

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

DOUGLAS M. SANDERS,
Petitioner/Appellant,

and

RUBY PARKS,
Respondent/Appellee.

No. 2 CA-CV 2017-0048-FC
Filed September 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NOT FOR PUBLICATION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. D20080264
The Honorable James E. Marner, Judge

APPEAL DISMISSED

COUNSEL

Sidney L. Kain, Tucson
Counsel for Petitioner/Appellant

Elkins & Associates, P.L.L.C., Tucson
By C. Joy Elkins
Counsel for Respondent/Appellee

IN RE MARRIAGE OF SANDERS & PARKS
Decision of the Court

MEMORANDUM DECISION

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

ECKERSTROM, Chief Judge:

¶1 Douglas Sanders appeals the trial court's order modifying child support. Because we do not have jurisdiction, we dismiss his appeal.

¶2 Regardless of whether the parties raise the issue, we have "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). With limited exceptions, this court's jurisdiction is restricted to appeals from final judgments that dispose of all claims as to all parties. *See In re Marriage of Johnson and Gravino*, 231 Ariz. 228, ¶ 5, 293 P.3d 504, 506 (App. 2012); *see also* A.R.S. § 12-2101(A)(1). Judgments resolving less than "all of the claims" are appealable only "upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." Ariz. R. Fam. Law. P. 78(B); *see* Ariz. R. Civ. P. 54(b). In the absence of such determinations, "a judgment that does not dispose of a request for attorney's fees is not final for purposes of appeal." *Bollermann v. Nowlis*, 234 Ariz. 340, ¶ 8, 322 P.3d 157, 159 (2014).

¶3 The trial court's January 2017 under-advisement ruling from which Sanders has appealed was not final because it did not resolve the amount of attorney fees to be awarded and did not contain Rule 78(B) language. *See id.* Thus, Sanders's February notice of appeal was premature. *See Camasura*, 238 Ariz. 179, ¶ 6, 358 P.3d at 602 ("A notice of appeal filed in the absence of a final judgment is premature."). Further, Sanders's premature notice cannot be treated as having been filed "on the date of, and after the entry of, the judgment" pursuant to Rule 9(c), Ariz. R. Civ. App. P., because the January ruling left attorney fees unresolved and, therefore, could not have resulted in a final judgment. *See Camasura*, 238 Ariz. 179, ¶¶ 7,

IN RE MARRIAGE OF SANDERS & PARKS
Decision of the Court

15, 358 P.3d at 602-03, 604. Accordingly, Sanders's premature notice of appeal was "'ineffective' and a nullity." *See id.* ¶ 9. Finally, Sanders did not file a notice of appeal following the court's March 2017 final judgment. *See* Ariz. R. Civ. App. P. 9(a) (party must file notice of appeal no later than thirty days after entry of judgment unless otherwise provided). In the absence of a timely notice of appeal, we lack jurisdiction. *See id.* Accordingly, we dismiss Sanders's appeal.