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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

PINAL COUNTY, a political subdivision of the State of Arizona, Plaintiff/Appellee, v. WAYNE M. MILLER, Defendant/Appellant.	2 CA-CV 2010-0198 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. C200902216

Honorable William J. O'Neil, Judge

DISMISSED

James P. Walsh, Pinal County Attorney
By Seymour G. Gruber — Florence
Attorney for Plaintiff/Appellee

Wayne M. Miller — Mesa
In Propria Persona

E S P I N O S A, Judge.

¶1 Wayne Miller, appearing pro se, appeals from the trial court's unsigned minute entry filed September 23, 2010. We dismiss this appeal for lack of jurisdiction.

Factual Background and Procedural History

¶2 Pinal County initiated this litigation in 2009, alleging Miller's home was in violation of the county's building code and seeking its demolition.[1] Miller filed an answer and counterclaim from prison.[2] During the pendency of the case, Miller was released from prison and thereafter failed to attend both a mandatory meeting with the county and a pretrial management conference with the trial court. Due to Miller's nonattendance, on August 23, 2010, the court struck his answer and permitted the county to proceed by default unless he could show good cause for his failure to appear.

¶3 Miller subsequently filed a "motion to continue" asking the trial court, *inter alia*, to reschedule the pretrial management conference and to "set aside the default entered on August 23." On September 20, the court heard argument from the county and testimony from Miller and his probation officer about Miller's "reasons for not appearing at the previous hearing." In an unsigned minute entry filed September 23, the court denied Miller's motion to continue and took the case under advisement. Miller filed a notice of appeal on September 27, purporting to appeal "the Decision rendered on

[1]Although Miller's wife, Lisa Haring Miller, was a party to the litigation in the trial court and signed Miller's appellate reply brief, her name does not appear on the notice of appeal as required by Rule 8(c), Ariz. R. Civ. App. P. Consequently, she is not a party to this appeal. *See Bennett v. Baxter Group, Inc.*, 223 Ariz. 414, ¶ 39, 224 P.3d 230, 239 (App. 2010).

[2]The trial court thereafter granted Miller's request for a change of venue to the superior court in Maricopa County, but the case was returned to Pinal County when Miller failed to pay Maricopa County's filing fee. Consequently, the counterclaim was dismissed as abandoned.

September 23."[3] In late October, the court ruled Miller had not shown good cause for failing to attend the August hearing and issued a final default judgment in favor of the county.

Discussion

¶4 The county argues we do not have jurisdiction but hinges its argument only on the fact Miller did not file a motion in the trial court to set aside the default judgment. The county does not address the timing of Miller's notice of appeal, which was filed nearly a month before the final judgment. Nevertheless, we have an independent duty to determine whether we have jurisdiction over an appeal. *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997).

¶5 "'The general rule is that an appeal lies only from a final judgment.'" *Id.*, *quoting Davis v. Cessna Aircraft Corp.*, 168 Ariz. 301, 304, 812 P.2d 1119, 1122 (App. 1991); *see* A.R.S. § 12-2101. A final judgment "'dispose[s] of all claims and all parties,'" *Maria v. Najera*, 222 Ariz. 306, ¶ 5, 214 P.3d 394, 395 (App. 2009), *quoting Musa v. Adrian*, 130 Ariz. 311, 312, 636 P.2d 89, 90 (1981), and must be signed by the judge, Ariz. R. Civ. P. 58(a). The September 23 minute entry does not dispose of all of

[3]The second digit of the date of the order being appealed appears smudged in Miller's notice of appeal, but the month and first digit of the date clearly refer to a decision rendered between September 20 and 29, and the trial court issued only one minute entry that month, filed September 23. Miller's notice of appeal was filed shortly thereafter on September 27. Accordingly, we conclude the notice of appeal refers to the minute entry filed September 23. In any event, the notice clearly does not refer to the final judgment, filed a month later in October.

the issues and is not signed by the judge. Therefore, it is not a final, appealable judgment.

¶6 Rather, the final judgment was entered on October 25, nearly a month after Miller filed his notice of appeal. Generally, "the premature filing of a notice of appeal will not . . . perfect an appeal." *Glenn v. Imperial Trust*, 114 Ariz. 239, 240, 560 P.2d 423, 424 (1977). However, in *Barassi v. Matison*, 130 Ariz. 418, 419-21, 636 P.2d 1200, 1201-03 (1981), our supreme court articulated an exception to the general rule, holding that a premature notice of appeal may give rise to appellate jurisdiction where the trial court's substantive decision had become final and only ministerial tasks remained to accomplish the entry of judgment. But this exception does not apply—and an appellate court therefore lacks jurisdiction—when "a litigant attempts to appeal where a motion is still pending in the trial court or where there is no final judgment." *Id.* at 422, 636 P.2d at 1204.

¶7 The *Barassi* exception does not confer jurisdiction here. This is not a case where the notice of appeal was filed after "the lower court's substantive decision had become final, and only ministerial tasks remained to accomplish the entry of a final judgment." *Engel v. Landman*, 221 Ariz. 504, ¶ 11, 212 P.3d 842, 846 (App. 2009). Rather, Miller filed his notice of appeal before the trial court had made a final decision. *See Barassi*, 130 Ariz. at 422, 636 P.2d at 1204; *cf. Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, ¶¶ 38-39, 132 P.3d 1187, 1195 (2006) (notice of appeal filed while "substantive matters requiring the discretion of the decision-maker" were pending did not confer jurisdiction). Miller's notice of appeal referred to "the

[d]ecision rendered on September 23," but that order only denied his motion to continue and took the matter under advisement; it was not the "final judgment" in this case. On the contrary, still pending before the court was the outcome-determinative decision about whether Miller had shown good cause for his absence at the August 23 hearing—an issue not resolved until late October when the court issued the final default judgment and attendant minute entry in which it found "[n]o good cause [had been] shown for the setting aside of the default." *See Duke v. Cochise County*, 189 Ariz. 35, 37, 938 P.2d 84, 86 (App. 1996) ("It is well established that appellate courts have jurisdiction only over those matters designated in the notice of appeal or cross-appeal.").

Disposition

¶8 Because Miller filed his notice of appeal before the trial court rendered its substantive decision, we lack jurisdiction over this appeal. *See Engel*, 221 Ariz. 504, ¶ 11, 212 P.3d at 846. The appeal is dismissed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge