IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF:

MICHAEL J. BOWMAN,
Petitioner/Appellee,

and

TANYA LEIGH BOWMAN,
Respondent/Appellant.

No. 2 CA-CV 2014-0096
Filed February 24, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. D20080474
The Honorable Suzanna S. Cuneo, Judge Pro Tempore

APPEAL DISMISSED

COUNSEL

Michael J. Bowman, Tucson
In Propria Persona

Pahl & Associates, Tucson
By Danette R. Pahl
Counsel for Respondent/Appellant

MEMORANDUM DECISION

Judge Vásquez authored the decision of the Court, in which Presiding Judge Kelly and Judge Howard concurred.

V Á S Q U E Z, Judge:

¶1 Tanya Bowman appeals from the trial court's under-advisement ruling denying her petition to modify parenting time following the dissolution of her marriage to Michael Bowman. For the reasons that follow, we dismiss the appeal for lack of jurisdiction.

Factual and Procedural Background

¶2 Tanya and Michael's marriage was dissolved in June 2010. In January 2013, Tanya filed a post-decree petition to modify legal decision-making and parenting time. In her petition, she also requested a modification of child support and attorney fees. The trial court determined it would treat Tanya's petition as a petition to modify parenting time and not a petition to modify legal decision-making because Tanya's allegations did not "rise[] to the level of evidence that is required by [A.R.S.] § 25-411." A five-day trial on the petition occurred between December 16, 2013, and March 7, 2014.

¶3 The trial court entered an under-advisement ruling on May 21, 2014, denying the petition for modification of parenting time and ordering the parties to bear their own attorney fees. The court further stated the issue of child support would "be dealt with at a later hearing." Tanya filed her notice of appeal from the under-advisement ruling on June 5, 2014.

Jurisdiction

¶4 Neither party addresses whether this court has jurisdiction over Tanya's appeal. We nevertheless have an independent duty to "review [this court's] jurisdiction and, if

jurisdiction is lacking, to dismiss the appeal." *Davis v. Cessna Aircraft Corp.*, 168 Ariz. 301, 304, 812 P.2d 1119, 1122 (App. 1991).

¶5 Generally, a party may only appeal from a final judgment. *Id.*; *see* A.R.S. § 12-2101(A)(1). Parties also may appeal from a special order made after a judgment, *see In re Marriage of Dorman*, 198 Ariz. 298, ¶¶ 1-4, 9 P.3d 329, 331 (App. 2000), but that order also must be final, *see Bollermann v. Nowlis*, 234 Ariz. 340, ¶ 8, 322 P.3d 157, 159 (2014). "[A] family court ruling that resolves some but not all of the issues pending before the court . . . is not final and appealable." *Natale v. Natale*, 234 Ariz. 507, ¶ 9, 323 P.3d 1158, 1160 (App. 2014). As an exception, Rule 78(B), Ariz. R. Fam. Law P., permits a court to designate a partial judgment as final and thus appealable. But the exception applies "only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." Ariz. R. Fam. Law P. 78(B); *see In re Marriage of Kassa*, 231 Ariz. 592, ¶¶ 4-6, 299 P.3d 1290, 1291-92 (App. 2013).

¶6 In the under-advisement ruling from which Tanya appeals, the trial court "denied" her petition for modification of parenting time and ordered the parties to bear their own attorney fees. *See Marriage of Dorman*, 198 Ariz. 298, ¶ 4, 9 P.3d at 331 (order on custody and parenting-time modification is special order after judgment). However, the court also stated:

> The parties are ordered to attend mediation to discuss specific amendments to their parenting time plan pertaining to the issues raised in court including curfew, educational issues, supervision during parenting time, overnights with friends and any other issues that need to be address[ed] based on the fact the minor is now a teenager. If the parties are unable to resolve those issues [the] court will entertain a request to set a hearing and a parenting plan will be developed at a court hearing with the assistance of the court. A separate Mediation Order will issue.

¶7 Thus, it appears the trial court's denial of the petition was not intended to resolve all the issues raised by Tanya, much less constitute a final order. Rather, the court's ruling was for the purpose of facilitating a resolution through mediation. *See Musa v. Adrian*, 130 Ariz. 311, 313, 636 P.2d 89, 91 (1981) (jurisdiction not conferred if judgment does not dispose of one or more claims). In addition, the court never ruled on Tanya's request to modify child support. The minute entry from the last day of trial shows the court had informed the parties: "[T]he issue[] pertaining to child support . . . w[ould] be set for hearing at a later time." And, the under-advisement ruling not only affirmed this decision, but also set "[a] hearing on the modification [of] child support . . . for June 20, 2014." Moreover, the ruling did not contain language pursuant to Rule 78(B), directing the entry of judgment. The May 2014 under-advisement ruling therefore is not final and appealable. *See Bollermann*, 234 Ariz. 340, ¶ 8, 322 P.3d at 159.

¶8 For "good cause," this court may "suspend an appeal and revest jurisdiction in the superior court to allow the superior court to consider and determine specified matters." Ariz. R. Civ. App. P. 3(b).[1] The "primary purpose" of Rule 3(b) is "to make clear the power of the appellate courts, in the furtherance of justice, to relieve litigants of the consequences of noncompliance." Ariz. R. Civ. App. P. 3 cmt. We decline to exercise such discretionary authority here.

¶9 The finality requirement "protect[s] the public policy 'against deciding cases piecemeal.'" *Grand v. Nacchio*, 214 Ariz. 9, ¶ 16, 147 P.3d 763, 770 (App. 2006), *quoting Musa*, 130 Ariz. at 312, 636 P.2d at 90. "The rule against piecemeal appeals recognizes that an appellant may ultimately prevail on the complete action, rendering interlocutory appellate determinations unnecessary." *Musa*, 130 Ariz. at 312, 636 P.2d at 90; *see* Ariz. R. Fam. Law P. 78(B) (order lacking finality "is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and

[1]Rule 3(b) became effective in 2015, replacing the former Rule 9.1, Ariz. R. Civ. App. P. Ariz. Sup. Ct. Order R-14-0017 (Sept. 2, 2014).

liabilities of all the parties"). And, "[b]y avoiding piecemeal appeals, this rule promotes judicial efficiency." *Maria v. Najera*, 222 Ariz. 306, ¶ 5, 214 P.3d 394, 395 (App. 2009).

¶10 In this case, there are significant issues pending in the trial court, including changes to the parenting plan and child support. *Cf. Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, ¶ 37, 132 P.3d 1187, 1195 (2006) (discussing "limited exception" to final-judgment rule "if no decision of the court could change and the only remaining task is merely ministerial"). We cannot predict when these issues might be resolved, or even whether Tanya ultimately will be aggrieved by the court's final order. Thus, suspending this appeal for an indefinite period would not serve the interests of justice. *See* Ariz. R. Civ. App. P. 3 cmt. We therefore decline to apply Rule 3(b) here.

Disposition

¶11 For the foregoing reasons, we dismiss the appeal for lack of jurisdiction.