

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

HENRY GERMAN II,
Petitioner/Appellant,

and

JENNIFER J. GERMAN,
Respondent/Appellee.

No. 2 CA-CV 2019-0118-FC
Filed May 5, 2020

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NOT FOR PUBLICATION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. D20180531
The Honorable Scott Rash, Judge

APPEAL DISMISSED

Henry German II, Tucson
In Propria Persona

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MEMORANDUM DECISION

Judge Brearcliffe authored the decision of the Court, in which Presiding Judge Staring and Chief Judge Vásquez concurred.

BREARCLIFFE, Judge:

¶1 Appellant Henry German II (German) appeals from the trial court’s denial of his motion for reconsideration following the court’s denial of his petition to modify legal decision-making, parenting time, and child support. For the reasons that follow, we dismiss the appeal for lack of jurisdiction.

Factual and Procedural History

¶2 In September 2010, as part of the decree of dissolution of the parties’ marriage, the Superior Court of Chatham County, Georgia, entered a Parenting Plan and Child Support Schedule as to their minor children. On February 27, 2018, German filed a Petition to Modify Parenting Time and a Petition for Modification of Child Support in the Superior Court of Pima County, Arizona. On April 27, 2018, after a hearing, the trial court in Pima County determined that it did not have jurisdiction over the matter because the State of Georgia had continuing jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act.¹ The court instructed German that, for the hearing to proceed, “he will either need to file documents from the State of Georgia relinquishing jurisdiction or [mother] will need to state to this Court that she does not object to Arizona having jurisdiction over the minor children.” Neither occurred and the court dismissed the case.

¶3 On February 22, 2019, German filed another petition to modify legal decision-making and parenting time under the same case number. On March 1, the trial court explained that “the Court has previously ordered the matter closed,” and dismissed the petition because “there is no pending case.” The court noted that “the same jurisdictional issues remain and must be resolved before the Court can act on any future petitions under a new case number.”

¶4 On April 8, 2019, German filed a motion for reconsideration, which did not address the jurisdictional issue, but offered a new, proposed

¹A.R.S. §§ 25-1001 to 25-1067.

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parenting plan. On April 22, the court summarily denied the motion. On May 9, using a modifiable pre-printed form, German filed a notice of appeal appealing “from the Judgment entered on 2/27/19 [Date] in favor of Motion Denied for reconsideration [Plaintiff or Defendant]. Dated: 22 April 2019” (underscored text was handwritten). No other notice of appeal or amended notice of appeal was filed.

Analysis

¶5 Although no responsive brief was filed and therefore neither party raised the issue, we have “an independent duty to examine whether we have jurisdiction over matters on appeal.” *Camasura v. Camasura*, 238 Ariz. 179, ¶ 5 (App. 2015). “[W]e have no authority to entertain an appeal over which we do not have jurisdiction.” *In re Marriage of Johnson & Gravino*, 231 Ariz. 228, ¶ 5 (App. 2012).

¶6 Under Rule 8, Ariz. R. Civ. App. P., a party is required to file a notice of appeal and, within that notice, to “[d]esignate the judgment or portion of the judgment from which the party is appealing or cross-appealing.” German’s notice of appeal refers only to the denial of the motion for reconsideration, not to any other ruling or judgment. Although the notice of appeal refers to a judgment dated “2/27/19,” no such judgment appears in the record. The correct date for the denial of the motion for reconsideration – “22 April 2019” – however, does appear in the notice of appeal after “Dated:” where it was handwritten on the form. Thus, it appears from his notice of appeal that German seeks to appeal from the trial court’s April 22, 2019 denial of his motion for reconsideration of the March 2019 order. And, in his opening brief, German states that “On 22 April 2019, the chambers denied the appellant’s (Henry) motion to reconsider case no. D20180531. There was no explanation for the judgment.”

¶7 “The general rule is that an appeal lies only from a final judgment.” *Davis v. Cessna Aircraft Corp.*, 168 Ariz. 301, 304 (App. 1991). However, A.R.S. § 12-2101(A)(2) permits an appeal “[f]rom any special order made after final judgment” and, in some instances, the denial of a motion for reconsideration of a final judgment is a special order made after judgment. *See Engineers v. Sharpe*, 117 Ariz. 413, 416 (1977) (grant of motion for reconsideration from entry of summary judgment is appealable). An order made after judgment, however, “is not appealable if the appeal [of that order] presents the same question as would be presented on an appeal from the judgment.” *Reidy v. O’Malley Lumber Co.*, 92 Ariz. 130, 136 (1962); *see also In re Marriage of Dorman*, 198 Ariz. 298, ¶ 3 (App. 2000) (“[t]o be

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appealable, a special order after judgment must raise different issues than those that would be raised by appealing the underlying judgment”). “This requirement prevents a delayed appeal from the judgment, and also prevents multiple appeals raising the same issues.” *Arvizu v. Fernandez*, 183 Ariz. 224, 227 (App. 1995).

¶8 German states the issue on appeal in his opening brief as: “Does the state of Arizona have jurisdiction to grant a modification to a parenting plan established in the state of Georgia.” Thus, this appeal raises the same jurisdictional issue that would have been raised in an appeal from either the original April 2018 dismissal or the March 2019 order issued as a consequence. The denial of the motion for reconsideration, therefore, is not independently reviewable, and we lack jurisdiction.

Disposition

¶9 For the foregoing reasons, this appeal is dismissed.²

²Even if we concluded that we have jurisdiction, German has waived his claims. Pursuant to Rule 13(a)(7)(A), Ariz. R. Civ. App. P., an opening brief must contain an argument with “[a]ppellant’s contentions concerning each issue presented for review, with supporting reasons for each contention, and with citations of legal authorities and appropriate references to the portions of the record on which the appellant relies.” In his opening brief, German makes no argument, nor does he cite any legal authority or the portions of the record on which he relies. By failing to comply with Rule 13, a party waives arguments on appeal. *Ritchie v. Krasner*, 221 Ariz. 288, ¶ 62 (App. 2009). Although we recognize that German is representing himself, he is “entitled to no more consideration than if [he] had been represented by counsel” and he is “held to the same standards as attorneys with respect to ‘familiarity with required procedures and . . . notice of statutes and local rules.’” *In re Marriage of Williams*, 219 Ariz. 546, ¶ 13 (App. 2008) (quoting *Smith v. Rabb*, 95 Ariz. 49, 53 (1963)).