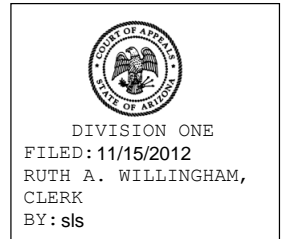


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



AUSSIE SONORAN CAPITAL, LLC, an ) No. 1 CA-CV 11-0459  
Arizona limited liability )  
company, fna Dos Mates, LLC, ) DEPARTMENT A  
)  
Plaintiff/Appellee, ) Maricopa County  
) Superior Court  
v. ) No. CV2011-008142  
)  
ANNA LEAFTY, an unmarried woman, ) **DECISION ORDER**  
)  
Defendant/Appellant. )  
)

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The court has reviewed the record pursuant to its duty to determine whether it has jurisdiction over this appeal. See *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997).

Appellant filed a notice of appeal on June 16, 2011, from a signed judgment of forcible entry and detainer ("Judgment") filed on June 10, 2011, while appellee's application for attorney's fees was pending. The Judgment provided that the court would award reasonable attorney's fees in an amount to be determined. Appellee filed an application for attorney's fees on June 16, 2011. On June 22, 2011, the superior court entered

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a signed order awarding appellee all of its requested attorney's fees. Appellant did not file a new or amended notice of appeal after entry of the June 22 order.

The Judgment was not a final appealable judgment because the court did not resolve the attorney's fees issue and the ruling does not contain a determination of finality pursuant to Arizona Rule of Civil Procedure 54(b). See *Pulaski v. Perkins*, 127 Ariz. 216, 217-19, 619 P.2d 488, 489-91 (App. 1980). Therefore, the notice of appeal was premature.

A premature notice of appeal is effective only if "no decision of the court could change and the only remaining task is merely ministerial." *Craig v. Craig*, 227 Ariz. 105, 107, ¶ 13, 253 P.3d 624, 626 (2011) (citation omitted). "In all other cases, a notice of appeal filed in the absence of a final judgment . . . is 'ineffective' and a nullity." *Id.* (citation omitted). Determining the amount of attorney's fees to award is not a ministerial task. *Fields v. Oates*, \_ Ariz \_\_, \_\_, ¶ 13, 286 P.3d 160, 164 (App. 2012) (holding "resolution of an application

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for attorneys' fees is a discretionary determination, not a merely ministerial act.").

Because the superior court had not resolved the attorney's fees issue when the notice of appeal was filed, the notice of appeal is a nullity. See *Craig*, 227 Ariz. at 107, ¶ 13, 253 P.3d at 626; *Santee v. Mesa Airlines, Inc.*, 229 Ariz. 88, 89, ¶ 7, 270 P.3d 915, 916 (App. 2012) (a notice of appeal filed while a Rule 68(g) motion is pending is a nullity). Therefore,

**IT IS ORDERED** dismissing this appeal for lack of jurisdiction.

/s/  
\_\_\_\_\_  
Ann A. Scott Timmer  
Presiding Judge

CONCURRING:

/s/  
\_\_\_\_\_  
Margaret H. Downie, Judge

/s/  
\_\_\_\_\_  
Patricia K. Norris, Judge