IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

DONDRA CRUSENBERRY,
Petitioner/Appellant,

and

CHARLES GRANT,
Respondent/Appellee.

No. 2 CA-CV 2016-0165-FC
Filed April 25, 2017

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NOT FOR PUBLICATION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. D20110287
The Honorable James E. Marner, Judge

APPEAL DISMISSED

COUNSEL

Richard W. Glenn, Tucson
Counsel for Petitioner/Appellant

Charles M. Grant, Tucson
In Propria Persona

MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Vásquez concurred.

H O W A R D, Presiding Judge:

¶1 Dondra Crusenberry appeals from the trial court's denial of her request to incrementally increase the spousal maintenance owed by Charles Grant and the court's order vacating a portion of one of its earlier orders, entered as a part of a civil contempt proceeding arising from Crusenberry's divorce from Grant. Because we do not have jurisdiction, we dismiss this appeal.

Factual and Procedural Background

¶2 The following facts are undisputed. The trial court issued a decree of dissolution of the marriage between Crusenberry and Grant in February 2013, which merged and incorporated the parties' marital separation agreement. That agreement provided that Grant would pay Crusenberry $2,000 per month in spousal maintenance. The agreement stated this spousal maintenance obligation was nonmodifiable, except under a provision which doubled the payment owed to Crusenberry in the event she was forced to "file bankruptcy as a result of [Grant] not complying with and fulfilling his obligations for spousal maintenance." In December 2013, Crusenberry declared bankruptcy, and in September 2014, the trial court entered an order effectuating the higher, $4,000 per month, spousal maintenance payments.

¶3 Grant did not meet his spousal maintenance obligations, and in October 2014 Crusenberry petitioned the trial court to enter an order for Grant to show cause why he should not be held in contempt, specifically requesting that Grant be incarcerated with work release until he met such obligations. Crusenberry also requested that the court order Grant to post a $60,000 bond and pay her attorney fees, and "such other relief" that the court found appropriate.

¶4 After a hearing, in November 2014 the trial court found Grant in contempt under A.R.S. § 12-864 and ordered that Grant should pay $500 per month or self-report to the Pima County Jail. The court also stated it was not altering Grant's spousal support obligation of $4,000 per month pursuant to the court's under-advisement ruling on September 2, 2014, in accordance with the marital separation agreement.

¶5 In February 2015, Crusenberry filed a supplemental motion for contempt in which she petitioned the trial court to increase the amount Grant should be required to pay to avoid incarceration to the full spousal maintenance award of $4,000 per month and asked the court to require Grant to provide copies of his pay stubs. After a review hearing, the court entered an order denying Crusenberry's request to change the amount to $4,000, setting it instead at $1,000 and also requiring that Grant take specific steps to increase his earning potential.

¶6 After further motions and proceedings, the trial court conducted another review hearing. On March 18, it issued an order addressing Crusenberry's requests that Grant remain under a commitment order and that his monthly obligation to avoid the commitment order be incrementally increased "until he has reached $4,000 a month." The court, noting Grant's consistent efforts to comply with the court's order, vacated the commitment order. The court also denied Crusenberry's request to increase the monthly amount to avoid incarceration in light of Grant's "good faith efforts . . . to secure a higher paying job." This request was "denied without prejudice." Further, the court ordered that, in the event Grant "get[s] a job that pays 25% or greater than his current gross income," Crusenberry could request an increase in the monthly payment amount.

¶7 Crusenberry filed a notice of appeal concurrently with a motion for reconsideration in April 2014. The trial court refused to rule on the motion, noting it lacked jurisdiction to do so after the notice of appeal had been filed. In May 2014, Crusenberry asked the court to rule on the issue of attorney fees and costs from the initial October 2014 contempt petition, which the court clarified that it had

implicitly denied. Crusenberry then filed a second notice of appeal which included this ruling as part of her appeal.

Jurisdiction

¶8 Both of Crusenberry's notices of appeal state that she appeals from the trial court's March 18 order.[1] She asserts that we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1), but we have a duty to review our jurisdiction "and, if jurisdiction is lacking, to dismiss the appeal." *In re Marriage of Flores & Martinez*, 231 Ariz. 18, ¶ 6, 289 P.3d 946, 948 (App. 2012), *quoting Davis v. Cessna Aircraft Corp.*, 168 Ariz. 301, 304, 812 P.2d 1119, 1122 (App. 1991).

¶9 "Our jurisdiction is derived wholly from statute, and 'the types of judgments and orders from which appeals may be taken are set forth in A.R.S. § 12-2101.'" *Id.* ¶ 7 (citation omitted), *quoting Eaton v. Unified Sch. Dist. No. 1*, 122 Ariz. 391, 392, 595 P.2d 183, 184 (App. 1979). "The general rule is that an appeal lies only from a final judgment." *Id.*, *quoting Davis*, 168 Ariz. at 304, 812 P.2d at 1122. Section 12-2101(A)(1) specifically states that an appeal may

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[1]Crusenberry's second notice of appeal also included the May 26, 2016, order called "In Chambers Clarification of November 14, 2014 Order on Petitioner's Motion for Contempt." That order is not signed and does not change the November 14 order. *See* Ariz. R. Fam. Law P. 81(A); *see also Klebba v. Carpenter*, 213 Ariz. 91, ¶ 9, 139 P.3d 609, 611 (2006) (notice of appeal from unsigned order "simply ineffective to confer jurisdiction on an appellate court"); *In re Marriage of Dorman*, 198 Ariz. 298, ¶ 3, 9 P.3d 329, 331 (App. 2000) (special order after judgment only appealable when it raises "different issues than those that would be raised by appealing the underlying judgment"). And Crusenberry has not identified the underlying November 14 order in her second notice of appeal. *See Lee v. Lee*, 133 Ariz. 118, 124, 649 P.2d 997, 1003 (App. 1982); *see also* Ariz. R. Civ. App. P. 8(c) ("notice of appeal" must "[d]esignate the judgment or portion of the judgment from which the party is appealing").

be taken from "a final judgment entered in an action or special proceeding commenced in a superior court."

¶10 In general, a party cannot seek review of a civil contempt order except by special action. *State v. Mulligan*, 126 Ariz. 210, 216-17, 613 P.2d 1266, 1272-73 (1980); *see BMO Harris Bank Nat. Ass'n v. Bluff ex rel. County of Yavapai*, 229 Ariz. 511, ¶ 5, 277 P.3d 216, 218 (App. 2012). However, the general rule does not apply—and a contempt order is appealable—when "the substance or effect of the order" goes beyond a finding of contempt and "qualifies the order as one of those made appealable pursuant to § 12-2101." *Green v. Lisa Frank, Inc.*, 221 Ariz. 138, ¶ 21, 211 P.3d 16, 26 (App. 2009). Thus, we only have jurisdiction over Crusenberry's appeal if the trial court's March 18 order was final such that it would justify jurisdiction under § 12-2101. *Id.*

¶11 Under the Arizona Rules of Family Law Procedure, the trial court must "resolve all issues raised in a post-decree petition" before an appeal may be filed. *In re Marriage of Kassa*, 231 Ariz. 592, ¶ 4, 299 P.3d 1290, 1291 (App. 2013). When a party files a petition, an action commences. *Id.* When that action presents more than one claim for relief, any order that does not fully resolve all claims as to all parties "'is subject to revision at any time before the entry of judgment' unless the court directs entry of judgment 'upon an express determination that there is no just reason for delay.'" *Id.*, *quoting* Ariz. R. Fam. Law P. 78(B). "Because Rule 78(A) defines a judgment as 'a decree and an order from which an appeal lies,' a ruling that does not contain the required language does not qualify as a final, appealable 'judgment' under the rules." *Id.* ¶ 5. If a notice of appeal is filed before an entry of final judgment, that notice is "premature, ineffective, and a nullity." *Id.*

¶12 Here, the March 18 order modified the terms of the trial court's earlier contempt order, but did not end the contempt proceeding. First, the court expressly stated that, should Grant fail to substantially comply with the court's order in the future, it would reinstitute the commitment order. Second, it stated that Crusenberry's request that Grant have to pay $4,000 per month to avoid incarceration under the contempt order was denied "without prejudice." Third, the court ordered that Grant must notify the

court in the event that he obtained a higher paying job. Finally, the order does not contain any indication that the court intended the order to be appealable as a judgment pursuant to Rule 78.

¶13 Thus, because the order was not final, and contempt proceedings are only appealable when they qualify "as one of those made appealable pursuant to § 12-2101," we do not have jurisdiction over Crusenberry's appeal under § 12-2101(A)(1). *Green*, 221 Ariz. 138, ¶ 21, 211 P.3d at 26. Crusenberry has not identified an alternate source of jurisdiction in either her opening brief or reply brief, *see* Ariz. R. Civ. App. P. 13(a)(4) (opening brief must contain statement of "the basis of the appellate court's jurisdiction"), and has not cited any cases in which an order denying a request to modify the terms of a civil contempt order has been considered appealable. We are unaware of any cases in which such an order has been held appealable under § 12-2101(A). Further, as stated above, our supreme court has repeatedly held contempt orders are not appealable and must be challenged through a petition for special action. *See Green,* 221 Ariz. 138, n.3, 211 P.3d at 23 n.3 (listing cases).

Disposition

¶14 Based on the foregoing, we dismiss Crusenberry's appeal.