IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE THE MARRIAGE OF

MEGAN RENE QUELLA,
Appellant,

and

DEREK JAMES JORDAN,
Appellee.

No. 2 CA-CV 2019-0155-FC
Filed September 30, 2020

Appeal from the Superior Court in Pinal County
No. DO201601107
The Honorable Richard T. Platt, Judge Pro Tempore

APPEAL DISMISSED

COUNSEL

Adam C. Rieth P.L.L.C., Mesa
By Adam C. Rieth
Counsel for Appellant

Berkshire Law Office PLLC, Tempe
By Keith Berkshire and Erica Gadberry
Counsel for Appellee

MEMORANDUM DECISION

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

E C K E R S T R O M, Judge:

¶1 Megan Quella appeals from the trial court's under-advisement ruling on her petition to modify parenting time, child support, and legal decision-making authority. For the reasons explained below, we dismiss this appeal for lack of jurisdiction.

Factual and Procedural Background

¶2 In July 2019, the trial court entered a ruling on Quella's petition. In that petition, she had requested certain changes to a pre-existing child support order. On July 30, Quella filed a motion to correct or clarify that ruling, or for reconsideration. Later that day, Quella filed a notice of appeal.

¶3 On Quella's motion, in October 2019 this court suspended the appeal and revested jurisdiction in the trial court to allow it to rule on Quella's motion for reconsideration. Addressing each of Quella's arguments, the trial court granted the motion in part and denied it in part. We then reinstated the appeal and allowed briefing to proceed.

¶4 Our jurisdiction is defined by statute, A.R.S. §§ 12-120.21, 12-2101, and we have an independent duty to determine whether we have the authority to consider an appeal, *Camasura v. Camasura*, 238 Ariz. 179, ¶ 5 (App. 2015). Generally, "only final judgments are appealable." *Id.* ¶ 6.

¶5 Upon our independent review of our jurisdiction, we conclude that the trial court's July 2019 ruling did not contain finality language sufficient to trigger our jurisdiction. The court's order stated only that it was "signing this minute entry as a formal order of this Court pursuant to Rule 81, *Arizona Rules of Family Law Procedure*." This language does not invoke Rule 78(c), the provision of the Arizona Rules of Family Law Procedure that renders an order resolving all claims as to all parties final and appealable. Even if the July 2019 ruling was intended to resolve all claims against all parties and included a citation to the appropriate provision of Rule 78, the order nevertheless would not have been final

because it failed to specify that "no further matters remain pending," as required by that rule. *See McCleary v. Tripodi*, 243 Ariz. 197, ¶ 7 (App. 2017) (requiring "no further matters remain pending" recitation for finality under Rule 54(c), Ariz. R. Civ. P.); *see also* Ariz. R. Fam. Law P. 1(c) (when language in rules of family law procedure "is substantially the same as language in the civil rules, case law interpreting the language of the civil rules will apply to these rules"). Nor does the reference to Rule 81 properly enter judgment under Rule 78(b), which might convey jurisdiction on our court as to some, but not all, claims.

¶6 The trial court's January 2020 ruling on Quella's motion for reconsideration did not cure the absence of a final judgment by providing the requisite finality language.[1] Thus, no final order has been entered in this matter, and Quella prematurely filed her notice of appeal. A premature notice of appeal is a nullity. *Craig v. Craig*, 227 Ariz. 105, ¶ 13 (2011). And although a premature notice of appeal may be cured under some circumstances, those circumstances do not exist here because no final judgment has been entered in the trial court. *See AU Enters. Inc. v. Edwards*, 248 Ariz. 109, ¶ 10 (App. 2020). Furthermore, even if the January 2020 order were final, Quella would have been required to file a new or amended notice of appeal from the ruling because it was substantive rather than "merely ministerial," and a new final order would not cure the prematurity of the notice of appeal. *See Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, ¶ 37 (2006).

Disposition

¶7 For the foregoing reasons, we dismiss this appeal for lack of jurisdiction. We note that Quella may file a timely notice of appeal upon the trial court's issuance of a final, signed order containing the necessary language under Rule 78, Ariz. R. Fam. Law P.

[1]Ordinarily, post-judgment rulings on timely motions filed after entry of a final judgment need only be signed and do not require additional finality language. A.R.S. § 12-1201(A)(2); Ariz. R. Civ. App. P. 9(e)(1)(E); *see also Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 420, ¶ 14 (App. 2016).