

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

---

IN RE THE MARRIAGE OF

BENJAMIN P. KOZUCH,  
*Petitioner/Appellant,*

*and*

BRENDA L. KOZUCH,  
*Respondent/Appellee.*

No. 2 CA-CV 2016-0070  
Filed June 29, 2016

---

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NOT FOR PUBLICATION.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);  
Ariz. R. P. Spec. Act. 7(g), (i).*

---

Appeal from the Superior Court in Pima County  
No. D20152108  
The Honorable Lori B. Jones, Judge Pro Tempore  
Special Action Proceeding

**APPEAL DISMISSED; SPECIAL ACTION JURISDICTION  
ACCEPTED; RELIEF DENIED**

---

COUNSEL

Goldstein & Scopellite, PC, Tucson  
By Sheldon I. Goldstein, Michelle J. Scopellite, Andrew P. Meshel,  
and Siovhan A. Sheridan  
*Counsel for Petitioner/Appellant*

IN RE MARRIAGE OF KOZUCH  
Decision of the Court

Waterfall, Economidis, Caldwell,  
Hanshaw & Villamana, P.C., Tucson  
By Megan C. Hill  
*Counsel for Respondent/Appellee*

---

**MEMORANDUM DECISION**

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

---

M I L L E R, Presiding Judge:

¶1 Brenda L. Kozuch has filed a motion to dismiss her husband Benjamin Kozuch’s appeal from the trial court’s March 3, 2016 order finding it is an inconvenient forum under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), *see* A.R.S. § 25-1037(B), for litigating parenting time and legal decision-making issues pertaining to the parties’ minor children, and ordering Brenda to file an action in Massachusetts. Brenda contends the order is interlocutory, is not appealable under A.R.S. § 12-2101, and, although it addresses less than all claims in this marital dissolution proceeding, lacks the finality language required by Rule 78(B), Ariz. R. Fam. Law P.

¶2 Benjamin asserts the order is appealable pursuant to A.R.S. § 12-2101(A)(3) as an order “affecting a substantial right . . . [that] in effect determines the action and prevents judgment from which an appeal might be taken.” We disagree. In accordance with § 25-1037(C), the court stayed proceedings related to the children, and anticipated further action: Brenda’s initiation of a custody proceeding in Massachusetts within sixty days and, presumably, a decision by that court whether to retain jurisdiction. The trial court did not “in effect determine[] the action,” § 12-2101(A)(3). Rather, it entered an interim order deferring jurisdiction and stayed further proceedings in Arizona until another forum’s jurisdiction could be established so that the matter could be litigated in that state and a

IN RE MARRIAGE OF KOZUCH  
Decision of the Court

final judgment entered there. *See In re S.Y.T.*, 267 P.3d 930, ¶¶ 4-7, 20-25 (Utah Ct. App. 2007).<sup>1</sup>

¶3 In the exercise of our discretion, however, we may accept special action jurisdiction when a challenged order is interlocutory in nature and the party seeking relief has no equally plain, speedy, and adequate remedy by appeal. *See* Ariz. R. P. Spec. Actions 1(a); *see also State v. Lee*, 236 Ariz. 377, ¶ 9, 340 P.3d 1085, 1088-89 (App. 2014). Because an inconvenient forum finding is interlocutory pursuant to statute, *see* § 25-1037(C), but waiting until the non-Arizona court acts would likely avoid direct appeal, we conclude that special action jurisdiction is appropriate.

¶4 Further, this case has reached a standstill. There is no order addressing current parenting time and legal decision-making issues regarding the children, who have lived in Massachusetts with Brenda for over a year while Benjamin lives in Alabama, and neither the Massachusetts court nor the Arizona court is willing to enter an

---

<sup>1</sup>Even assuming *arguendo* the order could be characterized as falling under § 12-2101(A)(3), it nevertheless would not be appealable because it does not include finality language required in Rule 78(B). The trial court bifurcated the property issues from the parenting and legal decision-making portion of the case, and decided less than all issues pending before it. *See Bollerman v. Nowlis*, 234 Ariz. 340, 322 P.3d 157 (2014) (interpreting Rule 78(B) consistently with Rule 54(b), Ariz. R. Civ. P.); *see also Camasura v. Camasura*, 238 Ariz. 179, ¶¶ 7-10, 358 P.3d 600, 602-03 (App. 2015) (order lacking amount of attorney fees, legal decision-making and parenting-time provisions, and express determination of finality pursuant to Rule 78(B) not appealable); *Natale v. Natale*, 234 Ariz. 507, ¶¶ 9, 11, 323 P.3d 1158, 1160, 1161 (App. 2014) (requiring trial court to resolve all issues before appeal may be filed in absence of certification under Rule 78(B)). We find unpersuasive Benjamin's argument that Rule 78(B) does not apply to orders that are appealable under § 12-2101(A)(3). *See Bollerman*, 234 Ariz. 340, ¶¶ 10, 11, 322 P.3d at 159 (finding finality in terms of immediate effectiveness not same as finality for purposes of appealability and stressing importance of Rule 78(B) for clarity).

IN RE MARRIAGE OF KOZUCH  
Decision of the Court

order while this appeal is pending. *See Sheets v. Mead*, 238 Ariz. 55, ¶ 6, 356 P.3d 341, 342-43 (App. 2015) (accepting special action jurisdiction; finding remedy by simultaneously filed appeal from visitation order not equally plain, speedy, and adequate because while appeal pending petitioner’s parental rights “would be impaired, and Child would face a prolonged period of uncertainty concerning her living arrangement”); *see also K.D. v. Hoffman*, 238 Ariz. 278, ¶ 4, 359 P.3d 1022, 1023 (App. 2015) (accepting special action jurisdiction in part because issues involved welfare of child). For these compelling reasons and in the interest of justice, we accept special action jurisdiction and consider the merits of Benjamin’s claims, which are set forth in his opening brief.

¶5 We review for an abuse of discretion a trial court’s determination that it is an inconvenient forum. *Tiscornia v. Tiscornia*, 154 Ariz. 376, 377, 742 P.2d 1362, 1363 (App. 1987); *see also Ariz. R. P. Spec. Act. 3(c)*. In its thorough, well-reasoned ruling, the trial court addressed the relevant factors under § 25-1037(B) and set forth the basis for its conclusion that it was an inconvenient forum. The record supports the court’s order and we see no error of law; no purpose would be served, therefore, by setting forth the court’s ruling in its entirety here. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 16, 53 P.3d 203, 207-08 (App. 2002), *citing State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Benjamin has not sustained his burden of establishing the court abused its discretion in granting Brenda’s motion or in denying Benjamin’s motion for reconsideration. *See Ariz. R. P. Spec. Act. 3(c) & bar committee note* (stating “plaintiff” in special action “must always carry the burden of persuasion as to discretionary factors”).

¶6 Although we grant special action jurisdiction, we deny relief. Consequently, we deny as moot Benjamin’s motion to suspend the appeal and revest jurisdiction in the trial court to permit it to address the motion to modify temporary orders that he filed while this appeal was pending and after Massachusetts refused to act.