

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

MICHAEL JOACHIM BLOS,
Petitioner/Appellant,

v.

JAIME ELIZABETH BLOS,
Respondent/Appellee.

No. 1 CA-CV 21-0639 FC
(Consolidated)

In re the Matter of:

GINA MARIE HOPKINS,
Petitioner/Appellant,

v.

CHRISTOPHER DOUGLAS HOPKINS,
Respondent/Appellee.

No. 1 CA-CV 21-0682 FC
(Consolidated)

FILED 3-31-2022

Appeal from the Superior Court in Maricopa County

No. FC2015-008726

FC2015-000378

The Honorable Suzanne M. Nicholls, Judge

The Honorable Mark H. Brain, Judge

APPEALS DISMISSED

APPEARANCES

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Respondent/Appellee

OPINION

Presiding Judge David D. Weinzwieg delivered the opinion of the Court, in which Judge Brian Y. Furuya and Judge Jennifer M. Perkins joined.

WEINZWEIG, Judge:

¶1 The issue in these consolidated family court appeals is whether we have jurisdiction to hear and decide a pair of belated appeals to special orders entered after final judgment. Appellants contend the appeals were timely, and we have jurisdiction, because they filed post-order motions to alter or amend a judgment under Arizona Rule of Family Law Procedure 83, and the Rule 83 motions tolled the deadline to appeal under Arizona Rule of Civil Appellate Procedure 9(e)(1)(E). We reject this argument and dismiss both appeals because Rule 83 is inapplicable to special orders entered after final judgment. A motion to alter or amend a judgment is proper only after and from entry of a final judgment, not a special order. Because the consolidated appeals were not timely noticed, we lack jurisdiction.

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FACTS AND PROCEDURAL BACKGROUND

¶2 In these consolidated appeals, the family court entered post-decree special orders on custody issues. Appellants then moved to alter or amend the special orders under Rule 83, rather than timely file notices of appeal from the special orders. By the time the motions were denied, the deadline to notice an appeal of the special orders had passed.

¶3 Michael and Jamie Blos divorced in 2016. Michael petitioned the family court to modify parenting time in September 2020. The court denied Michael's petition in an August 2021 special order, which had Rule 78(c) finality language. Rather than appeal, Michael moved the court to alter or amend the special order under Rule 83, which the court denied in September 2021. Michael appealed the special order in October 2021.

¶4 Christopher and Gina Hopkins divorced in 2015. Christopher petitioned the family court to modify legal decision-making, parenting time and child support in June 2019. The court resolved Christopher's petition in a September 2021 special order, which had Rule 78(c) finality language. Rather than appeal, Gina moved the court to alter or amend the special order under Rule 83, which the court denied in October 2021. Gina appealed the special order in October 2021.

¶5 Because Michael and Gina filed notices of appeal more than 30 days after the special orders had issued, we asked the parties for briefing on whether to dismiss both appeals for want of appellate jurisdiction.

DISCUSSION

¶6 Our jurisdiction is limited and defined by the legislature. *See Brumett v. MGA Home Healthcare, L.L.C.A.*, 240 Ariz. 421, 426, ¶ 4 (App. 2016). We have an independent duty to review and ensure that we have jurisdiction over an appeal and to dismiss an appeal when we lack jurisdiction. *Id.* at 425, ¶ 3; *see also In re Marriage of Johnson & Gravino*, 231 Ariz. 228, 230, ¶ 5 (App. 2012) (“[W]e have no authority to entertain an appeal over which we do not have jurisdiction.”).

¶7 A timely appeal is “a prerequisite to appellate jurisdiction.” *See Ariz. Pest Control Comm’n v. Taylor*, 223 Ariz. 486, 487, ¶ 3 (App. 2010). A notice of appeal is timely if filed with the clerk of the family court “no later than thirty days after the entry of the judgment or order from which the appeal is taken.” *See Ariz. R. Civ. App. P.* 8(a) & 9(a).

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¶8 The issue here is when the limitations clock starts to run, however, which depends on whether the appeal challenges a final judgment or special order. A final judgment cannot be appealed until the judgment includes a statement of finality under Section 12-2101(A)(1), which is satisfied with finality language under Rule 78(b) or (c). *In re Marriage of Kassa*, 231 Ariz. 592, 593, ¶ 5 (App. 2013). But no finality language is required to appeal a “special order entered after final judgment” under Section 12-2101(A)(2). *See Yee v. Yee*, 251 Ariz. 71, 73, ¶ 1 (App. 2021).

¶9 Michael and Gina challenge a pair of post-judgment special orders in these consolidated appeals, but neither appellant filed a notice of appeal within 30 days after the contested special order was entered. *See* Ariz. R. Civ. App. P. 9(a). Therefore, we must dismiss the appeals unless the appellants filed a time-extending motion in the family court under Arizona Rule of Civil Appellate Procedure 9(e).

¶10 Michael and Gina each filed a Rule 83 motion to alter or amend the special order and they argue those motions tolled their time to appeal under our rules. We are not persuaded.

¶11 To be sure, the countdown to appeal is tolled when certain motions are “timely and properly file[d]” in the family court, *see* ARCAP 9(e)(1), including a proper motion to alter or amend a judgment under Rule 83. But a Rule 83 motion was improper here. Rule 83 pertains to final judgments, not special orders; it affords no mechanism for parties to seek alterations or amendments to special orders. *See Yee*, 251 Ariz. at 75, ¶ 10. The rule is named “Altering or Amending a Judgment,” and it hinges on “the entry of judgment under Rule 78(b) or (c),” not the deadline to appeal the post-judgment entry of a special order. *Id.* at 77, ¶ 19 (quoting Rule 83(c)(1)).

¶12 Michael and Gina counter that Rule 78(a)(1) defines “judgment” to include “an order from which an appeal lies,” and Rule 83 broadly provides “grounds for altering or amending a judgment,” which means that Rule 83 encompasses motions to alter or amend special orders. Not so. According to its plain language, Rule 83 is used to contest a “judgment under Rule 78(b) or (c),” and the clock for a Rule 83 motion starts when the trial court enters a judgment with Rule 78 finality language. *See Yee*, 251 Ariz. at 75, ¶ 10. Again, the consolidated appeals are from “a special order entered after final judgment,” not “a final judgment entered in an action commenced in superior court.” *Compare* A.R.S. § 12-2101(A)(2) with A.R.S. § 12-2101(A)(1).

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¶13 Michael and Gina also contend their appeals were timely because the family court certified their special orders as final under Rule 78(c). But no certification was required to appeal because a *special order* after final judgment is not a *final judgment* under Rules 78(b) or (c). See *Yee*, 251 Ariz. at ¶ 10. Nor can the family court transform the nature of a special order into a final judgment by adding Rule 78 finality language. See *In re Marriage of Chapman*, 251 Ariz. 40, 43, ¶ 10 (App. 2021) (“[T]he inclusion of Rule 78 language alone does not make a judgment final and appealable; the certification also must be substantively warranted.”) (cleaned up).

¶14 We recognize that the Arizona Court of Appeals has not always “spoken with one voice” on this issue, *Yee*, 251 Ariz. at 74, ¶ 7, but we cannot ignore or avoid jurisdictional constraints under equitable principles. See, e.g., *U.S. ex rel. Eisenstein v. City of New York, New York*, 556 U.S. 928, 937, n.4 (2009) (“[T]o the extent that there are cases” that this decision “would unfairly punish,” “the Court must nonetheless decide the jurisdictional question before it irrespective of the possibility of harsh consequences.”); *Hamer v. Neighborhood Hous. Servs. of Chicago*, 138 S. Ct. 13, 17 (2017) (“Failure to comply with a jurisdictional time prescription, we have maintained, deprives a court of adjudicatory authority over the case, necessitating dismissal – a ‘drastic’ result.”) (citation omitted).

CONCLUSION

¶15 Because a post-judgment special order is not a final judgment under Arizona Rules of Civil Appellate Procedure, the consolidated appeals are untimely and we lack jurisdiction. Accordingly, we dismiss both appeals.



AMY M. WOOD • Clerk of the Court
FILED: AA