

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

JOSEPH NASCA, A SINGLE PERSON,
Plaintiff/Appellant,

v.

BMO HARRIS BANK, NA,
A FOREIGN CORPORATION DOING BUSINESS IN ARIZONA,
Defendant/Appellee.

No. 2 CA-CV 2014-0146
Filed April 22, 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NOT FOR PUBLICATION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 Pinal County
No. S1100CV201400019
The Honorable Lawrence M. Wharton, Judge

APPEAL DISMISSED

COUNSEL

David R. Vandeventer, Scottsdale
Counsel for Plaintiff/Appellant

Stinson Leonard Street LLP, Phoenix
By Jeffrey J. Goulder and Craig A. Morgan
Counsel for Defendant/Appellee

NASCA v. BMO HARRIS BANK
Decision of the Court

MEMORANDUM DECISION

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

H O W A R D, Judge:

¶1 Appellant Joseph Nasca appeals from an order granting appellee BMO Harris Bank, NA's (BMO) motion to dismiss his amended complaint. Because we lack jurisdiction, we dismiss his appeal.

Factual and Procedural Background

¶2 Joseph Nasca sued BMO and other parties for multiple claims arising from his purchase of real property, construction of a home, and the financing he obtained for both. BMO filed a motion to dismiss Nasca's claims on statute of limitations, statute of frauds, and other grounds. The other named defendants did not join in this motion. The trial court granted BMO's motion and stated in its written order, "This judgment resolves all outstanding claims. Because no further matters remain pending, this is a final judgment entered pursuant to Rule 54(c)." Nasca then filed his notice of appeal.

Discussion

¶3 This court has only the appellate jurisdiction granted to it by statute. See *Anderson v. Valley Union High Sch., Dist. No. 22*, 229 Ariz. 52, ¶ 2, 270 P.3d 879, 881 (App. 2012). And we cannot consider the merits of an appeal without the proper statutory authority to do so. *Id.* In turn, "this court has an independent duty to determine whether it has jurisdiction over an appeal[.]" even when the parties do not raise the issue. *McMurray v. Dream Catcher USA, Inc.*, 220 Ariz. 71, ¶ 4, 202 P.3d 536, 539 (App. 2009).

¶4 "Generally, this court's jurisdiction is limited to appeals from final judgments which dispose of all claims and

NASCA v. BMO HARRIS BANK
Decision of the Court

parties.” *Madrid v. Avalon Care Ctr.-Chandler, L.L.C.*, 236 Ariz. 221, ¶ 3, 338 P.3d 328, 330 (App. 2014), quoting *Baker v. Bradley*, 231 Ariz. 475, ¶ 9, 296 P.3d 1011, 1015 (App. 2013). As relevant here, “there are two types of judgments from which an appeal may be taken: (1) a Rule 54(c)[, Ariz. R. Civ. P.,] judgment and (2) a Rule 54(b)[, Ariz. R. Civ. P.,] judgment.” *Id.* A Rule 54(c) judgment is a final judgment in which “no further matters remain pending,” certified as such by the trial court. Ariz. R. Civ. P. 54(c). A Rule 54(b) judgment is a final judgment entered “as to one or more but fewer than all of the claims or parties 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. Civ. P. 54(b).

¶5 We do not take a trial court’s certification that a judgment is final at face value. See *Madrid*, 236 Ariz. 221, ¶ 3, 338 P.3d at 330 (we review finality determination de novo). Instead, we look to the record to determine if a court’s Rule 54(c) certification was accurate. See *id.* ¶ 6. And “[t]he inclusion of Rule 54(c) language in a judgment that does not resolve all claims by all parties is not a final judgment” over which we have jurisdiction. *Id.* ¶ 11.

¶6 For a judgment to become final and appealable when it resolves fewer than all claims against all parties, the court must include Rule 54(b) language. See *id.* ¶ 8. Rule 54(c) language is not a substitute for Rule 54(b) language when further claims remain pending below. See *id.* ¶¶ 2, 9, 11 (no jurisdiction over appeal from judgment disposing of some but not all claims, despite Rule 54(c) certification by court).

¶7 The order granting BMO’s motion to dismiss – a motion in which the other named defendants did not join – was a judgment “as to . . . fewer than all of the . . . parties” in this case. Ariz. R. Civ. P. 54(b). Thus, the trial court’s Rule 54(c) certification was inaccurate and insufficient to make the order appealable. See *Madrid*, 236 Ariz. 221, ¶ 11, 338 P.3d at 331. And this order could have become an appealable final judgment only if the court had included Rule 54(b) language, which it did not do. See *id.* ¶ 8. Consequently, we lack jurisdiction over this appeal and must dismiss it. See *id.* ¶ 10 (court lacks jurisdiction to do anything but

NASCA v. BMO HARRIS BANK
Decision of the Court

dismiss appeal “where an appeal is taken from a putative Rule 54(b) judgment and there is a Rule 54(b) deficiency”).

Disposition

¶8 For the foregoing reasons, we dismiss Nasca’s appeal. We also deny BMO’s request for attorney fees without prejudice to any request it may make if it is ultimately the successful party.