

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

DONALD JAMES STUTLER,
Petitioner/Appellant,

v.

SONYA RENEE BOOK,
Respondent/Appellee.

No. 2 CA-CV 2016-0167-FC
Filed August 25, 2017

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NOT FOR PUBLICATION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. SP20140152
The Honorable James E. Marner, Judge

APPEAL DISMISSED

COUNSEL

Donald Stutler, Tucson
In Propria Persona

Cayce & Associates, Tucson
By Cheryl C. Cayce
Counsel for Respondent/Appellee

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MEMORANDUM DECISION

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

ECKERSTROM, Chief Judge:

¶1 Donald Stutler (Father) appeals from the trial court’s order allowing Sonya Book (Mother) to relocate with their minor child, D.J. Because we lack jurisdiction, we dismiss the appeal.

¶2 Although neither party has raised the issue of jurisdiction, “[t]his 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). On May 31, 2016, Father filed a request to enforce the court’s prior order regarding parenting time and a separate request to prohibit Mother’s relocation with their minor child. On June 28, the trial court entered an under-advisement ruling permitting Mother to relocate to Missouri. As to Father’s motion to enforce parenting time, the court noted that “[t]he current parenting plan . . . is no longer an option,” put temporary orders for parenting time in place, and ordered the parties to attend mediation and “attempt to reach an agreed-upon parenting time plan.” Father then filed a “Rule 82, 83, 84 Omnibus Motion for a New Trial, Findings of Fact and Reconsideration,” which the trial court treated as a motion for new trial and denied. Father timely filed a notice of appeal.

¶3 An appeal generally will lie only from a final judgment. *Camasura*, 238 Ariz. 179, ¶ 6, 358 P.3d at 602. The trial court’s order regarding parenting time expressly stated that it was “temporary” and required the parties to attempt to create a permanent parenting time plan. Because there was no final order regarding parenting time, the judgment was not final as to all claims against all parties. *Id.* ¶ 7

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.

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(judgment that did not resolve parenting time, among other issues, was not final). Nor did the order contain a determination, pursuant to Rule 78(B), Ariz. R. Fam. Law P., that there was “no just reason for delay” or “an express direction for the entry of judgment.” Accordingly, there is no final, appealable judgment and we lack jurisdiction. We dismiss the appeal.