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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



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FILED: 03/16/2010
PHILIP G. URRY, CLERK
BY: GH

OSCAR and ANITA MARIE CHAVARRIA,) 1 CA-CV 09-0118
husband and wife, individually)
and on behalf of their minor) DEPARTMENT A
child, HANNAH CHAVARRIA,)
) **MEMORANDUM DECISION**
Plaintiffs/Appellees,)
) (Not for Publication -
v.) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
NANCY SCHOTT JONES,)
)
Defendant/Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CV2006-005715

The Honorable Richard J. Trujillo, Judge

VACATED

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P O R T L E Y, Judge

¶1 Nancy Schott Jones ("Jones") appeals from the trial court's award of attorneys' fees as sanctions to Oscar and Anita Chavarria ("the Chavarrias"). For the reasons that follow, we vacate the award of sanctions.

FACTS AND PROCEDURAL BACKGROUND

¶2 This action arises from an accident that occurred on May 1, 2004. The Chavarrias sued Jones for injuries they suffered from the accident. Soon after filing the action, the Chavarrias served Jones the following two requests for admission:

REQUEST FOR ADMISSION NO. 1: Admit that on May 01, 2004, at the time of the motor vehicle accident giving rise to this lawsuit, Nancy Schott Jones operated her motor vehicle in a negligent manner.

REQUEST FOR ADMISSION NO. 2: Admit that Nancy Schott Jones' negligent operation of her motor vehicle was the sole and proximate cause of the motor vehicle accident on May 01, 2004.

Jones denied both requests for admission.

¶3 A jury trial was held in April 2008. At the close of evidence, the Chavarrias filed a motion for judgment as a matter of law on the issue of comparative negligence and on the issue of liability. The court granted the motion regarding comparative negligence, but denied the motion regarding

liability. The jury found in favor of the Chavarrias and awarded them damages.

¶14 Before the court entered final judgment, the Chavarrias filed a motion for sanctions because Jones failed to admit the two requests for admission. The court denied the motion. The form of judgment submitted by the Chavarrias was signed on July 21, 2008, with the court striking the language proposed that would have imposed sanctions. The judgment was filed on July 22, 2008.

¶15 The Chavarrias asked the court to reconsider the denial of sanctions on August 21, 2008. Jones responded, there was oral argument, and both parties submitted supplemental briefing. The court subsequently granted the motion for reconsideration and awarded the Chavarrias sanctions in the amount of \$12,500 in attorneys' fees and \$463.47 in costs. Jones appealed.

¶16 During the oral argument on appeal, the issue was raised whether the trial court lacked subject matter jurisdiction to amend or modify the judgment and award sanctions. Because subject matter jurisdiction cannot be waived, *Swichtenberg v. Brimer*, 171 Ariz. 77, 82, 828 P.2d 1218, 1223 (App. 1991), we ordered both parties to file supplemental briefs on the jurisdiction issue. We have jurisdiction to

consider this issue pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(C) (2003).

DISCUSSION

¶7 We properly address whether the trial court had subject matter jurisdiction to amend the judgment and impose sanctions. See *Danielson v. Evans*, 201 Ariz. 401, 411, ¶ 36, 36 P.3d 749, 759 (App. 2001) (stating that "[w]hether the court had jurisdiction to enter the order from which this appeal has been taken is a matter we may address") (quoting *Don L. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 556, 557 n.1, 975 P.2d 146, 147 n.1 (App. 1998)). Jones argues that, once judgment was entered, the Chavarrias needed to file a post-judgment motion to pursue further relief because a motion for reconsideration is not a post-judgment motion that extends the time to file an appeal. Jones, therefore, contends that, once entered, the judgment became final by passage of time, and the trial court had no jurisdiction to modify or vacate its judgment absent a timely Rule 59 or 60 motion. We agree.

¶8 Pursuant to Arizona law, the inherent power of the court to vacate or modify its judgment does not extend beyond the point at which the judgment becomes final, except as authorized by law. When a judgment becomes final, the power of the court to open it is governed by the Rules of Civil Procedure adopted by [our supreme court].

Preston v. Denkins, 94 Ariz. 214, 219, 382 P.2d 686, 689 (1963). Once a judgment is entered, it can be vacated or modified by orders entered pursuant to Arizona Rules of Civil Procedure 50(b), 52(b), 59, and 60.

¶19 Here, the Chavarrias asked the trial court to reconsider its ruling by a motion for reconsideration. Rule 7.1(e) provides, however, that a motion for reconsideration "may not be employed as a substitute for a motion pursuant to Rule[s] 50(b), 52(b), 59 or 60." Rule 7.1(e) only refers to seeking reconsideration of a ruling and does not specifically address judgments, unlike Rules 50, 52, 59, and 60, which all explicitly state a trial court can modify or vacate a final judgment. Because reconsideration cannot be used as a substitute for post-judgment motions, the trial court could not utilize such a motion to modify the final judgment.

¶10 The Chavarrias argue that the denial of sanctions was not incorporated into the final judgment. The trial court, however, denied sanctions and ordered the "ent[ry] [of] Judgment in favor of [the Chavarrias] and against Defendant in accordance with the above rulings." The court subsequently struck the sanctions language from the proposed judgment before signing it.

¶11 Because there was a final judgment that addressed the sanctions issue, the trial court did not have subject matter jurisdiction to amend the denial of sanctions contained in the

judgment. Accordingly, the court did not have authority to rule on the motion for reconsideration.

CONCLUSION

¶12 Because the trial court did not have subject matter jurisdiction to modify the judgment, we vacate the sanctions awarded to the Chavarrias.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Judge

/s/

ANN A. SCOTT TIMMER, Chief Judge