

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

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JAMES J. MCMANUS,  
*Plaintiff/Appellant,*

*v.*

DOUG HAGEN AND JOY HAGEN,  
HUSBAND AND WIFE,  
*Defendants/Appellees.*

No. 2 CA-CV 2016-0166  
Filed March 8, 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NOT FOR PUBLICATION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 Cochise County  
No. S0200CV201300639  
The Honorable Karl D. Elledge, Judge

**APPEAL DISMISSED**

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James J. McManus, Fort Myers, Florida  
*In Propria Persona*

Doug Hagen, Tucson  
*In Propria Persona*

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**MEMORANDUM DECISION**

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

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ESPINOSA, Judge:

¶1 James McManus appeals from the trial court’s judgment in favor of appellees Doug and Joy Hagen, arguing the trial court abused its discretion by considering evidence that “occurred outside of any applicable statute of limitation.” We dismiss the appeal for lack of jurisdiction.

**Factual and Procedural Background**

¶2 McManus filed a complaint against the Hagens in September 2013 for breach of contract. In March 2015, the trial court determined the matter was subject to compulsory arbitration and referred the case to the Alternative Dispute Resolution program. The arbitrator found in favor of the Hagens and granted them an award of attorney fees. McManus requested a trial de novo pursuant to Rule 77, Ariz. R. Civ. P.

¶3 Following the de novo trial, the trial court determined McManus did not “prove by a preponderance of the evidence that other money is owed to him in this action” and the Hagens were “entitled to judgment.” The court also concluded the Hagens were entitled to an award of reasonable attorney fees and costs, and ordered their attorney to “prepare a form of Judgment based on the Court’s decision, leaving a place open for the attorney’s fees and costs incurred in this action, together with an Affidavit of Attorney’s Fees and Costs.” The Hagens submitted their affidavit of attorney fees and a “notice of lodging proposed final judgment” on July 25, 2016, and McManus filed a notice of appeal on August 3 and an amended notice of appeal on August 9. The trial court awarded attorney fees and entered judgment in favor of the Hagens on August 16.

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**Appellate Jurisdiction**

¶4 This court has an independent duty to determine whether it has jurisdiction over matters on appeal. *Camasura v. Camasura*, 238 Ariz. 179, ¶ 5, 358 P.3d 600, 602 (App. 2015). Our jurisdiction is strictly defined by statute and without it we are without authority to entertain an appeal. *In re Marriage of Kassa*, 231 Ariz. 592, ¶ 3, 299 P.3d 1290, 1291 (App. 2013).

¶5 As a general rule, only final judgments are appealable. *Musa v. Adrian*, 130 Ariz. 311, 312, 636 P.2d 89, 90 (1981). A notice of appeal filed in the absence of a final judgment is premature and, with limited exceptions, is a nullity. See *Bollermann v. Nowlis*, 234 Ariz. 340, ¶ 6, 322 P.3d 157, 158 (2014); see also *Camasura*, 238 Ariz. 179, ¶ 6, 358 P.3d at 602. We may nevertheless exercise appellate jurisdiction when the premature notice was filed after the trial court has made its final decision but before entering a formal judgment if the entry of that judgment is merely ministerial. See *Camasura*, 238 Ariz. 179, ¶ 9, 358 P.3d at 603. A trial court's decision determining attorney fees and costs, however, is not ministerial. *Id.* ¶ 10. And, although Rule 9(c), Ariz. R. Civ. App. P., provides that "a notice of appeal . . . filed after the superior court announces an order or other form of decision—but before entry of the resulting judgment that will be appealable—is treated as filed on the date of, and after the entry of, the judgment," that subsection does not apply when an order or ruling has been entered but a request for attorney fees is left for later decision. *Camasura*, 238 Ariz. 179, ¶¶ 15-16, 358 P.3d at 604.

¶6 Here, McManus filed his notice of appeal after the trial had concluded, but before attorney fees were resolved and a final judgment was entered. The trial court's July 12, 2016 minute entry granting judgment in favor of the Hagens was not signed and expressly directed the Hagens to submit a proposed "form of Judgment based on the Court's decision, leaving a place open for the attorney's fees and costs incurred in this action." As noted above, McManus filed a notice of appeal on August 3 and an amended notice on August 9, but the trial court did not award attorney fees and enter final judgment until August 16, and McManus did not file another amended notice after the entry of final judgment. Accordingly, McManus's premature notice of appeal was a nullity

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over which we lack jurisdiction. *See Camasura*, 238 Ariz. 179, ¶ 17, 358 P.3d at 605.

**Disposition**

¶7 The appeal is dismissed.