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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



DIVISION ONE
FILED: 05/08/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In the Matter of the Guardianship) 1 CA-CV 11-0132
of and Conservatorship of:)
) DEPARTMENT A
MIYUKI K. YAMAMOTO,)
) MEMORANDUM DECISION
An Adult.)
) (Not for Publication -
) (Rule 28, Arizona Rules of
DAVID YAMAMOTO,) Civil Appellate Procedure)
)
Appellant,)
)
v.)
)
JEANNIE YAMAMOTO, MIYUKI)
YAMAMOTO,)
)
Appellees.)
)

Appeal from the Superior Court in Maricopa County

Cause No. PB2010-000297

The Honorable Cynthia L. Gialketsis, Commissioner

APPEAL DISMISSED

Dominguez Law Firm
by Antonio Dominguez
Attorney for Appellant

Phoenix

P O R T L E Y, Judge

¶1 David Yamamoto ("David") appeals from the order directing him to return assets belonging to his mother, Miyuki Yamamoto ("Mother"), and freezing the remaining assets identified by Jeannie Yamamoto ("Jeannie") in her Motion for Return of Assets and Either Releasing All Assets or Freezing Assets in Question. For the following reasons, we dismiss the appeal for lack of jurisdiction.

PROCEDURAL BACKGROUND

¶2 David filed a Petition for Appointment of Guardian and Conservator in the probate division of the superior court, and voluntarily dismissed it in July 2010. A week later, Jeannie filed an ex parte motion to freeze assets, but the motion was denied on July 28, 2010.

¶3 She filed a motion to reopen on August 20, 2010, along with a Petition/Complaint for Return of Assets, Misrepresentation to the Tribunal, Elder Abuse, Exploitation of a Vulnerable Adult and Theft. The court granted her motion to reopen six days later and set a hearing in September 2010, which was subsequently continued to December. After the parties filed

a number of contested motions, the court eventually signed the order that forms the basis of this appeal.

JURISDICTION

¶4 Our first task is to ensure that we have jurisdiction. *Sorensen v. Farmers Ins. Co.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997) (citation omitted). Although Jeannie and Mother believe there is jurisdiction, we disagree.

¶5 David filed his petition, but later voluntarily dismissed it before anyone had filed an answer or objection, or moved for summary judgment. As a result, the case was uncontested, see Ariz. R. Prob. P. 27, and the dismissal was automatic pursuant to Arizona Rule of Civil Procedure 41(a)(1)(A) even before the court formally signed the dismissal order. *Spring v. Spring*, 3 Ariz. App. 381, 383, 414 P.2d 769, 771 (1966) (dismissal is completely effective upon filing of the notice of dismissal).

¶6 The motion David filed to voluntarily dismiss his petition "ended the matter and the court lost all jurisdiction to enter any further orders or take any other action with regard thereto." *Id.* The probate court therefore correctly determined that it did not have jurisdiction to address Jeannie's ex parte motion. The court similarly did not have jurisdiction to

address her motion to reopen the case to allow her to file a separate petition.

¶7 Although Jeannie filed her motion to reopen, there was nothing for the probate court to do. Moreover, the motion did not articulate a legal reason to reopen the dismissed case and reinstate David's petition because nothing was pending at the time the case was dismissed. And, the petition accompanying the motion did not seek to establish a guardianship or conservatorship pursuant to Ariz. Rev. Stat. section 14-1302 (West 2012). As a result, the court did not have jurisdiction to decide any motions after the case was dismissed and those actions are a nullity. See *McHazlett v. Otis Eng'g Corp.*, 133 Ariz. 530, 533, 652 P.2d 1377, 1380 (1982). Furthermore, because the court lacked jurisdiction to reopen the case and rule upon the motions, we do not have jurisdiction over this appeal. *Id.* (citations omitted) ("If a [trial] court has no jurisdiction to issue an order an appeal from that order gives the appellate court no jurisdiction except to dismiss the appeal.").

CONCLUSION

¶19 Based on the foregoing, we dismiss this matter for a lack of appellate jurisdiction.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

ANN A. SCOTT TIMMER, Judge

/s/

ANDREW W. GOULD, Judge