

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



DIVISION ONE
FILED: 11/06/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Marriage of:) No. 1 CA-CV 12-0147
)
ROSALINE A. OLADE,) DEPARTMENT D
)
Petitioner/Appellee,) Maricopa County
) Superior Court
v.) No. DR1996-000441
)
MOSES OLADE,) **DECISION ORDER**
)
Respondent/Appellant.)
_____)

This matter was scheduled for conference on November 7, 2012 before Presiding Judge Michael J. Brown, Judge Andrew W. Gould and Judge Donn Kessler. While preparing for the scheduled conference, we determined that we lack jurisdiction over this appeal. See *Sorensen v. Farmers Ins. Co.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997) (stating this court has an independent duty to determine whether it has appellate jurisdiction).

Moses Olade ("Husband") and Rosaline Olade ("Wife") divorced in 1997. As provided in the decree, the parties stipulated to place a four-unit apartment complex ("the property") into a trust for their children and to give Husband's mother a life estate in the property. Husband's mother died in

2004. In 2010, Wife filed a petition for contempt and modification of the decree, claiming Husband had blocked efforts to transfer the property to the children. As a result, Wife requested that the property be transferred to Husband but that she receive one-half of the value of the property plus the "present value of rents from the period of 2004 through a future estimated date of disposition of the property."

The court held an evidentiary hearing and issued a signed order in July 2011 granting most of the relief Wife requested, including finding Husband in contempt of court for preventing transfer of the property. As pertinent here, the court granted judgment to Wife in the amount of \$66,666.00 for her share of the property plus one-half of the "rental value of the property up to the date of this Decree." The court also found that because insufficient evidence had been presented as to what the rental value might be, "no specific monetary judgment is made with respect to that amount at this time." The court also granted Wife's request for attorneys' fees and ordered her to submit an application and supporting affidavit.

Husband filed a timely motion for new trial, which was denied in a signed minute entry dated January 12, 2012.¹ As part of the minute entry, the court set a date for an evidentiary

¹ In August 2011, in a signed minute entry, the court awarded Wife a portion of her attorneys' fees.

hearing on the amount of rent to which Wife was entitled. Husband filed a notice of appeal from the January 12 order. In May 2012, the parties stipulated to dismiss Wife's claim for rent with prejudice, and the court entered a signed order dismissing the claim. Husband did not file a new or amended notice of appeal from the May 2012 order.

As an initial matter, to the extent Husband is seeking to challenge the court's order finding him in contempt for taking actions to prevent transfer of the property, we lack jurisdiction to consider that argument. A civil contempt order can be reviewed only by filing a special action, which Husband did not do. *See Stoddard v. Donahoe*, 224 Ariz. 152, 154, ¶ 7, 228 P.3d 144, 146 (App. 2010) ("A special action petition is the appropriate method to challenge a civil contempt order because the finding of contempt and civil sanctions are not appealable.").

As for the remainder of Husband's appeal, we lack jurisdiction because he did not file a timely notice of appeal from a final appealable order. The January 2012 order did not resolve all claims relating to Wife's petition nor did it include a finding under Arizona Rule of Family Law Procedure 78(B) that there was no just reason for delay; therefore, Husband's notice of appeal was ineffective. *See Craig v. Craig*, 227 Ariz. 105, 107, ¶ 13, 253 P.3d 624, 626 (2011) (explaining

that "a notice of appeal filed in the absence of a final judgment . . . , is ineffective and a nullity," unless it fits the exception in *Barassi v. Matison*, 130 Ariz. 418, 422, 636 P.2d 1200, 1204 (1981)); see also *Fields v. Oates*, ___ Ariz. ___, ___, ¶ 12, 286 P.3d 160, 163 (App. 2012) ("A judgment on less than all claims without Rule 54(b) certification is subject to modification at any time prior to adjudication of all claims.").

The *Barassi* exception allows a notice of appeal to be filed "after the trial court has made its final decision, but before it has entered a formal judgment, if no decision of the court could change and the only remaining task is merely ministerial." *Craig*, 117 Ariz. at 107, ¶ 13, 253 P.3d at 626. The January 2012 order plainly indicated that Wife's request for rent had not been resolved, as shown by the trial court's decision to set the matter for a hearing to take evidence on that issue. The rent claim was not "merely ministerial" and would therefore fall outside the limited *Barassi* exception. See *Ghadimi v. Soraya*, ___ Ariz. ___, ___, ¶ 13, 285 P.3d 969, 971 (App. 2012) ("The *Barassi* exception does not apply here because the family court had not issued a final judgment and the remaining task—determining the amount of attorneys' fees and costs to be paid by Wife—was discretionary and not merely ministerial."). For the foregoing reasons,

IT IS ORDERED dismissing this appeal for lack of jurisdiction.

/s/

MICHAEL J. BROWN, Presiding Judge