IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

ANITA GULICK, AS CUSTODIAN FOR THE
REAL PROPERTY OF B.H. AND K.H.,
Plaintiff/Appellant,

v.

YUCCA HILLS HOMEOWNERS ASSOCIATION, INC.,
Defendant/Appellee.

No. 2 CA-CV 2014-0168
Filed October 14, 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NOT FOR PUBLICATION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 Cochise County
No. CV201000276
The Honorable James L. Conlogue, Judge
The Honorable Karl D. Elledge, Judge

APPEAL DISMISSED

Anita Gulick, Willcox
In Propria Persona

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Howard and Judge Brammer[1] concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Anita Gulick, as custodian of real property owned by minors B.H. and K.H., appeals from the consent judgment the trial court entered pursuant to a settlement agreement between her and Yucca Hills Homeowners Association, Inc. (YHHA), as well as the trial court's ruling on her post-judgment motions to enforce the judgment, for sanctions, and to vacate the judgment. On appeal, she raises a number of issues challenging the denial of her motions and the validity of the settlement agreement. For the following reasons, we dismiss for lack of jurisdiction.[2]

Factual and Procedural Background

¶2 We view the facts and all reasonable inferences therefrom in the light most favorable to upholding the trial court's rulings. *Ezell v. Quon*, 224 Ariz. 532, ¶ 2, 233 P.3d 645, 647 (App. 2010). YHHA was formed in 1993 "for the purpose of owning and operating a water delivery system" for several properties in Willcox, Arizona. A "Shared Well Use and Maintenance Agreement" provided that YHHA was "responsible for delivery of water" to the properties and that new property owners would be assessed "appropriate fees."

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[1]The Hon. J. William Brammer, Jr., a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

[2]YHHA has not filed an answering brief. Although we may consider its failure to do so as an admission of error, in our discretion, we address the substance of Anita's appeal. *See In re Marriage of Diezsi*, 201 Ariz. 524, ¶ 2, 38 P.3d 1189, 1190 (App. 2002).

¶3 Ted and Anita Gulick acquired parcel 58 (the "Property") after YHHA was formed. YHHA initially refused to deliver water to the Property. However, in 2005, the Gulicks were granted a permanent injunction, requiring YHHA to provide water to the Property and, in turn, obligating them "to pay dues" for that benefit.

¶4 In separate litigation initiated in 2006 by other property owners, the trial court appointed a receiver to oversee repairs to the YHHA well. In May 2009, that court ordered all property owners to contribute to the costs of repairing the well and set a monthly maintenance fee for "operational costs." In June 2009, YHHA issued the Gulicks a notice that they had failed to pay several monthly maintenance fees, as well as a portion of the well repair cost. The next month, the Gulicks transferred title to the Property to "Anita Gulick as Custodian for [B.H.] and [K.H.] under the Arizona Uniform Gifts to Minors Act." And, in September 2009, YHHA disconnected water service to the Property.

¶5 The Gulicks brought this action against YHHA in April 2010, asserting YHHA had improperly terminated "water service to Parcel #58." Upon discovering that Ted was no longer listed as an owner of the Property, the trial court dismissed him as a party to the action.[3] And, the court granted a motion to intervene filed by Robert Miller, a property owner and an officer of YHHA. Also during the litigation, Anita filed several motions to compel discovery, which the court granted in part, as well as a motion for appointment of counsel to represent B.H. and K.H., which the court denied.

¶6 In May 2014, the trial court held a settlement conference attended by the Gulicks, Miller, and Joan Abney, YHHA's secretary.[4] Anita and Miller agreed during negotiations that, among

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[3]Anita filed a notice of appeal from the trial court's order in November 2011. This court dismissed the appeal because the notice had not been filed timely. *Gulick v. Yucca Valley Homeowners Ass'n, Inc.*, No. 2 CA-CV 2012-0001 (order filed Mar. 6, 2012).

[4]The trial court explained, however, "only parties to this action will be allowed to participate," and the minute entry

other things, YHHA would "repair a small section of pipe and whatever shut-off valve there is to restore water to the Gulick property and, in return for that, . . . [the] Gulicks w[ould] begin paying" monthly maintenance fees, as well as payments for the reconnection. The court noted the "settlement is binding on all parties, including the corporation."

¶7 In June 2014, the trial court entered a judgment pursuant to the parties' settlement agreement. On July 30, 2014, and again on September 2, 2014, Anita filed motions to enforce the judgment, claiming "water service ha[d] not been restored." She also filed motions for sanctions against YHHA for failing to appear at the settlement conference through counsel and against Miller for failing to reconnect water service to the Property. Last, Anita filed a motion to vacate or modify the judgment, arguing, among other things, that Miller had improperly represented YHHA at the settlement conference and therefore the resulting settlement and judgment were void pursuant to Rule 60(c), Ariz. R. Civ. P. After a hearing on the motions, in an October 24, 2014 minute entry, the court restated that "Miller will cause the water to flow to the lot line of parcel #58." In the same signed minute entry, the court also denied Anita's motion to vacate or modify the judgment, but it did not address her motion for sanctions. This appeal followed.

Jurisdiction

¶8 "This court has an independent duty to determine whether it has jurisdiction over an appeal." *Baker v. Bradley*, 231 Ariz. 475, ¶ 8, 296 P.3d 1011, 1014 (App. 2013). "Our jurisdiction is defined by statute, and we must dismiss an appeal over which we lack jurisdiction." *Id.*; *see also* A.R.S. § 12-2101(A).

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indicated the settlement conference would proceed with "both parties being self-represented," apparently referring to Anita and Miller individually. Nevertheless, YHHA did not challenge the entry of judgment based on the settlement agreement.

The Judgment

¶9 Anita contends we have jurisdiction pursuant to § 12-2101(A)(1) because she is appealing from a final judgment. That statute grants us jurisdiction over "a final judgment entered in an action . . . commenced in a superior court." However, "[a]ppellate courts do not have jurisdiction to consider appeals which are not timely filed." *Butler Prods. Co. v. Roush*, 145 Ariz. 32, 32, 699 P.2d 906, 906 (App. 1984).

¶10 Generally, a party must file a notice of appeal no later than thirty days after entry of a final judgment. Ariz. R. Civ. App. P. 9(a). Certain post-judgment motions extend the time to file a notice of appeal, including a motion filed pursuant to Rule 60, Ariz. R. Civ. P. *See* Ariz. R. Civ. App. P. 9(e). In the case of a motion filed under Rule 60, Ariz. R. Civ. P., Rule 9(e)(1)(E), Ariz. R. Civ. App. P., states specifically that the motion must be filed within fifteen days after the entry of the judgment to extend the time to file a notice of appeal. *See* Ariz. R. Civ. App. P. 9(e)(1)(E).

¶11 In this case, the trial court entered judgment on June 18, 2014, following the May 8 settlement conference. Anita filed her notice of appeal nearly five months later, on November 12, 2014, far exceeding the thirty-day limit under Rule 9(a), Ariz. R. Civ. App. P. Although Anita filed a motion pursuant to Rule 60(c), Ariz. R. Civ. P., that motion was not filed until September 3, 2014—after the fifteen-day limit provided in Rule 9(e)(1)(E), Ariz. R. Civ. App. P. Thus, the Rule 60(c), Ariz. R. Civ. P., motion did not extend the time during which Anita could file her notice of appeal from the judgment. Consequently, we lack jurisdiction to address those issues Anita has raised in her opening brief relating to the final judgment.[5] *See Butler Prods. Co.*, 145 Ariz. at 32, 699 P.2d at 906.

[5]This includes Anita's arguments that "[t]he trial judge and the settlement conference mediator did not have jurisdiction to adjudicate on issues from a previous case dismissed with prejudice as to all remaining substantive issues," that "[t]he minors did have the right to be represented by licensed counsel in order to protect their rights," and that "[t]he bias and prejudice of [the trial judge]

¶12 But Anita's notice of appeal indicates that she also appeals from the trial court's failure to grant her motions for sanctions, for enforcement of the judgment, and its denial of her Rule 60(c), Ariz. R. Civ. P., motion to vacate the judgment. Anita's notice of appeal was timely filed after the court's October 24 minute entry ruling on her post-judgment motions. *See* Ariz. R. Civ. App. P. 9(a). But our conclusion that Anita timely appealed from that ruling does not resolve the issue of our jurisdiction.

Post-Judgment Motions

¶13 Section 12-2101(A)(2) provides this court with jurisdiction to review a "special order made after final judgment." But we lack jurisdiction because the trial court's ruling on pending motions did not address, much less dispose of, Anita's motions for sanctions.[6] Appellate jurisdiction generally is limited to final

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and [the settlement conference mediator] compromised the rights of the plaintiffs."

[6]Even assuming the trial court had denied Anita's motions for sanctions, we would lack jurisdiction in any event. The motions for sanctions sought contempt orders, which are not appealable. *See Hurd v. Hurd*, 223 Ariz. 48, n.2, 219 P.3d 258, 260 n.2 (App. 2009) (order denying contempt sanctions not appealable); *Danielson v. Evans*, 201 Ariz. 401, ¶ 35, 36 P.3d 749, 759 (App. 2001) ("[T]his court lacks . . . jurisdiction over an appeal from a civil contempt adjudication."); *see also State v. Mulligan*, 126 Ariz. 210, 216-17, 613 P.2d 1266, 1272-73 (1980). Additionally, Anita did not seek sanctions below for YHHA's failure to obey the judgment or produce discovery material; she requested sanctions only for its alleged failure to attend the settlement conference. Accordingly, the arguments are waived. *See Odom v. Farmers Ins. Co. of Ariz.*, 216 Ariz. 530, ¶ 18, 169 P.3d 120, 125 (App. 2007) ("Generally, arguments raised for the first time on appeal are untimely and deemed waived."). Similarly, by failing to mention the sanctions sought against Miller personally in her notice of appeal, Anita has waived that issue. *See Neal v. City of Kingman*, 169 Ariz. 133, 137, 817 P.2d 937, 941 (1991).

judgments disposing of all claims against all parties, *Harris v. Cochise Health Sys.*, 215 Ariz. 344, ¶ 8, 160 P.3d 223, 226 (App. 2007), and "[f]rom any special order made after final judgment," § 12-1201(A)(2).

¶14 Here, the trial court's October 24 minute entry ruling on Anita's post-judgment motions addressed only her motion to enforce judgment[7] and her motion to vacate judgment pursuant to Rule 60(c), Ariz. R. Civ. P. The minute entry, however, did not contain the necessary language pursuant to Rule 54(b), Ariz. R. Civ. P., to make the ruling on those motions appealable in the absence of a ruling on the motion for sanctions. Rule 54(b), Ariz. R. Civ. P., "allows a trial court to certify finality to a judgment which disposes of one or more, but not all, of the multiple claims, if the court determines that there is no just reason for delay and directs the entry of judgment." *Davis v. Cessna Aircraft Corp.*, 168 Ariz. 301, 304, 812 P.2d 1119, 1122 (App. 1991). Rule 54(a), Ariz. R. Civ. P., "in turn defines judgment as including 'a decree and an order from which an appeal lies.'" *Haywood Sec., Inc. v. Ehrlich*, 214 Ariz. 114, ¶ 9, 149 P.3d 738, 740 (2007). Accordingly, this court lacks appellate jurisdiction here.

Disposition

¶15 For the foregoing reasons, we dismiss this appeal.

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[7]Notably, the trial court granted the relief Anita requested in her motions to enforce. Although the court ordered her to pay for her portion of the water service, Anita does not challenge that part of the court's order on appeal. Thus, she is not an aggrieved party to the extent she attempts to appeal from the denial of her motions to enforce the underlying judgment. *See Harris*, 215 Ariz. 344, ¶ 8, 160 P.3d at 226 (appellant may only appeal from "'that part of the judgment by which [it] is aggrieved'"), *quoting In re Gubser*, 126 Ariz. 303, 306, 614 P.2d 845, 848 (1980). Accordingly, Anita lacks standing to challenge the court's order.