

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAY 15 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

In re the Marriage of:	)	2 CA-CV 2011-0192
	)	DEPARTMENT A
RUTH ANN ARCHIBALD,	)	
	)	<u>MEMORANDUM DECISION</u>
Petitioner/Appellee,	)	Not for Publication
	)	Rule 28, Rules of Civil
and	)	Appellate Procedure
	)	
STEPHEN V. ARCHIBALD,	)	
	)	
Respondent/Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. D20044077

Honorable Frederic J. Dardis, Judge Pro Tempore

DISMISSED

Stolar & Pollins, P.C.  
By Merle L. Stolar

Tucson  
Attorneys for Petitioner/Appellee

Law Offices of Carl D. Macpherson  
By Carl D. Macpherson

Tucson  
Attorney for Respondent/Appellant

H O W A R D, Chief Judge.

¶1 Appellant Stephen Archibald appeals from the trial court's October 2011 denial of his request to modify spousal maintenance awarded to appellee Ruth Ann

Archibald in the decree dissolving their marriage entered in April 2006, and its denial of his motion to reconsider. Because we do not have jurisdiction, we dismiss.

### **Factual and Procedural Background**

¶2 Ruth Ann filed a petition for dissolution of marriage without children in November 2004. After a bench trial, the trial court ordered Stephen to pay Ruth Ann spousal maintenance in the amount of \$2,500 per month. In 2011, Stephen filed a request to modify that amount and Ruth Ann responded, objecting to the requested modification and seeking her attorney fees. After holding a hearing, the court issued a ruling on October 21, denying Stephen's request. Stephen subsequently filed a motion for reconsideration, which the court denied on November 3, 2011.

¶3 On November 14, 2011, Stephen filed a notice of appeal from the trial court's ruling denying his request for modification of spousal maintenance and motion to reconsider. On November 28, 2011, the trial court issued a ruling awarding Ruth Ann costs and attorney fees in the amount of \$5,000, stating "the court will sign this ruling in lieu of a formal judgment." It also entered a final judgment on December 8, 2011. Stephen did not file another notice of appeal.

### **Discussion**

¶4 Stephen does not cite any authority for our jurisdiction over this appeal, as required under Rule 13(a)(3), Ariz. R. Civ. App. P. However, we have an independent duty to determine whether we have jurisdiction. *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997). Our jurisdiction is prescribed by statute, and we have no authority to entertain an appeal over which we do not have

jurisdiction. *See Hall Family Props., Ltd. v. Gosnell Dev. Corp.*, 185 Ariz. 382, 386, 916 P.2d 1098, 1102 (App. 1995). And “[w]herever the language in [the Arizona Rules of Family Law Procedure] is substantially the same as the language in other statewide rules, the case law interpreting that language will apply. . . .” Ariz. R. Fam. Law P. 1 cmt.

¶5 Section 12-2101(A)(1) vests jurisdiction in this court “[f]rom a final judgment.” Generally we do not have jurisdiction over an appeal unless a judgment has disposed of all claims of all parties. *Musa v. Adrian*, 130 Ariz. 311, 312, 636 P.2d 89, 90 (1981). If an order does not adjudicate all claims among all parties it is not appealable unless it satisfies the requirements of Rule 78(B), Ariz. R. Fam. Law P. *See Musa*, 130 Ariz. at 313, 636 P.2d at 91 (interpreting Rule 54(b), Ariz. R. Civ. P.). *Compare* Ariz. R. Fam. Law P. 78(B), *with* Ariz. R. Civ. P. 54(b). Rule 78(B) only applies if the trial court enters a final judgment “upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.” Further, under Rule 78(B), “a claim for attorneys’ fees may be considered a separate claim from the related judgment regarding the merits of a cause.” Unless only ministerial acts remain to be performed, “a notice of appeal filed in the absence of a final judgment . . . is ‘ineffective’ and a nullity.” *Craig v. Craig*, 227 Ariz. 105, ¶ 13, 253 P.3d 624, 626 (2011), *quoting Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, ¶ 39, 132 P.3d 1187, 1195 (2006).

¶6 Here, Stephen filed the notice of appeal after the trial court issued rulings denying his request to modify spousal maintenance and motion for reconsideration. However, the court had not addressed Ruth Ann’s pending request for attorney fees in

either of these rulings. Thus, neither of the October 21 and November 3 rulings were final appealable judgments. And, because substantive issues remained to be resolved, the notice of appeal was a nullity. *See Craig*, 227 Ariz. 105, ¶ 13, 253 P.3d at 626. We therefore do not have jurisdiction over the appeal. *See* § 12-2101(A)(1); *Musa*, 130 Ariz. at 312, 636 P.2d at 90.

### Conclusion

¶7 For the foregoing reasons, we dismiss for lack of jurisdiction. Ruth Ann requests an award of costs and attorney fees pursuant to A.R.S. § 25-324, and Rule 21, Ariz. R. Civ. App. P. Section 25-324 requires us to examine “the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings.” The trial court found that Stephen had more resources than Ruth Ann and should be required to pay some of her attorney fees. And Stephen attempted to appeal prematurely, causing an invalid appeal. Accordingly, we will award Ruth Ann some portion of her fees, after she complies with Rule 21.

*/s/ Joseph W. Howard*

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JOSEPH W. HOWARD, Chief Judge

CONCURRING:

*/s/ Peter J. Eckerstrom*

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PETER J. ECKERSTROM, Presiding Judge

*/s/ J. William Brammer, Jr.*

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J. WILLIAM BRAMMER, JR., Judge