IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

RICHARD PAUL VENABLE AND VICKY VENABLE, HUSBAND AND WIFE,
Plaintiffs/Appellees,

v.

CHRISTIAN SCOTT BURTON,
Defendant/Appellant.

No. 2 CA-CV 2016-0095
Filed December 19, 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NOT FOR PUBLICATION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).

Appeal from the Superior Court in Pima County
No. C20133966
The Honorable Sarah R. Simmons, Judge

APPEAL DISMISSED

COUNSEL

Rai & Barone, P.C., Phoenix
By Rina Rai and Kimberly K. Page
Counsel for Defendant/Appellant

Miniat & Wilson, L.P.C.
By Kevin E. Miniat, Tucson
Counsel for Plaintiffs/Appellees

MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Judge Espinosa and Judge Staring concurred.

H O W A R D, Presiding Judge:

¶1 Christian Burton appeals from the trial court's denial of his requests for costs as the prevailing party on the grounds the request was untimely. Because the order denying costs was not signed and no final judgment has been entered in any event, we lack jurisdiction and therefore dismiss this appeal.

Factual and Procedural Background

¶2 In July 2013, Richard Venable sued Burton and Burton's employer after Burton hit Venable with his car while delivering pizzas for his employer. On January 19, 2016, the trial court entered an order imposing discovery sanctions against Venable and in favor of both defendants in the amount of $70,374.78. In that order, the court stated that Venable's failure to deposit that amount with the clerk of the court within thirty days would result in the "case being dismissed without further notice to the parties."

¶3 On February 29, the trial court noted that Venable had not complied with its January 19 order and dismissed the case with prejudice as to Burton.[1] That order lacked a determination of finality pursuant to Rule 54(c), Ariz. R. Civ. P. On March 8, Burton filed a request for costs as the prevailing party pursuant to Rule 54(f), Ariz. R. Civ. P. On April 1, the court denied the request, finding that the dismissal was effective on February 19—thirty days after its January 19 order—and Burton's request was therefore due by March 4. Ariz. R. Civ. P. 54(f); *see also* Ariz. R. Civ. P. 6(a). Consequently, the court denied Burton's March 8 request as

[1]On February 17, the trial court entered a stipulated judgment as to Burton's employer.

untimely and, on April 6, denied his motion for reconsideration of that denial. Burton timely appealed the denial of costs.

Discussion

¶4 Although neither party has argued the ground we find dispositive, this court has an independent duty to examine its jurisdiction. *Workman v. Verde Wellness Ctr., Inc.*, 240 Ariz. 525, ¶ 6, 382 P.3d 812, 815 (App. 2016). Our jurisdiction is defined by statute and we must dismiss an action if it is lacking. *Id.* Additionally, our rules of civil procedure lay out the proper procedure for an order to be appealable. *See, e.g.,* Ariz. R. Civ. P. 54(b) & (c), 58(a); Ariz. R. Civ. App. P. 8, 9. For the followings reasons, we conclude we lack jurisdiction.

¶5 Burton's notice of appeal states he is appealing the trial court's April 1 order denying his request for costs as the prevailing party. *See* Ariz. R. Civ. P. 54(f). However, orders only become effective for the purposes of conveying appellate jurisdiction when they are "in writing and signed by a judge." *Klebba v. Carpenter*, 213 Ariz. 91, ¶ 6, 139 P.3d 609, 610 (2006), *quoting* Ariz. R. Civ. P. 58(a). The trial court's April 1 order denying Burton's request for costs is not signed. It therefore cannot be appealed. *See id.* Burton's notice of appeal also states he is appealing the trial court's April 6 denial of his motion of reconsideration, which is signed. But such orders are generally not appealable. *Arvizu v. Fernandez,* 183 Ariz. 224, 226, 902 P.2d 830, 832 (App. 1995) (to be appealable, "the issues raised by the appeal from the [post-judgment] order must be different from those that would arise from an appeal from the underlying judgment").

¶6 Furthermore, even if it were signed, the April 1 order cannot be appealed. First, to the extent the denial of costs could be considered a final judgment, the order does not contain the requisite language of finality pursuant to Rule 54(c) stating that "no further matters remain pending." *Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 421, ¶ 1, 380 P.3d 659, 664 (App. 2016). It therefore cannot be appealed as a final judgment. *Id.*; *see also* A.R.S. § 12-2101(A)(1).

¶7 Second, Burton contends the "final judgment" in this case was actually the February 29 dismissal of the complaint with prejudice, meaning that the denial of costs could potentially be a "special order made after final judgment" which does not require Rule 54(c) language. *See* § 12-2101(A)(2); *see also Brumett*, 240 Ariz. 421, ¶ 27, 380 P.3d at 671; *Bennett Blum, M.D., Inc. v. Cowan*, 235 Ariz. 204, ¶ 4, 330 P.3d 961, 962 (App. 2014). But the February 29 dismissal lacks Rule 54(c) language and is therefore not final. In the absence of a final judgment, the April 1 denial of costs could not be a special order made after final judgment. *Ruesga v. Kindred Nursing Ctrs., L.L.C.*, 215 Ariz. 589, ¶ 13, 161 P.3d 1253, 1257-58 (App. 2007).

Disposition

¶8 For the foregoing reasons, we dismiss this appeal.