

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

BRENT RUST;
CHARLES AND RUTH RUST REVOCABLE TRUST;
RUTH E. RUST REVOCABLE TRUST; AND
RUST FAMILY TRUST,
Plaintiffs/Appellees,

v.

JAN C. RUST,
Defendant/Appellant.

No. 2 CA-CV 2017-0168
Filed February 6, 2018

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NOT FOR PUBLICATION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. PB20170553
The Honorable Charles V. Harrington, Judge

APPEAL DISMISSED

COUNSEL

Diaz Law Offices, PLLC, Tucson
By Suzanne L. Diaz

and

Fennemore Craig, P.C., Tucson
By Scott McDonald
Counsel for Plaintiffs/Appellees

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Jan C. Rust, Tucson
In Propria Persona

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Judge Brearcliffe and Judge Espinosa concurred.

ECKERSTROM, Chief Judge:

¶1 Jan Rust attempts to appeal from the trial court’s order finding she unlawfully recorded interests in ten different properties throughout Arizona and awarding Brent Rust statutory damages and attorney fees. Because we lack jurisdiction, we dismiss the appeal.

¶2 On July 13, 2017, the trial court orally pronounced judgment in favor of Brent¹ as to some of the claims alleged in his petition. Then, on July 21, the court filed a minute entry reflecting the oral pronouncement. Although signed, this order did not contain language pursuant to Rule 54(b), Ariz. R. Civ. P. It gave counsel leave to request an award of attorney fees and directed counsel to submit a form of judgment. On July 24, Brent submitted an application for attorney fees. On August 3, Jan filed a notice of appeal. On August 22, the court entered a judgment pursuant to Rule 54(b) regarding the claims resolved by the July 21 order and awarding Brent his attorney fees.

¶3 Although no party has raised the issue of jurisdiction, and Brent suggests this court has jurisdiction pursuant to Rule 9(c), Ariz. R. Civ. App. P., we have an independent duty to examine our own jurisdiction. *Baker v. Bradley*, 231 Ariz. 475, ¶ 8 (App. 2013). In general, an appeal will only lie from a final judgment that disposes of all claims against all parties. *Id.* ¶ 9. Under Rule 9(c), “[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.” This rule, however, applies “only when a . . . court announces a decision that *would be* appealable if immediately followed by the entry of judgment.” *Camasura v. Camasura*,

¹For ease in identifying and distinguishing the parties, we refer to them by their first names.

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238 Ariz. 179, ¶ 14 (App. 2015), *quoting FirstTier Mortg. Co. v. Investors Mortg. Ins. Co.*, 498 U.S. 269, 276 (1991) (emphasis in *Camasura*). Here, the July 21 order did not resolve all claims against all parties and gave Brent leave to request attorney fees. Brent did, in fact, file a request for attorney fees before Jan filed her notice of appeal, resulting in the issue being outstanding at the time Jan filed the notice of appeal. *See Bollermann v. Nowlis*, 234 Ariz. 340, ¶ 8 (2014) (“judgment that does not dispose of a request for attorneys’ fees is not final for purposes of appeal”). Consequently, the notice of appeal was premature when filed, Rule 9(c) does not save the appeal, and this court lacks jurisdiction.²

Disposition

¶4 For the foregoing reasons, we dismiss the appeal.

²Jan’s brief, on the cover page, states “Oral Arguments Requested.” In the court of appeals, parties must file a “separate request for oral argument” and may not include it in the opening brief. Ariz. R. Civ. App. P. 18(a); *see Svendsen v. Ariz. Dep’t of Transp., Motor Vehicle Div.*, 234 Ariz. 528, n.8 (App. 2014). Accordingly, we deny the request.