IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

LARRY N. SULLIVAN,
Petitioner/Appellant,

and

YVONNE M. LEPAGE,
Respondent/Appellee,

STATE OF ARIZONA EX REL. THE DEPARTMENT OF ECONOMIC SECURITY,
Respondent/Intervenor.

No. 2 CA-CV 2015-0191
Filed August 26, 2016

Appeal from the Superior Court in Pinal County
No. S1100DO201500461
The Honorable Karl C. Eppich, Judge
The Honorable Craig A. Raymond, Judge Pro Tempore

APPEAL DISMISSED

COUNSEL

Larry N. Sullivan, Edgewood, New Mexico
In Propria Persona

Zawtocki Law Offices, PLLC, Mesa
By Marie Splees Zawtocki
Counsel for Respondent/Appellee

Mark Brnovich, Arizona Attorney General
By Carol A. Salvati, Assistant Attorney General, Phoenix
Counsel for Respondent/Intervenor State of Arizona

MEMORANDUM DECISION

Judge Staring authored the decision of the Court, in which Presiding Judge Howard and Judge Espinosa concurred.

S T A R I N G, Judge:

¶1 Larry Sullivan initiated proceedings in the trial court, seeking to modify child support obligations imposed by a Texas court. The trial court dismissed Sullivan's request for modification, denied his motion for findings of fact and conclusions of law, and denied his motion for reconsideration. Sullivan appeals those orders. For the reasons discussed below, we dismiss Sullivan's appeal.

Factual and Procedural Background

¶2 "We view the facts in the light most favorable to sustaining the trial court's judgment." *Sw. Soil Remediation, Inc. v. City of Tucson*, 201 Ariz. 438, ¶ 2, 36 P.3d 1208, 1210 (App. 2001). In December 2014, a Texas court entered a "Final Decree of Divorce," dissolving Sullivan's marriage to Yvonne LePage, and requiring him to pay $920.55 per month in child support. In March 2015, Sullivan appealed the decree in Texas. The same month, he filed an "Affidavit of Filing Foreign Judgment" in Pinal County Superior Court, stating: "Pursuant to A.R.S. § 12-1702 et seq., I am filing this affidavit with the Clerk of the Superior Court along with a certified copy of the foreign judgment." Sullivan also filed the Texas "Final Decree of Divorce" in Pinal County, accompanied by a "Request to

Modify Child Support," in which he sought to eliminate his $920.55 per month child support obligation.

¶3 LePage moved to dismiss Sullivan's action, asserting "lack of jurisdiction over the subject matter and person, improper venue, and failure to state a claim upon which relief can be granted." LePage argued Sullivan had not registered the Texas child support order pursuant to Arizona's Uniform Interstate Family Support Act ("AUIFSA"), A.R.S. §§ 25-1201 through 25-1362, as required to permit the Arizona court to exercise jurisdiction. On May 13, 2015, before receiving a response from Sullivan, the trial court ordered the matter "dismissed in its entirety as jurisdiction and venue are in Lubbock County, Texas."

¶4 On June 4, 2015, Sullivan moved to vacate the dismissal. He also requested findings of fact and conclusions of law pursuant to Rule 82, Ariz. R. Fam. Law P. The trial court denied Sullivan's request for findings and conclusions and treated the motion to vacate as a motion for reconsideration under Rule 84(A)(2), Ariz. R. Fam. Law P., ordering the filing of responses.

¶5 In response, LePage and the state, which by then had appeared pursuant to A.R.S. § 25-509, asserted a lack of subject matter jurisdiction due to Sullivan's failure to comply with AUIFSA. *See Glover v. Glover*, 231 Ariz. 1, ¶ 23, 289 P.3d 12, 18 (App. 2012) ("A party or support agency must register a foreign child support order in compliance with AUIFSA in order to confer subject matter jurisdiction on an Arizona court to modify that order."). In reply, Sullivan argued many of the points he argues on appeal: the court should ignore *Glover*; he was denied due process; federal law preempts AUIFSA; AUIFSA compliance would violate his Fifth Amendment privilege against compulsory self-incrimination; and the state was not entitled to intervene.

¶6 The trial court found "at the time of dismissal [Sullivan] had failed to comply with the registration requirements of . . . [A]UIFSA," and denied reconsideration. Sullivan appealed.

Discussion

¶7 Sullivan challenges the initial dismissal of his petition, raising essentially the same arguments as those noted above, including that we should disregard *Glover* because it not only amounts to "sweeping *dicta*," but is also "unpublished" and a "plurality opinion." Sullivan further claims he was denied due process because his petition was dismissed without notice or hearing. He alleges the trial court engaged in ex parte communications, and that AUIFSA has been preempted by the Full Faith and Credit for Child Support Orders Act ("FFCCSOA"), 28 U.S.C. § 1738B. Lastly, he alleges the trial court erred by failing to exclude the state from participation in the litigation. We do not address these issues, however, because we lack jurisdiction.

¶8 We have an independent duty to examine whether we have jurisdiction over matters on appeal. *See Ghadimi v. Soraya*, 230 Ariz. 621, ¶ 7, 285 P.3d 969, 970 (App. 2012). "We have no authority to entertain an appeal over which we do not have jurisdiction." *In re Marriage of Dougall*, 234 Ariz. 2, ¶ 6, 316 P.3d 591, 594 (App. 2013), *quoting In re Marriage of Johnson & Gravino*, 231 Ariz. 228, ¶ 5, 293 P.3d 504, 506 (App. 2012).

¶9 "[T]he timely filing of a notice of appeal is a jurisdictional prerequisite to appellate review." *Id.* ¶ 7, *quoting In re Marriage of Gray*, 144 Ariz. 89, 90, 695 P.2d 1127, 1128 (1985). Generally, the notice must be filed no later than thirty days after an entry of judgment. Ariz. R. Civ. App. P. 9(a). Under Rule 9(e), Ariz. R. Civ. App. P., however, the time for filing a notice of appeal is extended if certain motions are "timely and properly file[d]" with the trial court. Among the included motions are a motion to amend or alter judgment and a motion for new trial pursuant to Rule 83(A), Ariz. R. Fam. Law P., and a motion for relief pursuant to Rule 85, Ariz. R. Fam. Law P. *See* Ariz. R. Civ. App. P. 9(e)(1)(C), (D), (E). Those motions, however, must be filed no later than fifteen days after entry of the judgment. *See* Ariz. R. Fam. Law P. 83(D)(1); Ariz. R. Civ. App. P. (9)(e)(1)(E). If not timely filed, "a trial court does not have jurisdiction to address them, and they do not extend the time for an appeal." *Marriage of Dougall*, 234 Ariz. 2, ¶ 7, 316 P.3d at 594 (citations omitted).

¶10 Furthermore, while a motion for reconsideration may be filed within thirty days after entry of the relevant ruling, a motion for reconsideration does not "suspend or extend the deadline for filing a notice of appeal from the relevant ruling." Ariz. R. Fam. Law P. 84(D), (E). And, significantly, the filing of a motion requires "actual delivery and receipt" of the relevant document. *See Lee v. State*, 218 Ariz. 235, ¶ 27, 182 P.3d 1169, 1174 (2008) (McGregor, J., dissenting); *see also File*, Black's Law Dictionary (10th ed. 2014).

¶11 As noted above, on May 13, 2015, the trial court dismissed Sullivan's petition. From that date, Sullivan had fifteen days to file a motion for new trial or Rule 85 relief, or until May 28; otherwise, Sullivan was required to file his notice of appeal within thirty days of judgment, or by June 12. On June 4, the trial court received a document titled, "Petitioner's Request for Rule 85 and General Relief Made as a Motion to Vacate the Order Dismissing Petitioner's Request to Modify a Child Support Order, to Reinstate Petitioner's Cause, and to Enter Judgment for Petitioner." The court treated Sullivan's motion as a motion for reconsideration pursuant to Rule 84(A)(2), Ariz. R. Fam. Law. P. Thus, Sullivan was still required to file his notice of appeal by June 12. *See* Ariz. R. Fam. Law P. 84(E). Sullivan did not file his notice of appeal until August 31, making it untimely.

¶12 Moreover, the time for filing a notice of appeal is extended by the *timely* filing of the motions listed in Rule 9(e)(1), Ariz. R. Civ. App. P. Sullivan's motion was filed after the fifteen-day deadline required for a timely motion to amend or alter judgment or motion for new trial pursuant to Rule 83(A), Ariz. R. Fam. Law P., or motion for relief pursuant to Rule 85(A), Ariz. R. Fam. Law P. As noted above, a document is not filed until actually delivered or received. *See Lee*, 218 Ariz. 235, ¶ 27, 182 P.3d at 1174 (McGregor, J., dissenting). And, while we note Sullivan's motion apparently was signed and notarized on May 20, it was not actually filed until June 4. Thus, Sullivan's motion was untimely and did not extend the time for filing a notice of appeal.

¶13 Sullivan also seeks to appeal the trial court's denial of his motion for findings of fact and conclusions of law and the denial

of his June 4 motion treated as one for reconsideration. We lack jurisdiction to consider these matters as well.

¶14 "[N]ot every order following a final judgment is appealable." *Williams v. Williams*, 228 Ariz. 160, ¶ 11, 264 P.3d 870, 874 (App. 2011), *quoting Arvizu v. Fernandez*, 183 Ariz. 224, 226, 902 P.2d 830, 832 (App. 1995). In order for a post-judgment order to be appealable under A.R.S. § 12-2101(A)(2), the "order must 1) raise different issues than would be raised in an appeal from the underlying decree, and 2) the order must affect the judgment or relate to its enforcement." *Id.* Preparatory orders, such as an order entering findings of fact and conclusions of law, neither affect a judgment nor relate to its enforcement and are not appealable. *Id.* ¶ 12.

¶15 We thus lack jurisdiction to review the denial of Sullivan's motion for findings of fact and conclusions of law because it was merely a preparatory order from which an appeal cannot be taken. *See id.* As to the court's denial of Sullivan's motion for reconsideration, it is evident from the record and his opening brief before us that his motion did not raise any issues that would not be raised in an appeal from the initial dismissal of his petition. *See id.* ¶ 11. Thus, the denial of his motion by the court was an unappealable order which we lack jurisdiction to entertain.[1]

Attorney Fees

¶16 Pursuant to Rule 21(a), Ariz. R. Civ. App. P., LePage requests an award of attorney fees and costs. Given the nature of Sullivan's voluminous, redundant appeal, portions of which were

[1]Sullivan's pro se status does not relieve him from the strict application of our rules of procedure. *See Copper State Bank v. Saggio*, 139 Ariz. 438, 441, 679 P.2d 84, 87 (App. 1983) (party conducting themselves in propria persona "entitled to no more consideration than if he had been represented by counsel, and he is held to the same familiarity with required procedures . . . as would be attributed to a qualified member of the bar").

frivolous, we grant the request upon LePage's compliance with Rule 21(b), Ariz. R. Civ. App. P.

Disposition

¶17 For the foregoing reasons, we dismiss Sullivan's appeal.