

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



DIVISION ONE
FILED: 01/27/2011
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

In re the Marriage of:) No. 1 CA-CV 10-0105
)
ANACLETA G. SERRATO,) DEPARTMENT C
)
Petitioner/Appellee,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules
) of Civil Appellate
JOSE M. SERRATO,) Procedure)
)
Respondent/Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. FC2007-008102

The Honorable Randall H. Warner, Judge

AFFIRMED

Bert L. Roos P.C. Phoenix
By Bert L. Roos
Attorneys for Petitioner/Appellee

Law Offices of T. Anthony Guajardo Phoenix
By T. Anthony Guajardo
Attorneys for Respondent/Appellant

D O W N I E, Judge

¶1 Jose Serrato ("Husband") appeals from the denial of his post-decree motion. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Husband and Anacleta Serrato ("Wife") divorced in 2008. In the decree of dissolution, the court ordered, *inter alia*, "that the 6 acres of property on Alta Vista will be subdivided into two properties of equal value which will be awarded to each of the parties. If such a subdivision cannot be accomplished, the property will be sold with each party receiving half of the sale proceeds."

¶3 In June 2009, Husband filed a motion to enforce the decree. He stated that he had divided the Alta Vista property into two parcels of equal value and equal acreage. Husband further divided one parcel (which he referred to as "his ½ of the six acres") into three one-acre plots. He quitclaimed his interest in the remaining undivided three-acre parcel to Wife. Wife, however, refused to sign a quitclaim deed for the three one-acre plots. Husband's motion asked the superior court to "make her sign the Quit Claim Deed."

¶4 After an evidentiary hearing, the court found that Husband had unilaterally selected his desired portion of the Alta Vista property and subdivided it without consulting Wife. In a signed minute entry filed November 9, 2009, the court awarded Wife the three one-acre plots and awarded Husband the

undivided three-acre parcel. It reasoned that permitting Husband "to both divide the property and pick which half to take is inequitable," and found that Husband had "every incentive to pick the better property for himself." The court ordered that the parties equally share the costs of subdividing the property.

¶15 Husband did not appeal from the November 9, 2009 ruling. On December 14, 2009, he filed a "Second Motion to Enforce Decree and/or Reconsideration." In an unsigned December 17, 2009 minute entry, the court denied the motion. On December 24, 2009, Husband appealed from the December 17 ruling. We suspended the appeal to allow Husband to obtain a signed order from the superior court. After he did so, the appeal was reinstated.

DISCUSSION

¶16 A notice of appeal must be filed within thirty days from entry of judgment from which the appeal is taken. ARCAP 9(a). We lack jurisdiction over untimely filed appeals. *James v. State*, 215 Ariz. 182, 185, ¶ 11, 158 P.3d 905, 908 (App. 2007).

¶17 Husband filed his notice of appeal more than thirty days after the November 9 decision, and he filed no time-extending motion as to that ruling. As a result, the November 9 ruling is not subject to our review. Perhaps in recognition of this fact, Husband's notice of appeal states that he is

appealing from the December 17 ruling that denied his "Second Motion to Enforce Decree and/or Reconsideration." That motion, though, raised no new facts or circumstances regarding the Alta Vista property. Instead, it sought reconsideration of the November 9 ruling. The motion asserted that the superior court had improperly deviated from the decree's terms and requested the following relief:

WHEREFORE premises, considered, [sic] the movant (Respondent/Jose Serrato) prays that this Court enter an order *correcting its most recent Minute Entry Order* to conform to the terms of the Divorce Decree

(Emphasis added.)

¶8 Husband's motion for reconsideration was not timely filed. Rule 35(D), Rules of Family Law Procedure, reads in relevant part:

A party seeking reconsideration of a ruling of the court may file a motion for reconsideration. All motions for reconsideration, however titled, shall be submitted without oral argument and without response or reply unless the court otherwise directs. . . . A motion authorized by this rule may not be employed as a substitute for a motion pursuant to Rule 82(B), 83 or 85(C) and shall not operate to extend the time within which a notice of appeal must be filed. A motion for reconsideration shall be filed not later than thirty (30) days after the date of filing of the ruling sought to be reconsidered.

¶9 Husband's motion for reconsideration was filed thirty-five days after the November 9 ruling and was thus untimely. The superior court properly denied it.¹

CONCLUSION

¶10 The judgment of the superior court is affirmed.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
DANIEL A. BARKER, Presiding Judge

/s/
MICHAEL J. BROWN, Judge

¹ The superior court also apparently treated Husband's motion as one for reconsideration. It denied the motion three days after it was filed and did not ask Wife to file a response.