

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF:

MARIA T. FERNANDEZ, FKA MANRIQUEZ,
Petitioner/Appellee,

and

CARLOS R. MANRIQUEZ,
Respondent/Appellant.

No. 2 CA-CV 2014-0131
Filed March 30, 2015

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NOT FOR PUBLICATION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. DO200101060
The Honorable Stephen F. McCarville, Judge

AFFIRMED

COUNSEL

Popp Law Firm, P.L.C., Tempe
By James S. Osborn Popp
Counsel for Petitioner/Appellee

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Scott L. Patterson, P.L.L.C., Tempe
By Scott L. Patterson
Counsel for Respondent/Appellant

MEMORANDUM DECISION

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

ECKERSTROM, Chief Judge:

¶1 Carlos Manriquez appeals from the trial court's order denying his motion to set aside a qualified domestic relations order (QDRO) granting his former wife, Maria Fernandez, a portion of his retirement benefits. For the following reasons, we affirm.

Factual and Procedural Background

¶2 In December 2001, Maria Fernandez filed a petition for dissolution of marriage from her husband, Carlos Manriquez. Fernandez prepared the decree of dissolution using a legal form, and the trial court signed it. The part of the form addressing division of "retirement, pension, [and] deferred compensation" included two checkboxes, and was filled out as follows:

Award each party his/her interest in any and all retirement benefits, pension plan, or other deferred compensation as described:

OR each party WAIVES AND GIVES UP his/her interest in any and all retirement benefits, pension plan, or other deferred compensation of the other party:

Although the first box was checked, the decree did not include any description of how the retirement benefits were to be distributed.

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¶3 Manriquez retired in December 2013. In February 2014, Fernandez filed a petition seeking a QDRO awarding her a share of Manriquez’s pension from the Arizona Corrections Officer Retirement Plan (ACORP), including arrearages and interest. Manriquez did not file a response, and the trial court entered the QDRO. Manriquez subsequently filed a motion to set aside the QDRO. After an evidentiary hearing, the court denied the motion. The court’s ruling was silent as to Fernandez’s requested arrearages and interest, and she filed a motion to amend the judgment to include those items, which was granted. Manriquez appeals from the trial court’s ruling denying his motion to set aside the QDRO and the amended judgment granting Fernandez arrearages and interest.

Set Aside

¶4 Manriquez characterized his motion to set aside the QDRO as a motion pursuant to Rule 85(B), Ariz. R. Fam. Law P., which allows for the correction of a clerical error in a judgment or an order. He contends that, although the box on the decree indicating that each party was to be awarded their interest in any retirement benefits was checked, the actual intention was for Manriquez to maintain sole interest in his own pension. The “clerical error” he asserts, therefore, is not within the QDRO, but within the dissolution decree, which Manriquez did not challenge. We therefore construe his motion, as the trial court did, as one for relief from judgment pursuant to Rule 85(C).

¶5 We review a trial court’s denial of a motion for relief from judgment for an abuse of discretion. *Duckstein v. Wolf*, 230 Ariz. 227, ¶ 8, 282 P.3d 428, 432 (App. 2012). A party moving to set aside a default judgment generally must demonstrate “1) that its failure to file a timely answer was excusable . . . 2) that it acted promptly in seeking relief and 3) that it had a substantial and meritorious defense to the action.” *Blair v. Burgener*, 226 Ariz. 213, ¶ 7, 245 P.3d 898, 901 (App. 2010), quoting *Alvarez v. Superior Court*,

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146 Ariz. 189, 190, 704 P.2d 830, 831 (App. 1985).¹ The trial court concluded that Manriquez lacked a meritorious defense. We agree.

¶6 In his motion to set aside the QDRO, Manriquez claimed the trial court erred in interpreting the dissolution decree when it entered the order granting Fernandez a portion of his ACORP pension. The court found his claim was not a meritorious defense to entry of the QDRO. On appeal, Manriquez asserts the trial court erred in refusing to consider parol evidence to interpret the decree.

¶7 The Arizona Supreme Court has unequivocally stated that the parol evidence rule “does not apply to a judgment.” *In re Marriage of Zale*, 193 Ariz. 246, ¶ 15, 972 P.2d 230, 234 (1999). Even if a judgment is ambiguous, courts may use “general rules of construction for written instruments,” but “may not consider parol or extrinsic evidence.” *In re Marriage of Johnson & Gravino*, 231 Ariz. 228, ¶ 16, 293 P.3d 504, 509 (App. 2012); *accord Merrill v. Merrill*, 230 Ariz. 369, ¶ 14, 284 P.3d 880, 884-85 (App. 2012); *Cohen v. Frey*, 215 Ariz. 62, ¶ 14, 157 P.3d 482, 487 (App. 2007). Manriquez attempts to distinguish *Zale* by claiming that the decree contains a “clerical mistake.” Assuming arguendo that such a distinction is cognizable, we conclude the decree did not contain a clerical error.

¶8 “Whether error is judgmental or clerical turns on the question whether the error occurred in rendering judgment or in recording the judgment rendered. The power to correct clerical error does not extend to the changing of a judgment, order, or decree which was entered as the court intended.” *Ace Auto. Prods., Inc. v. Van Duyne*, 156 Ariz. 140, 142-43, 750 P.2d 898, 900-01 (App. 1987) (citation omitted). In the decree, as it is entered, the court “[a]ward[ed] each party his/her interest in any and all retirement benefits, pension plan, or other deferred compensation.” Manriquez has cited no evidence to suggest this award was contrary to the

¹ Because Rule 60(c), Ariz. R. Civ. P., is “substantively identical” to Rule 85(C), Ariz. R. Fam. Law P., *Cohen v. Frey*, 215 Ariz. 62, n.1, 157 P.3d 482, 484 n.1 (App. 2007), we may cite cases concerning the former to aid in our interpretation of the latter.

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court's intentions. *See Hatch v. Hatch*, 113 Ariz. 130, 134, 547 P.2d 1044, 1048 (1976).

¶9 Furthermore, to the extent Manriquez claims his offered extrinsic evidence shows the decree does not reflect Fernandez's intentions, that is irrelevant. A judgment is "an independent resolution by the court of the issues before it and rightfully is regarded in that context and not according to the negotiated intent of the parties." *Zale*, 193 Ariz. 246, ¶ 11, 972 P.2d at 233.

¶10 Because the trial court did not err in refusing to consider Manriquez's offered parol evidence, it did not abuse its discretion in denying his motion to set aside the QDRO.

Attorney Fees

¶11 Fernandez has asked this court to award her costs and attorney fees on appeal pursuant to A.R.S. § 25-324. But she has not presented this court with any record concerning her current financial situation, nor can we find such information in the trial court's record. We therefore have no basis for determining whether her relative "financial resources" justify such an award. § 25-324(A); *see Patterson v. Patterson*, 226 Ariz. 356, ¶ 13, 248 P.3d 204, 208 (App. 2011). Nor do we believe the position taken by Manriquez to be unreasonable. Accordingly, we decline to grant her attorney fees. However, under A.R.S. § 12-341, recovery of costs by "[t]he successful party to a civil action" is mandatory. We therefore grant Fernandez her costs on appeal, subject to her compliance with Rule 21, Ariz. R. Civ. App. P.

Disposition

¶12 For the foregoing reasons, the judgment of the trial court is affirmed.