

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE
2002 CHEVROLET AVALANCHE, VIN 3GNEC13T32G284819, ARIZ. LIC.
BJT2340; AND SIX HUNDRED TWENTY-ONE DOLLARS (\$621.00) IN U.S.
CURRENCY
No. 2 CA-CV 2016-0046
Filed July 11, 2016

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NOT FOR PUBLICATION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. C20152807
The Honorable Leslie Miller, Judge

APPEAL DISMISSED

COUNSEL

John D. Kaufmann, Tucson
Counsel for Appellant

Barbara LaWall, Pima County Attorney
By Edward Russo and Kevin S. Krejci,
Deputy County Attorneys, Tucson
Counsel for Appellee

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MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Presiding Judge Vásquez and Judge Kelly¹ concurred.

M I L L E R, Judge:

¶1 Martin Castro-Leon appeals the trial court’s judgment declaring his interest in a 2002 Chevrolet Avalanche and \$300.00 cash (“the property”) forfeited. Because we conclude the judgment in question was not a final, appealable order, we dismiss this appeal for lack of jurisdiction.

Factual and Procedural Background

¶2 The state filed an in rem forfeiture complaint in July 2015 against the property, which had been seized in connection with a drug investigation against Castro-Leon. In its complaint, the state also requested attorney fees and costs pursuant to A.R.S. § 13-4314(F).² Castro-Leon did not file an answer within twenty days of service of the complaint, as required by A.R.S. § 13-4311(G).

¶3 In November 2015, the trial court ordered the property forfeited. The judgment stated, “[T]his is a final judgment entered pursuant to Arizona Rules of Civil Procedure, Rule 54(c).” However, it made no mention of the state’s attorney fees request.

¶4 Castro-Leon filed a motion to set aside the judgment pursuant to Rule 60(c), Ariz. R. Civ. P. In its response to that motion, the state again requested attorney fees and costs pursuant to

¹The Hon. Virginia C. Kelly, 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.

²The complaint incorrectly cited “A.R.S. § 13-4314(E)” as the basis for the fee request, but in context, it is clear the state meant to refer to § 13-4314(F).

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§ 13-4314(F), but did not address the absence of a ruling on attorney fees in the judgment. The trial court denied the Rule 60(c) motion in January 2016, again without mentioning or ruling on the issue of attorney fees. Castro-Leon filed a notice of appeal the following day.

Jurisdiction

¶5 “This court has an independent duty to examine whether we have jurisdiction over matters on appeal.” *Camasura v. Camasura*, 238 Ariz. 179, ¶ 5, 358 P.3d 600, 602 (App. 2015). Our jurisdiction is strictly statutory, and as a general rule, it is limited to appeals from final judgments disposing of all claims and parties. *Madrid v. Avalon Care Ctr.-Chandler, L.L.C.*, 236 Ariz. 221, ¶ 3, 338 P.3d 328, 330 (App. 2014). We review de novo the trial court’s determination that its judgment is final. *Id.*

¶6 A judgment that includes the finality language of Rule 54(c), Ariz. R. Civ. P., is nevertheless not final and appealable if it does not actually resolve all claims as to all parties. *Madrid*, 236 Ariz. 221, ¶ 6, 338 P.3d at 331. For example, our de novo review in *Madrid* established that “the Rule 54(c) language in the judgment stating that there are ‘no further matters pending’ [was] not accurate” – the record showed the court never had dismissed or otherwise resolved certain claims it previously had ordered into arbitration. 236 Ariz. 221, ¶ 6, 338 P.3d at 331. Because the judgment lacked the Rule 54(b) language appropriate to certify for appeal a resolution of fewer than all claims, we dismissed the appeal. 236 Ariz. 221, ¶ 11, 338 P.3d at 331-32; *see also id.* ¶¶ 9-10 (court of appeals also lacked jurisdiction to suspend appeal and reconstitute jurisdiction in trial court so it could enter Rule 54(b) language instead of Rule 54(c) language).

¶7 Here, as in *Madrid*, the judgment did not in fact resolve all claims, because it did not include a ruling on the state’s request for attorney fees.³ *Cf.* 236 Ariz. 221, ¶ 6, 338 P.3d at 331. The mere

³ Section 13-4311(B) states: “Judicial in rem forfeiture proceedings are in the nature of an action in rem and are governed

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fact that the judgment describes itself as “final . . . pursuant to . . . Rule 54(c)” does not make it so. *Madrid*, 236 Ariz. 221, ¶ 6, 338 P.3d at 331. Nor does the judgment contain the language of Rule 54(b), as is required to appeal a judgment that resolves fewer than all claims. *Cf. Madrid*, 236 Ariz. 221, ¶¶ 7-10, 338 P.3d at 331. Because the November 2015 judgment was not final and appealable, we lack jurisdiction of this appeal. *Id.* ¶ 11.

Attorney Fees

¶8 Although we lack jurisdiction over the appeal, we nevertheless have the power to award appellate attorney fees. *See, e.g., Lightning A Ranch Venture v. Tankersley*, 161 Ariz. 497, 500, 779 P.2d 812, 815 (App. 1989) (appellees awarded attorney fees on appeal despite no jurisdiction over appeal); *but see Burke v. Ariz. State Ret. Sys.*, 206 Ariz. 269, ¶ 7, 77 P.3d 444, 447 (App. 2003) (court may award fees only where expressly authorized by statute or contract). The state requests attorney fees and costs on appeal pursuant to A.R.S. § 13-4314(F), which provides: “The court shall order any claimant who fails to establish that his entire interest is exempt from forfeiture under § 13-4304 to pay . . . the state’s costs and expenses of the investigation and prosecution of the matter, including reasonable attorney fees.” Because there is no final disposition, the award is not yet authorized by statute. Therefore, we deny the request without prejudice to the state to make a request for fees and costs incurred in this appeal to the trial court when it enters a final judgment.

Disposition

¶9 We dismiss the appeal for the reasons stated.

by the Arizona rules of civil procedure unless a different procedure is provided by law.”