

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

TED WILLIAMS,
Plaintiff/Appellee,

v.

JOHN ELLIOT MAYER JR.,
Defendant/Appellant.

No. 2 CA-CV 2020-0112
Filed August 10, 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NOT FOR PUBLICATION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 Pima County
No. C20202150
The Honorable Brenden J. Griffin, Judge

APPEAL DISMISSED

COUNSEL

Law Offices of Lawrence Y. Gee PLLC, Tucson
By Lawrence Y. Gee

and

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By Louis M. Spivack
Counsel for Plaintiff/Appellee

John Elliot Mayer Jr., Tucson
In Propria Persona

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MEMORANDUM DECISION

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

E P P I C H, Presiding Judge:

¶1 In this eviction action, John Mayer appeals from the trial court’s order denying his motions to stay and to dismiss Ted Williams’s amended eviction complaint and granting that complaint. For the following reasons, we dismiss this appeal for lack of jurisdiction.

Factual and Procedural Background

¶2 In May 2020, Williams filed an eviction action against Mayer. In his complaint, Williams alleged he was the owner of the at-issue property (“the property”) because he had purchased it through a sheriff’s sale and Mayer was a holdover tenant who had refused to vacate after the redemption period expired. After being granted leave by the trial court, Williams submitted an amended eviction complaint—including a copy of the deed to the property obtained as a result of the sale.¹ Mayer filed a motion to dismiss the amended complaint. On June 26, the court entered an order granting Williams possession of the property, ordering Mayer to vacate immediately, and denying Mayer’s motions to stay and to dismiss. Mayer filed a notice of appeal from that order.

Jurisdiction

¶3 We have an independent obligation to determine whether we have jurisdiction to consider an appeal. *Camasura v. Camasura*, 238 Ariz. 179, ¶ 5 (App. 2015); see A.R.S. §§ 12-120.21(A), 12-1182, 12-2101(A). Eviction actions “are ‘purely statutory’ and are ‘controlled by statute both as to procedure and damages.’” *AU Enters. Inc. v. Edwards*, 248 Ariz. 109, ¶ 5 (App. 2020) (quoting *DVM Co. v. Stag Tobacconist, Ltd.*, 137 Ariz. 466, 468 (1983)).

¹Williams requested attorney fees in both the complaint and the amended complaint.

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¶4 “As a general rule, only final judgments are appealable. A notice of appeal filed in the absence of a final judgment is premature.” *Camasura*, 238 Ariz. 179, ¶ 6 (citation omitted); *see also* § 12-2101(A)(1); *Edwards*, 248 Ariz. 109, ¶¶ 10-11 (citing civil case law in concluding notice of appeal premature in eviction action).² Our supreme court has recognized a limited exception where premature notices of appeal may be cured. *See Baker v. Bradley*, 231 Ariz. 475, ¶¶ 10-11 (App. 2013); *see also Edwards*, 248 Ariz. 109, ¶ 10 (Premature notices of appeal may be cured if order appealed from “disposed of all issues as to all parties and the trial court ultimately entered final judgment upon it.” (quoting *McCleary v. Tripodi*, 243 Ariz. 197, ¶ 16 (App. 2017))). This exception applies “if no decision of the court could change and the only remaining task is merely ministerial.” *McCleary*, 243 Ariz. 197, ¶ 9 (quoting *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, ¶ 37 (2006)). If a premature notice of appeal is not cured, we do not have jurisdiction to consider the merits of the appeal. *See Edwards*, 248 Ariz. 109, ¶ 11.

¶5 Here, Mayer is attempting to appeal from the June 26 order that resolved the issue of possession of the premises against him but did not address Williams’s request for attorney fees and costs. Although the trial court found Mayer guilty of “special detainer,” this appears to be a forcible detainer action, as Williams contends. *See Keenen v. Biles*, 199 Ariz. 266, n.1 (App. 2001) (special detainer rather than forcible detainer because “[s]pecial detainer actions are situations where a landlord files an action to terminate a tenant’s lease for breach of a current, valid lease agreement”); A.R.S. § 12-1173.01(A)(4) (Forcible detainer action proper when “property has been sold by virtue of an execution and the title has been duly transferred.”).

¶6 If a defendant is found guilty of forcible detainer, “the court shall give judgment for the plaintiff for . . . damages, attorney fees, court and other costs.” A.R.S. § 12-1178(A). If a defendant is found guilty of special detainer, “the court may assess damages, attorney fees and costs as prescribed by law.” A.R.S. § 33-1377(D); *Iverson v. Nava*, 248 Ariz. 443, ¶ 27 (App. 2020). Assuming, without deciding, that this is a forcible detainer action, attorney fees are mandatory, and we must dismiss. *See Edwards*, 248 Ariz. 109, ¶¶ 5, 7, 10-12. But even if this is a special detainer action, as characterized by the trial court, and an award of attorney fees is

²There are other grounds in § 12-2101 from which an appeal may be taken, however, none appear applicable in this case.

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discretionary, the issue of attorney fees has still not been decided. Because the judgment did not dispose of all issues as to all parties, and a substantive task remains under either forcible detainer or special detainer, the June 26 order did not constitute a final judgment, Mayer's notice of appeal was prematurely filed, and the limited exception permitting cure when only ministerial acts remain does not apply. *See Bradley*, 231 Ariz. 475, ¶ 9 (court of appeals jurisdiction generally limited to "appeals from final judgments which dispose of all claims and parties"); *Fields v. Oates*, 230 Ariz. 411, ¶ 13 (App. 2012) ("[R]esolution of an application for attorneys' fees is a discretionary determination, not a merely ministerial act."). Therefore, we lack jurisdiction to address the merits of this appeal. *See id.* ¶¶ 11, 13 (premature notice of appeal not cured when attorney fees outstanding).

Attorney Fees and Costs on Appeal

¶7 Williams requests his attorney fees and costs on appeal pursuant to Rule 25 and Rule 21, Ariz. R. Civ. App. P. He argues that Mayer's appeal is "completely unsupported by any law in Arizona or in any other jurisdiction, state or federal, and that his filing the appeal was, in fact, frivolous." *See Price v. Price*, 134 Ariz. 112, 113-14 (App. 1982). In the exercise of our discretion, we deny Williams's request for attorney fees because he did not raise this court's lack of jurisdiction. *See Robinson v. Kay*, 225 Ariz. 191, ¶ 8 (App. 2010) (denying request for attorney fees under Rule 25, in part, for not challenging jurisdiction). However, as the prevailing party on appeal, Williams is entitled to his costs upon his compliance with Rule 21. *See id.* (appellee still entitled to costs when appeal dismissed for lack of jurisdiction).

Disposition

¶8 For the foregoing reasons, we dismiss this appeal.