

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

EZEKIEL OPUROKU,
Plaintiff/Appellant,

v.

MARK & FAYE BLAUBACH 401(K) PROFIT SHARING PLAN, MARK LUTHER
BLAUBACH, AND FAYE LOIS BLAUBACH,
Defendants/Appellees.

No. 2 CA-CV 2020-0102
Filed January 12, 2021

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NOT FOR PUBLICATION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 Pinal County
No. CV202000254
The Honorable Stephen J. Fuller, Judge

APPEAL DISMISSED

COUNSEL

Ezekiel Opuroku, Phoenix
In Propria Persona

Jones, Skelton & Hochuli P.L.C., Phoenix
By Chelsey M. Golightly and Alejandro D. Barrientos
Counsel for Defendants/Appellees

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MEMORANDUM DECISION

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

BREARCLIFFE, Judge:

¶1 Ezekiel Oporoku appeals from the trial court’s order granting the Appellees’, Mark and Faye Blaubach 401(k) Profit Sharing Plan, Mark Blaubach, and Faye Blaubach (“the Blaubachs”), motion to dismiss. We dismiss for lack of jurisdiction.

Factual and Procedural Background

¶2 The Blaubachs purchased property (“the property”) in Maricopa County at a foreclosure auction in January 2019. They then instituted eviction proceedings against the prior owner, Oporoku’s sister, and any and all occupants. The justice court entered an eviction order in favor of the Blaubachs in February 2019, granting them, among other things, “[i]mmediate possession of [the] premises.”

¶3 Later that month, Oporoku was lawfully evicted from the property and given fourteen days to remove his belongings. Oporoku went to the property to remove his belongings, and two police officers were dispatched to assist in a “civil standby.” The officers observed a friend of the Blaubachs telling Oporoku that the Blaubachs were allowing him to access the home so he could retrieve his personal items. The officers then explained to everyone present that they “would allow approximately 15 minutes for the civil standby to ensure the peace was not disturbed.”

¶4 Once inside the home, Oporoku claimed that he lived there and was not leaving. Oporoku told the police officers that he had received a court order stating he did not have to leave and instructing him to show the order to the police if they tried to make him leave. The officers reviewed the order and determined that it was an application for an injunction against harassment and an order for a hearing on the matter. The officers then confirmed the lawful eviction and informed Oporoku that he either

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had to leave the property or be arrested for trespass. He refused to leave and was arrested.

¶5 Opuroku then sued the Blaubachs for false imprisonment, negligence, fraud, and intentional infliction of emotional distress. The Blaubachs moved to dismiss under Rule 12(b)(6), Ariz. R. Civ. P., and requested attorney fees and costs. On April 28, 2020, the trial court granted the motion, including reasonable attorney fees, in an unsigned minute entry. On May 8, 2020, the Blaubachs filed an application for attorney fees. On May 18, 2020, Opuroku filed a notice of appeal from the court's April 28 order. In June 2020, the court dismissed the case, awarded the Blaubach's attorney fees and costs, and entered judgment pursuant to Rule 54(c), Ariz. R. Civ. P.

Analysis

¶6 We have an independent duty to determine whether we have jurisdiction to consider an appeal. A.R.S. §§ 12-120.21(A), 12-2101(A); *Camasura v. Camasura*, 238 Ariz. 179, ¶ 5 (App. 2015). "As a general rule, only final judgments are appealable." *Camasura*, 238 Ariz. 179, ¶ 6. A notice of appeal filed before the final judgment is entered is premature and a nullity. *Id.* ¶¶ 6, 16.

¶7 Because the trial court's April 28 order did not determine the amount of attorney fees to be awarded, it was not a final and appealable judgment disposing of all claims. *See AU Enters., Inc. v. Edwards*, 248 Ariz. 109, ¶ 10 (App. 2020). Thus, Opuroku's notice of appeal was premature.

¶8 A premature notice of appeal may, however, be cured under two limited exceptions. Under Rule 9(c), Ariz. R. Civ. App. P., if the order being appealed "disposed of all issues as to all parties and the trial court ultimately entered final judgment upon it," the premature notice of appeal will become effective. *McCleary v. Tripodi*, 243 Ariz. 197, ¶ 16 (App. 2017). And under the "Barassi exception," if only a "ministerial" task remains to be completed, a subsequent final judgment is entered, and no appellee is prejudiced, a premature notice of appeal will similarly nonetheless be effective. *Barassi v. Matison*, 130 Ariz. 418, 422 (1981); *McCleary*, 243 Ariz. 197, ¶ 9.

¶9 The April 28 order did not include attorney fees and thus did not dispose of all issues as to all parties. *Camasura*, 238 Ariz. 179, ¶¶ 11-16 (premature notice of appeal not made effective by Rule 9(c) when, among other things, it did not compute attorney fees). And a trial court's decision

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determining attorney fees and costs is not ministerial. *Id.* ¶ 10. Thus, neither exception applies here, and Oपुरoku’s notice of appeal was “‘ineffective’ and a nullity.” *Craig v. Craig*, 227 Ariz. 105, ¶ 13 (2011) (quoting *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, ¶ 39 (2006)). And, because Oपुरoku did not file a successive notice of appeal encompassing the court’s final Rule 54(c) judgment, we lack jurisdiction to consider his appeal.

Attorney Fees and Costs on Appeal

¶10 The Blaubachs request attorney fees pursuant to A.R.S. § 12-349(A)(1) claiming that Oपुरoku lacked “substantial justification” to bring this appeal. In our discretion, because the Blaubach’s did not raise this court’s lack of jurisdiction, we decline the Blaubach’s request for attorney fees. However, as the prevailing party on appeal, the Blaubachs are entitled to costs incurred upon their compliance with Rule 21, Ariz. R. Civ. App. P. See *Robinson v. Kay*, 225 Ariz. 191, ¶ 8 (App. 2010) (appellee entitled to costs when appeal dismissed for lack of jurisdiction).

Disposition

¶11 Because Oपुरoku’s appeal was premature, does not come within Rule 9(c), Ariz. R. Civ. App. P., or the *Barassi* exception, and no valid and effective notice of appeal was filed, we do not have jurisdiction to consider this appeal. Accordingly, Oपुरoku’s appeal is dismissed for lack of jurisdiction.