

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

RICHARD EDWARD MEYER,
Plaintiff/Appellant,

v.

STEPHEN MITCHELL BAQUET AND MARLENE C. BAQUET,
HUSBAND AND WIFE,
Defendants/Appellees.

No. 2 CA-CV 2019-0186
Filed June 12, 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NOT FOR PUBLICATION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
Nos. C20173648 and C20175662
The Honorable Richard E. Gordon, Judge

APPEAL DISMISSED

Richard E. Meyer, Tucson
In Propria Persona

Stephen Mitchell Baquet and Marlene C. Baquet, Tucson
In Propria Personae

MEMORANDUM DECISION

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

V Á S Q U E Z, Chief Judge:

¶1 Richard Meyer appeals from the trial court’s denial of his motion for reconsideration of its order denying his request for attorney fees and costs. For the reasons stated below, we dismiss this appeal for lack of jurisdiction.

Procedural Background

¶2 The issues in this matter arise from two civil actions Meyer¹ filed in Pima County Superior Court against Stephen and Marlene Baquet.² In July 2017, Meyer filed C20173648, alleging the Baquets had falsely recorded an affidavit of foreign judgment, falsely filed an affidavit of foreign judgment with the superior court, falsely filed a UCC financing statement with the Arizona Secretary of State, breach of contract, and seeking to quiet title to two parcels of real property in Pima County (the

¹Meyer’s wife, Soon Ok Jung, was also listed as a plaintiff below, but she is not a party to this appeal.

²Although Meyer listed a third action, No. C20171651, in a motion filed in this court, no order from that case is included in his notice of appeal, or mentioned in his opening brief, and he has failed to provide any of its record on appeal. Accordingly, he has waived any argument regarding the third case, and we will not consider it further. *See* Ariz. R. Civ. App. P. 8(c)(3) (requiring notice of appeal to “[d]esignate the judgment or portion of the judgment from which the party is appealing”); Ariz. R. Civ. App. P. 11(c) (appellant must ensure record contains all documents necessary to address issues raised); *Sholes v. Fernando*, 228 Ariz. 455, ¶ 16 (App. 2011) (waiving issues not properly presented in opening brief); *see also In re Marriage of Williams*, 219 Ariz. 546, ¶ 13 (App. 2008) (self-represented parties are “‘entitled to no more consideration than if they had been represented by counsel’ and are held to the same standards as attorneys with respect to ‘familiarity with required procedures and . . . notice of statutes and local rules.’” (quoting *Smith v. Rabb*, 95 Ariz. 49, 53 (1963))).

MEYER v. BAQUET
Decision of the Court

First Lawsuit). In November 2017, Meyer filed a second action, C20175662, to domesticate a judgment entered in the United States Bankruptcy Court for the District of Arizona, which awarded him over \$5,000 in attorney fees against Stephen Baquet (the Second Lawsuit).

¶3 In January 2018, the trial court entered a default judgment in the First Lawsuit, quieting title to the subject parcels in favor of Meyer and awarding him compensatory and punitive damages, attorney fees, and costs, thereby resolving all pending claims in that action. The judgment also included Rule 54(c), Ariz. R. Civ. P., finality language.³

¶4 Meyer requested attorney fees and costs in the Second Lawsuit pursuant to A.R.S. § 12-349. In October 2018, the trial court approved Meyer’s request for fees and costs in the Second Lawsuit as a sanction and granted leave for Meyer’s attorney “to file a supplement[al application]” for additional fees incurred since the initial request “after consultation with his client.” The record before us does not contain any such supplement. The amended order also contained Rule 54(c) finality language for the Second Lawsuit. Additionally, the court found that it was not “appropriate to issue another final judgment” for the First Lawsuit as a final judgment had been entered in January 2018 and “no notice of appeal had been filed within thirty (30) days of the final judgment.”

¶5 The following month, the trial court permitted Meyer’s counsel to withdraw, and Meyer proceeded without counsel. In December 2018, the court issued an amended order that denied “any pending request or motion the Court may have missed” and again included Rule 54(c) finality language. While both parties continued to file motions, neither party filed a notice of appeal within thirty days after this judgment was entered, nor did they file any time-extending motion regarding the judgments.

¶6 In August 2019, Meyer “refiled [his] Application for Attorneys’ Fees to include additional fees and costs incurred since the application was originally filed in January 2018.” The trial court declined to “revisit these decisions” and denied Meyer’s request. Meyer then filed a

³The trial court nevertheless continued to issue minute entries scheduling hearings “on all pending matters” in both cases.

MEYER v. BAQUET
Decision of the Court

motion for reconsideration, which the court also denied. This appeal followed.⁴

Discussion

¶7 Although Meyer has not identified a basis for our jurisdiction as required by Rule 13(a)(4), Ariz. R. Civ. App. P., this court has an independent duty to ensure we have jurisdiction over an appeal. *Robinson v. Kay*, 225 Ariz. 191, ¶ 4 (App. 2010). Our jurisdiction is derived from statute, see *Lee v. ING Inv. Mgmt., LLC*, 240 Ariz. 158, ¶ 21 (App. 2016), and we must dismiss an appeal over which we lack jurisdiction, see *Baker v. Bradley*, 231 Ariz. 475, ¶ 8 (App. 2013).

¶8 Generally, only final judgments are appealable. *Kim v. Mansoori*, 214 Ariz. 457, ¶ 6 (App. 2007). “An order made after judgment is not appealable if the appeal 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); cf. *Sotomayor v. Sotomayor-Muñoz*, 239 Ariz. 288, ¶ 11 (App. 2016) (requiring issues raised on appeal from post-judgment order to differ from those that could have been raised on appeal from judgment).

¶9 “The timely filing of a valid notice of appeal is a prerequisite to the exercise of appellate jurisdiction.” *Santee v. Mesa Airlines, Inc.*, 229 Ariz. 88, ¶ 3 (App. 2012). And in a civil case, a notice of appeal must be filed within thirty days after entry of the appealable order, absent a time-extending motion. See Ariz. R. Civ. App. P. 9(a), (e). “Whether an order is final and appealable depends not on its form but on ‘its substance or effect.’” *Green v. Lisa Frank, Inc.*, 221 Ariz. 138, ¶ 14 (App. 2009) (quoting

⁴Because the order denying the motion for reconsideration lacked finality language pursuant to Rule 54 and was not signed, we suspended the appeal and revested jurisdiction in the trial court to allow Meyer “to apply for an appropriate final judgment.” It appears such action was unnecessary because the court had previously entered final judgments in both cases and the order being appealed does not purport to be a final judgment for which Rule 54 finality language is required. See *Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 420, ¶¶ 13, 15, 17, 19 (App. 2016) (explaining that appeals from A.R.S. § 12-2101(a)(2)–(8), (10)–(11) may be brought absent Rule 54 finality language and that § 12-2101(a)(9) governs probate appeals requiring Rule 54 finality language). And although the challenged ruling was unsigned, cf. *Klebba v. Carpenter*, 213 Ariz. 91, ¶¶ 6-8 & n.4 (2006) (appealable orders must be signed), it would not have been appealable even if it were signed.

MEYER v. BAQUET
Decision of the Court

Props. Inv. Enters., Ltd. v. Found. For Airborne Relief, Inc., 115 Ariz. 52, 54 (App. 1977)). A final judgment is one that “leav[es] no question open for judicial determination,” including claims for attorney fees. See *Decker v. City of Tucson*, 4 Ariz. App. 270, 272 (1966); see also *Nat’l Broker Assocs., Inc. v. Marlyn Nutraceuticals, Inc.*, 211 Ariz. 210, ¶ 36 (App. 2005) (describing if claim for attorney fees remains open, judgment is not final). Failure to resolve attorney fees can be cured through a subsequent judgment resolving all pending claims. See *Fields v. Oates*, 230 Ariz. 411, ¶¶ 9, 18 (App. 2012). Finality language under Rule 54(b) or (c) is required for most orders before they may be appealed.

¶10 Meyer filed identical notices of appeal in each case, each stating that he is challenging the trial court’s October 3, 2019 order denying his motion for reconsideration of the court’s order denying his request for attorney fees and costs. Our review is limited to the ruling or rulings identified within the notice of appeal. See Ariz. R. Civ. App. P. 8(c)(3) (requiring notice of appeal to “[d]esignate the judgment or portion of the judgment from which the party is appealing”); *Ruesga v. Kindred Nursing Ctrs., L.L.C.*, 215 Ariz. 589, ¶ 38 (App. 2007) (limiting review to those orders listed in notice of appeal).

¶11 The order denying Meyer’s motion for reconsideration is not an appealable order because it did not raise any issues that were different from those that could have been raised in a direct appeal from the underlying final judgment. See *Reidy*, 92 Ariz. at 136; cf. *Sotomayor*, 239 Ariz. 288, ¶ 11. The same would be true even if Meyer’s notice of appeal had included the various orders denying his pro per application for reimbursement of attorney fees and costs entered after the judgment. In its amended order on December 19, 2018, the trial court “further ordered denying any pending request or motion the Court may have missed.” That amended order resolved any unresolved issues in the Second Lawsuit, including the matter of supplemental fees and costs. It was signed and included the necessary Rule 54(c) language. See *Decker*, 4 Ariz. App. at 272. Consequently, the rulings denying Meyer’s pro per post-judgment “refiled” application for fees and costs presented the same issues that could have been raised in a direct appeal from the underlying judgment. See *Reidy*, 92 Ariz. at 136; cf. *Sotomayor*, 239 Ariz. 288, ¶ 11.

¶12 Additionally, even if Meyer’s notice of appeal had listed the final judgments, we would lack jurisdiction because the notices were not filed within thirty days after the judgments were entered. See Ariz. R. Civ. App. P. 9(a). The trial court entered a default judgment in the First Lawsuit on January 22, 2018. The judgment resolved every issue in the case,

MEYER v. BAQUET
Decision of the Court

including attorney fees and costs. *See Decker*, 4 Ariz. App. at 272; *see also Nat'l Broker Assocs., Inc.*, 211 Ariz. 210, ¶ 36. Consequently, the January 2018 judgment in that case was a final, appealable judgment. *See* A.R.S. § 12-2101(A)(1).

¶13 Although the trial court's October 8, 2018 order in the Second Lawsuit included Rule 54(c) finality language, it also granted Meyer's counsel leave to supplement his request for fees and costs. It was therefore not a final judgment. *See Decker*, 4 Ariz. App. at 272; *see also Green*, 221 Ariz. 138, ¶ 14 (quoting *Props. Inv. Enters., Ltd.*, 115 Ariz. at 54); *Nat'l Broker Assocs., Inc.*, 211 Ariz. 210, ¶ 36. However, as noted above, the court issued an amended order on December 19, 2018, expressly denying "any pending request or motion the Court may have missed," which included Meyer's additional request for attorney fees and costs. The amended order was signed and included the necessary language to make it a final judgment under Rule 54(c). *See Fields*, 230 Ariz. 411, ¶¶ 9, 18.

¶14 Meyer's notice of appeal filed on October 21, 2019, was well beyond the thirty-day limit for appealing either final judgment.⁵ *See* Ariz. R. Civ. App. P. 9(a).

Disposition

¶15 For the reasons stated above, we dismiss this appeal.

⁵Even if this court had jurisdiction, Meyer would not be entitled to relief. Meyer has not supported his arguments with citations to relevant portions of the record on which he relies. *See* Ariz. R. Civ. App. P. 13(a)(7)(A) (requiring appellant to include "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 opening brief). Accordingly, in the absence of a properly developed argument, Meyer would have waived any issue related to attorney fees and costs. *See Sholes*, 228 Ariz. 455, ¶ 16 (waiving issues not properly presented in opening brief).