IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

AU ENTERPRISES INC.,
Plaintiff/Appellee,

v.

GUADALUPE EDWARDS,
Defendant/Appellant.

No. 2 CA-CV 2019-0043
Filed January 21, 2020

Appeal from the Superior Court in Pima County
No. C20185219
The Honorable Charles V. Harrington, Judge

APPEAL DISMISSED

COUNSEL

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By Blythe Edmondson
Counsel for Plaintiff/Appellee

Law Firm of Richard Luff LLC, Tucson
By Richard R. Luff
Counsel for Defendant/Appellant

OPINION

Judge Eckerstrom authored the opinion of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

E C K E R S T R O M, Judge:

¶1 In this forcible entry and detainer (FED) action, Guadalupe Edwards appeals from the trial court's entry of judgment in favor of AU Enterprises Inc. Because Edwards prematurely filed her notice of appeal before the trial court entered a final ruling regarding AU Enterprises' motion for attorney fees and costs, we dismiss for lack of jurisdiction.

Factual and Procedural Background

¶2 This matter's procedural history is complex; we address only that which is relevant to our jurisdictional analysis.[1] On February 13, 2019, after a hearing, the trial court found Edwards guilty of forcible detainer and entered a signed order granting AU Enterprises' request for a writ of restitution. That judgment provided "[f]or Court Costs and Attorney's fees to be proven by Affidavit filed by the Plaintiff." It also noted that "[n]o further matters remain pending" and entered judgment "pursuant to ARCP Rule 54(c)." On February 20, AU Enterprises filed a motion and affidavit for attorney fees and costs.

¶3 Edwards filed a notice of appeal on February 26, 2019. The following week, on March 4, she filed with the trial court an objection to AU Enterprises' motion for attorney fees; AU Enterprises replied one week later, on March 11. On April 3, the court issued a ruling by minute entry awarding AU Enterprises $3,690 in attorney fees,[2] but deferring "awarding costs until the time a final judgment is entered." This ruling is not signed and, at the time of this opinion, no further relevant entries appear on the trial court's docket in this matter.

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[1]We do not recount the procedural history relating to this appeal's substantive complaint, which concerns several rulings the trial court made prior to its entry of judgment in favor of AU Enterprises, as well as that entry of judgment.

[2]This ruling does not appear in our record on appeal. However, we take judicial notice of it because it is relevant to our jurisdictional analysis. *See In re Sabino R.*, 198 Ariz. 424, ¶ 4 (App. 2000) (trial court may judicially notice its own files and appellate court may take judicial notice of "anything of which the trial court could take notice"); Ariz. R. Evid. 201(b)(2) (court may judicially notice any fact that may be accurately determined "from sources whose accuracy cannot reasonably be questioned").

Discussion

¶4 We have an independent duty to determine whether we have the authority to consider an appeal. A.R.S. §§ 12-120.21(A), 12-1182, 12-2101(A); *Camasura v. Camasura*, 238 Ariz. 179, ¶ 5 (App. 2015). Generally, "only final judgments are appealable." *Id.* ¶ 6. This approach avoids "deciding cases piecemeal." *Musa v. Adrian*, 130 Ariz. 311, 312 (1981).

¶5 Eviction actions, including FED actions, are "purely statutory" and are "controlled by statute both as to procedure and damages." *DVM Co. v. Stag Tobacconist, Ltd.*, 137 Ariz. 466, 468 (1983) (quoting *Gangadean v. Erickson*, 17 Ariz. App. 131, 134-35 (1972)). The pertinent statute specifies that, in addition to judgment for restitution, the court shall give judgment "for damages, *attorney fees, court and other costs*." A.R.S. § 12-1178(A) (emphasis added); *see also Bank of N.Y. Mellon v. Dodev*, 246 Ariz. 1, ¶¶ 35-36 (App. 2018) (2008 amendment to § 12-1178(A) specifically authorized courts to award attorney fees in FED judgments). This language is included in the same subsection—indeed, in the same sentence—in which the statute authorizes trial courts to grant writs of restitution. § 12-1178(A). Thus, on its face, the statute contemplates that a judgment in an FED action shall include an award of attorney fees.

¶6 FED actions are also governed by the Rules of Procedure for Eviction Actions (RPEA). Those rules specify that, with specific enumerated exceptions, the Arizona Rules of Civil Procedure do not apply to eviction actions unless incorporated by reference. RPEA 1. Rule 17, RPEA, provides for appeals from eviction actions. Rule 17 does not incorporate the Arizona Rules of Civil Procedure by reference, but it does so incorporate the Rules of Civil Appellate Procedure for appeals from superior court. RPEA 17(a). Therefore, the determination of finality as contemplated by Rule 54, Ariz. R. Civ. P., does not apply here. Rather, we look to Rules 13 (Entry of Judgment and Relief Granted) and 17 (Appeals) of the RPEA and to Rule 9, Ariz. R. Civ. App. P., to determine whether the order entered on February 13, 2019, is final and appealable. Rule 13 specifically includes attorney fees in its enumeration of issues a trial court must resolve in considering an eviction action. RPEA 13(f); *see also Bank of N.Y. Mellon v. Lehnerd*, No. 2 CA-CV 2014-0160, ¶ 9 (Ariz. App. Apr. 15, 2016) (mem. decision) ("Rule 13 of the RPEA contemplates that a judgment finding a party guilty of forcible detainer will award the plaintiff possession of the premises, damages specified in the complaint, court costs, and attorney fees."); *see also Dodev*, 246 Ariz. 1, ¶ 19 (applying same standard in evaluating finality under RPEA).

¶7 In applying the finality standard set forth in *Lehnerd* as derived from these rules, we conclude that no appealable final judgment has been entered here. Edwards filed her notice of appeal after the trial court entered a signed judgment that contains finality language and resolves the issue of possession of the premises. However, although it found that AU Enterprises was entitled to attorney fees, that judgment did not compute the amount of fees, leaving the issue unresolved. The parties' briefing in support of and opposition to the requested attorney fees, all of which occurred after the court entered its February 13 judgment, further supports a conclusion that the judgment was not final. Consequently, Edwards's notice of appeal was prematurely filed.

¶8 In so holding, we recognize that measuring finality by traditional procedural standards can create unique hazards in the arena of FED actions. When, as here, the trial court issues a non-final order that includes a judgment for possession, defendants become procedurally unable to file a notice of appeal, the primary avenue for securing a stay of the order removing them from the premises. RPEA 17(c) (providing means for appellants to request stay of execution pending appeal). All other procedural means of securing such a stay would require defendants to challenge the merits of the judgment for possession before the very court that has recently ruled adversely to them. *See* RPEA 14(c) (allowing motions to quash writs of restitution); RPEA 15 (providing limited grounds for seeking relief from an eviction judgment or order). Thus, when a non-final order includes a judgment for possession resulting in the issuance of a writ of restitution and the eviction of a litigant,[3] imposing traditional rules of finality can render the remedy of appeal functionally unavailable to litigants.[4]

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[3]Edwards filed a petition for special action in this court after being evicted from the property in question. We declined to accept jurisdiction.

[4]For this reason, a public policy argument exists for a rule triggering appellate jurisdiction when a trial court issues any judgment for possession and a writ of restitution. Indeed, our state's statutory and procedural scheme, which focuses on the right of possession, reflects the title holder's interest in efficiently securing lawful possession of premises, without any procedural delay arising from the litigation of peripheral issues. A.R.S. § 12-1177(A) (in FED action, "the only issue shall be the right of actual possession"); *DVM Co.*, 137 Ariz. at 467 (FED actions seek to "provide a

¶9 Nowithstanding this hazard, it is not our role to conjure a unique finality rule for FED actions in the absence of any language in the RPEA suggesting such intent. And, we are reluctant to deviate from prior case law that interprets the RPEA as requiring the calculation of attorney fees for a judgment to be final. However, Rule 17 of the RPEA expressly contemplates that litigants should have a procedural avenue for appellate review of an FED judgment. *See* RPEA 17. To make this avenue available in practice, our trial judges should consider issuing immediately enforceable judgments of possession only in conjunction with final orders.[5]

¶10 A premature notice of appeal may be cured if the order being appealed "disposed of all issues as to all parties and the trial court ultimately entered final judgment upon it." *McCleary v. Tripodi*, 243 Ariz. 197, ¶ 16 (App. 2017); *see also* Ariz. R. Civ. App. P. 9(c) (notice of appeal filed after trial court "announces an order or other form of decision—but before entry of the resulting judgment that will be appealable—is treated as filed on the date of, and after the entry of, the judgment"). But no such final judgment currently exists here. *Camasura*, 238 Ariz. 179, ¶¶ 7, 11-16 (premature notice of appeal not made effective by Rule 9(c), Ariz. R. Civ. App. P., when order did not compute attorney fees, did not resolve legal decision-making or allocation of parenting time, and did not contain finality language). The February 13 judgment does not compute attorney fees and therefore does not dispose of all issues as to all parties. And, although the trial court later entered a minute entry determining the amount of attorney fees, that later entry cannot save the premature appeal because it resolved a substantive matter—the computation of fees is not purely ministerial but rather may, itself, be the subject of an appeal. *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, ¶ 37 (appellate court may exercise jurisdiction only when "no decision of the court could change and the only remaining task is ministerial"). Finally, the April 3 ruling awarding attorney fees is not signed and thus does not, itself, constitute a

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summary, speedy and adequate means for obtaining possession of premises by one entitled to actual possession").

[5]As explained above, Rule 54(b), Ariz. R. Civ. P, is not applicable to FED actions and therefore our judges should be mindful that they lack the authority to issue a non-final order that triggers appellate jurisdiction.

final judgment.[6] *See* RPEA 13(c)(1)(A) (contemplating a signed judgment before writ of restitution may issue).

¶11 In sum, Edwards filed her notice of appeal prematurely. A premature notice of appeal is a nullity. *Craig v. Craig*, 227 Ariz. 105, ¶ 13, (2011). Consequently, we lack jurisdiction to consider it on its merits.

Disposition

¶12 For the foregoing reasons, we dismiss for lack of jurisdiction without prejudice to Edwards filing a timely notice of appeal upon the trial court's issuance of a final, signed order disposing of all issues, including the award of attorney fees and costs.

[6]*Compare Brown v. Recinos*, No. 2 CA-CV 2017-0155, n.1 (Ariz. App. May 30, 2018) (mem. decision) (construing premature appeal as timely under Ariz. R. Civ. App. P. 9(c) when trial court's unsigned written ruling formed basis of court's final judgment), *with Black v. Town of Thatcher*, No. 2 CA-CV 2017-0075, ¶ 4 (Ariz. App. Oct. 6, 2017) (mem. decision) (premature appeal not saved when "no final, signed judgment appears in the record").