

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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SOUTHWEST EQUITIES, LLC,  
*Plaintiff/Appellant,*

*v.*

LUCINA A. CAMACHO AND THE ESTATE OF BENITO M. CAMACHO,  
*Defendants/Appellees.*

No. 2 CA-CV 2016-0158  
Filed July 13, 2017

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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NOT FOR PUBLICATION  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).*

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Appeal from the Superior Court in Pima County  
No. C20153055  
The Honorable Cynthia T. Kuhn, Judge

**APPEAL DISMISSED**

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COUNSEL

The Law Firm of Thomas C. Piccioli, Tucson  
By Thomas C. Piccioli  
*Counsel for Plaintiff/Appellant*

Mesch, Clark & Rothschild, P.C., Tucson  
By Paul A. Loucks  
*Counsel for Defendants/Appellees*

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**MEMORANDUM DECISION**

Presiding Judge Staring authored the decision of the Court, in which Judge Espinosa and Judge Kelly<sup>1</sup> concurred.

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STARING, Presiding Judge:

¶1 Southwest Equities (“Southwest”) appeals from a July 2016 trial court ruling in Southwest’s action to enforce an express easement. We lack jurisdiction and therefore dismiss the appeal.

**Factual and Procedural Background**

¶2 In 2015, Southwest filed suit to enforce an express easement allowing it to use property owned by Lucina and Benito Camacho, claiming the Camachos had blocked the easement with a shed, a dog kennel, and other objects. In an unsigned minute entry entered on July 13, 2016, the trial court found that the express easement had been extinguished by adverse possession, but that an implied easement had been created along an alternate route. The court’s ruling directed the Camachos to submit a proposed form of judgment and statement of costs. On July 29, Southwest filed a notice of appeal, purporting to appeal from a “Judgment” entered on July 13.

¶3 On August 3, the trial court signed a judgment that included an award of costs but lacked the language required by Rule 54(c), Ariz. R. Civ. P. In October, we revested jurisdiction in the trial court, and the court issued an amended judgment with Rule 54(c) language.

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<sup>1</sup>The 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.

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**Appellate Jurisdiction**

¶4 We have an independent duty to confirm appellate jurisdiction, and we may not consider the merits of an appeal over which we lack jurisdiction. *Musa v. Adrian*, 130 Ariz. 311, 312, 636 P.2d 89, 90 (1981). Appellate jurisdiction requires the existence of an appealable order, and a decision that does not dispose of all claims and parties is generally not appealable unless it contains a designation pursuant to Rule 54(b), Ariz. R. Civ. P. *Id.* at 312-13, 636 P.2d at 90-91. Unless “no decision of the court could change and the only remaining task is merely ministerial,” a notice of appeal filed prior to the entry of final judgment is “ineffective’ and a nullity.” *Craig v. Craig*, 227 Ariz. 105, ¶ 13, 253 P.3d 624, 626 (2011), quoting *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, ¶¶ 37, 39, 132 P.3d 1187, 1195 (2006); see also *Barassi v. Matison*, 130 Ariz. 418, 422, 636 P.2d 1200, 1204 (1981). Determining the amount of costs requires an exercise of discretion and is not purely ministerial. See *Ghadimi v. Soraya*, 230 Ariz. 621, ¶ 13, 285 P.3d 969, 971-72 (App. 2012); see also *Fowler v. Great Am. Ins. Co.*, 124 Ariz. 111, 114, 602 P.2d 492, 495 (App. 1979) (trial court has “wide latitude” to determine amount of costs).

¶5 Here, Southwest’s notice of appeal was premature because it was filed on July 29 before the trial court’s August 3 ruling on the Camachos’ statement of costs. See *Craig*, 227 Ariz. 105, ¶ 13, 253 P.3d at 626. Southwest did not file a notice of appeal at any time after the court had determined the amount of costs.

¶6 Although Southwest contends otherwise in its response to our order to show why the appeal should not be dismissed, no amended notice appears in the record. The notice to which Southwest refers is a copy of its July 29 notice, which was transmitted by facsimile from the superior court to this court. The copy does not contain a new electronic file stamp, which would be present had Southwest refiled the notice. Instead, it bears a hand-written stamp generated by the superior court’s appeals unit as part of its internal administrative procedures.<sup>2</sup> Because Southwest did not file a timely

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<sup>2</sup>Southwest retained new counsel after initiating its appeal. Therefore, in light of the substitution, we presume current counsel is

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notice of appeal from a judgment that was either final or required only ministerial tasks to become final, we lack jurisdiction. *See* Ariz. R. Civ. App. P. 9(a), (c) (requiring filing of notice of appeal after announcement of final decision but no more than thirty days after entry of judgment); *Korens v. Ariz. Dep't of Econ. Sec.*, 129 Ariz. 426, 427, 631 P.2d 581, 582 (App. 1981) (timely notice of appeal prerequisite to appellate jurisdiction).

**Disposition**

¶7 We dismiss Southwest's appeal for lack of jurisdiction.

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mistaken about an amended notice of appeal having been filed, and has not attempted to mislead this court.