

1 Dustin Matthews  
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3 Tempe, AZ 85282  
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(*Pro Per*)

**SUPREME COURT OF THE UNITED STATES**

Case No. AZSC NO. CV-17-360-PR

DUSTIN MATTHEWS

APPELLANT,

V.

Roseann Robles

APPELLEE,

**MOTION FOR  
RECONSIDERATION**

22 Comes Now Appellant, Dustin Matthews *Pro Per*, and pursuant to Rule 21  
23 Rules of the Supreme Court of the United States motions this court to reconsider  
24 its decision regarding the petition for writ of certiorari being out of time for the  
25 following reasons:  
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The Arizona Court of Appeals Division One granted me two extensions to file a writ of certiorari *see Attached 1*.

I respectfully request this court honor the previously granted extensions that allowed me to file a writ of certiorari by January 31, 2019. I timely filed my writ in accordance with the lower courts order.

*Dustin Matthews*

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Dustin Matthews  
Pro Per  
1500 E. Broadway Rd. #1116B  
Tempe, AZ 85282

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# ATTACHMENT 1

IN THE  
COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

In re the Matter of: ) Court of Appeals  
 ) Division One  
DUSTIN MATTHEWS, ) No. 1 CA-CV 16-0774 FC  
 )  
Petitioner/Appellant, ) Maricopa County  
 ) Superior Court  
v. ) No. FC2012-093973  
 )  
ROSEANN ROBLES, )  
 )  
Respondent/Appellee. )  
\_\_\_\_\_ )

**ORDER GRANTING MOTION TO CONTINUE STAYED MANDATE**

The court has received appellant's Motion to Continue Stayed Mandate.  
After consideration,

**IT IS ORDERED** granting appellant's motion.

**IT IS FURTHER ORDERED** appellant shall file a notice advising the clerk of this court that a writ of certiorari has been filed with the United States Supreme Court by January 31, 2019. If appellant fails to file the writ of certiorari with the United States Supreme Court and the notice to this court by that date, a mandate will issue. **No further continuances will be granted.**

**IT IS FURTHER ORDERED** appellant shall file a notice advising the clerk of this court of the United States Supreme Court's mandate within 30 days of its issuance.

/s/

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JENNIFER B. CAMPBELL, Judge

A copy of the foregoing  
was sent to:

Dustin Matthews  
Jennifer Mihalovich



SCOTT BALES  
CHIEF JUSTICE

JANET JOHNSON  
CLERK OF THE COURT

## Supreme Court

STATE OF ARIZONA  
ARIZONA STATE COURTS BUILDING  
1501 WEST WASHINGTON STREET, SUITE 402  
PHOENIX, ARIZONA 85007-3231

TELEPHONE: (602) 452-3396

September 4, 2018

**RE: DUSTIN MATTHEWS v ROSEANN ROBLES**  
Arizona Supreme Court No. CV-17-0360-PR  
Court of Appeals, Division One No. 1 CA-CV 16-0774 FC  
Maricopa County Superior Court No. FC2012-093973

**GREETINGS:**

The following action was taken by the Supreme Court of the State of Arizona on August 31, 2018, in regard to the above-referenced cause:

**ORDERED: Petition for Review of a Decision of the Court of Appeals = DENIED.**

**FURTHER ORDERED: Request for Attorneys' Fees (Appellant Matthews, Pro Se) = DENIED.**

Vice Chief Justice Brutinel did not participate in the determination of this matter.

Janet Johnson, Clerk

TO:  
Dustin Matthews  
Jennifer Mihalovich  
Amy M Wood  
bp

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

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

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In re the Matter of:

DUSTIN MATTHEWS, *Petitioner/Appellant*,

*v.*

ROSEANN ROBLES, *Respondent/Appellee*.

No. 1 CA-CV 16-0774 FC  
FILED 10-26-2017

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Appeal from the Superior Court in Maricopa County  
No. FC2012-093973  
The Honorable Richard J. Hinz, Judge *Pro Tempore*

**AFFIRMED**

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**APPEARANCES**

Dustin Matthews, Tempe  
*Petitioner/Appellant*

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**MEMORANDUM DECISION**

Judge Jennifer B. Campbell delivered the decision of the Court, in which  
Presiding Judge Michael J. Brown and Judge Margaret H. Downie joined.

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MATTHEWS v. ROBLES  
Decision of the Court

CAMPBELL, Judge:

¶1 Dustin Matthews ("Father") appeals the denial of his petition to enforce parenting time and the award of attorney fees in favor of Roseann Robles ("Mother"). For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Pursuant to a paternity judgment entered in December 2013, Father and Mother were awarded joint legal decision-making authority with Father having parenting time during the week from 6:30 a.m. through 4:30 p.m. and alternating weekends.

¶3 In September 2016, Father filed a petition to enforce, seeking to compel Mother's compliance with the parenting time order. The underlying facts were not disputed. The maternal grandparents picked up the child from day care on weekdays prior to 4:30 p.m. Father did not get off work until 5 p.m. If Father could leave work early, he called Mother to request the child be left at day care – in that case, Father picked up the child and parented him until 4:30 p.m. Mother testified she would have made the child available to Father by having the maternal grandparents return with the child had he asked. According to Mother, "[t]hat's not ever actually come up as an issue thus far."

¶4 After an evidentiary hearing, the family court denied the petition, finding as follows:

Mother is not refusing to allow Father to exercise his parenting time. The parties need to communicate in an open and honest manner about the welfare of the child. If Father is able to leave work early to exercise his parenting time Monday through Friday from 6:30 a.m. to 4:30 p.m., he shall communicate such to Mother at least 30 minutes in advance. If Mother or the maternal grandparents pick the child up early, the Court does not find it constitutes a violation of Father's parenting time as it appears that Mother is willing to allow Father to have the child at that time if Father is able to leave work early.

¶5 Thereafter, the family court awarded Mother \$850 in attorney fees, concluding that Father's position was unreasonable because (i) he was never denied "any physical parenting time" and (ii) "it is mainly an issue of control for [him]." See Ariz. Rev. Stat. ("A.R.S.") § 25-324 (attorney fees).



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Father timely appealed. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(2). See *In re Marriage of Dorman*, 198 Ariz. 298, 300, ¶ 3 (App. 2000).<sup>1</sup>

DISCUSSION

I. Petition to Enforce Parenting Time

¶6 Father argues the family court (1) “revoked” his constitutional right to make decisions concerning the care, custody, and control of the child without due process and (2) “violated” his right under Arizona law to make routine decisions regarding the child during his parenting time, *i.e.*, whether it was acceptable for the maternal grandparents to pick up the child before 4:30 p.m. See A.R.S. § 25-401(2), (5).

¶7 We view the evidence in the light most favorable to sustaining the family court’s ruling, deferring to its factual findings unless clearly erroneous. *Vincent v. Nelson*, 238 Ariz. 150, 155, ¶ 17 (App. 2015); *Walsh v. Walsh*, 230 Ariz. 486, 490, ¶ 9 (App. 2012). We defer to the family court to decide witness credibility and weight to give the evidence. *Gutierrez v. Gutierrez*, 193 Ariz. 343, 347-48, ¶ 13 (App. 1998). We review *de novo* questions of law, including the interpretation of a decree or court order. *Danielson v. Evans*, 201 Ariz. 401, 406, ¶ 13 (App. 2001). We also review *de novo* an alleged denial of due process. *Jeff D. v. Dep’t of Child Safety*, 239 Ariz. 205, 207, ¶ 6 (App. 2016).

¶8 Father argues the family court “revoked” his constitutional right to make decisions concerning the care, custody, and control of the child without due process. But a party asserting a denial of due process must show prejudice, *e.g.*, *Gamboa v. Metzler*, 223 Ariz. 399, 402, ¶ 17 (App. 2010), and Father has shown none. Father also argues the court “violated” his right under Arizona law to make routine decisions regarding the child during his parenting time, *i.e.*, whether it was “acceptable” for the maternal grandparents to pick up the child before 4:30 p.m. See A.R.S. § 25-401(2), (5). Even assuming an error on this basis, the error was harmless. See Ariz. R. Fam. Law P. 86 (“The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.”). Father offers no persuasive explanation why it was *unacceptable* for the maternal grandparents to pick the child up early from

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<sup>1</sup> Mother did not file an answering brief. In our discretion, we decline to consider her failure to file an answering brief a confession of reversible error. See *Gonzales v. Gonzales*, 134 Ariz. 437, 437 (App. 1982).

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day care when such action does not prevent him from exercising his allotted parenting time.

II. Attorney Fees

¶9 Father argues the family court erred by awarding Mother attorney fees under A.R.S. § 25-324 because she did not request fees on this basis, his “reasonableness was not in question” within the meaning of the statute, and the court failed to evaluate the financial resources of both parties. We review de novo questions of law, including the application of a fee statute. *Burke v. Ariz. State Ret. Sys.*, 206 Ariz. 269, 272, ¶ 6 (App. 2003); *Bennett Blum, M.D., Inc. v. Cowan*, 235 Ariz. 204, 205, ¶ 5 (App. 2014).

¶10 The family court was not required to make findings of fact because Father did not request them. *See Myrick v. Maloney*, 235 Ariz. 491, 494-95, ¶ 10 (App. 2014). Thus, we assume the court resolved each issue of fact in a way that supports its decision. *See Murren v. Murren*, 191 Ariz. 335, 337, ¶ 8 (App. 1998) (citing *Crye v. Edwards*, 178 Ariz. 327, 328 (App. 1993)); *Horton v. Mitchell*, 200 Ariz. 523, 526, ¶ 13 (App. 2001). Although A.R.S. § 25-324 lists “reasonableness” and “financial resources” as factors, a fee “applicant need not show both a financial disparity and an unreasonable opponent in order to qualify for consideration for an award.” *Magee v. Magee*, 206 Ariz. 589, 591 n.1, ¶ 8 (App. 2004); *see also Rinegar v. Rinegar*, 231 Ariz. 85, 90, ¶ 23 (App. 2012) (recognizing fee award may be based on financial disparity alone). The family court’s findings regarding the reasonableness of Father’s position were supported by the evidence. Accordingly, its decision to award Mother attorney fees was not an abuse of discretion.

CONCLUSION

¶11 For the foregoing reasons, we affirm the denial of Father’s petition to enforce parenting time and the award of attorney fees. Because

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Decision of the Court

Father is not the prevailing party, we deny Father's request for fees and costs on appeal.



AMY M. WOOD • Clerk of the Court  
FILED: AA

**Additional material  
from this filing is  
available in the  
Clerk's Office.**