lacked jurisdiction to enter the decree, in reliance on *Martin v. Martin*, 182 Ariz. 11, 15, 893 P.2d 11, 15 (App. 1994), he uses the term “jurisdiction” in a broader, now antiquated, sense actually referring to a court’s authority under the specific controlling procedural rule rather than subject matter or personal jurisdiction. *See In re the Marriage of Thorn*, 235 Ariz. 216, ¶ 17, 330 P.3d 973, 977 (App. 2014). Accordingly, we limit consideration of Ismael’s argument to whether the court had the authority to enter the consent decree under Rule 45(B).

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(judgment or order voidable when trial court has subject matter jurisdiction but errs in issuing order). Accordingly, we not only view Petra's failure to file an answering brief a confession of reversible error, *see DeLong*, 233 Ariz. 163, ¶ 18, 310 P.3d at 44, but we also conclude the family court erred by failing to enter a consent decree in compliance with Rule 45(B) and by denying Ismael's motion to set aside the decree. Thus, we reverse the court's denial of Ismael's motion to set aside and vacate the consent decree. *See Dougall*, 234 Ariz. 2, ¶ 12, 316 P.3d at 595 (court must vacate void judgment or order).

Disposition

¶7 For the reasons outlined above, we vacate the decree of dissolution and remand this case to the family court for further proceedings consistent with this decision.