

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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LEONARD J. McDONALD, AS TRUSTEE,  
*Plaintiff/Appellee,*

*v.*

BETH FORD, PIMA COUNTY TREASURER,  
*Defendant/Appellee.*

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ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM,  
*Applicant/Appellee,*

*v.*

CYNTHIA FLORES-HUES,  
*Applicant/Appellant.*

No. 2 CA-CV 2020-0138  
Filed April 29, 2021

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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NOT FOR PUBLICATION  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).*

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Appeal from the Superior Court in Pima County  
No. C20183906  
The Honorable Leslie Miller, Judge

**APPEAL DISMISSED**

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COUNSEL

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**MEMORANDUM DECISION**

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

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E P P I C H, Presiding Judge:

¶1 Cynthia Flores-Hues appeals from the trial court’s order denying her application for distribution of excess proceeds following a trustee’s sale. Because we lack jurisdiction, we dismiss this appeal.

**Factual and Procedural Background**

¶2 In 2018, Leonard McDonald conducted a trustee’s sale of a residence. The sale resulted in \$45,827.22 in excess proceeds. McDonald subsequently filed a complaint and the excess proceeds were deposited with the Pima County Treasurer, Beth Ford.<sup>1</sup> The complaint listed two lien holders for the excess proceeds—a judgment lien holder in second lien position and Arizona Health Care Cost Containment System (AHCCCS) in

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<sup>1</sup>The Pima County Treasurer filed a notice with this court stating that she takes no position on the arguments raised in this appeal.

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third lien position. The trial court ordered \$7,239.61 in proceeds to be distributed to the second position lien holder and \$38,587.61 remained.<sup>2</sup>

¶3 Flores-Hues, in her capacity as personal representative of the estate of the former owner of the residence, filed an application for distribution of the excess proceeds pursuant to A.R.S. § 33-812(G). AHCCCS subsequently filed a competing application for distribution.<sup>3</sup> In August 2020, the trial court denied Flores-Hues' application for distribution on the grounds that "[a]s a lienholder with an interest as of the date of the sale, AHCCCS has priority over Flores[-Hues]." Flores-Hues appealed that order. In October 2020, the court issued another order, directing the Pima County Treasurer to release the excess proceeds to AHCCCS.

**Discussion**

¶4 Flores-Hues asserts we have jurisdiction over this appeal pursuant to A.R.S. § 12-2101(A)(3), and AHCCCS contends that we lack jurisdiction because the order from which Flores-Hues "appeals was not a final judgment and did not prevent the entry of a final order or judgment from which an appeal might be taken." Flores-Hues did not support her claim of jurisdiction or respond in her reply to AHCCCS's argument, but in any event, "we have an independent obligation in every appeal to ensure we have jurisdiction, and we must dismiss an appeal over which we lack jurisdiction," *Robinson v. Kay*, 225 Ariz. 191, ¶ 4 (App. 2010) (citations omitted). The legislature defines, and limits, our jurisdiction, and so we must determine whether any statutory provision grants us jurisdiction in this circumstance. *Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 420, ¶ 4 (App. 2016). For the following reasons, we conclude none does, and we therefore lack jurisdiction over this appeal.

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<sup>2</sup>In this order, the trial court stated, "There being no further matters pending before this Court, this Order is entered as a final Judgment pursuant to [Rule 54(c)]." However, this judgment was not final pursuant to Rule 54(c) because the court still had before it, and subsequently ruled on, the remaining excess proceeds. See *Madrid v. Avalon Care Ctr.-Chandler, L.L.C.*, 236 Ariz. 221, ¶ 6 (App. 2014) ("A statement that a judgment is final pursuant to Rule 54(c) when, in fact, claims remain pending does not make a judgment final and appealable.").

<sup>3</sup>Flores-Hues and AHCCCS appear in this appeal as claimants to the excess proceeds.

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¶5 Section 12-2101(A) lists various instances from which an appeal may be taken, but the statutory provisions do not account for the August order from which Flores-Hues appeals. See § 12-2101(A)(1)–(11). Flores-Hues relies on § 12-2101(A)(3), which allows an appeal from an “order affecting a substantial right made in any action when the order in effect determine[d] the action and prevent[ed] judgment from which an appeal might be taken.”

¶6 The order from which Flores-Hues appeals was unsigned by the judge and not certified as final under Rule 54(b), Ariz. R. Civ. P. See *Klebba v. Carpenter*, 213 Ariz. 91, ¶ 6 (2006) (Rule 58(b), Ariz. R. Civ. P., requires that “all judgments must be in writing and signed by a judge” and applies to any order made appealable by statute.). But, “compliance with Rule 54(b) or 54(c) is not required for [a ruling under] § 12-2101(A)(3).” *Brumett*, 240 Ariz. 420, ¶ 19. Flores-Hues has not, however, explained how the order prevents a judgment from which an appeal could be taken. Indeed, as detailed above, the trial court entered a further order to release the funds in October 2020. See *Bekelian v. JP Morgan Chase Bank NA*, 246 Ariz. 352, ¶¶ 4-5 (App. 2019) (accepting appeal of excess proceeds award under subsection (A)(1), not under subsection (A)(3)).

¶7 The order here, however, solely denied Flores-Hues’ application for distribution and determined AHCCCS had priority as a lienholder. Although the order noted that “AHCCCS’s Application will deplete the excess proceeds,” the trial court still had to distribute the funds, which it subsequently ordered in October.<sup>4</sup> Thus, the challenged order was not a final judgment. See § 12-2101(A)(1).

¶8 Instead, the order was interlocutory. Rule 54(b), (c) compliance is not required for rulings under § 12-2101(A)(6)–(8) to be appealable, *Brumett*, 240 Ariz. 420, ¶ 17, but this order is not an appealable “interlocutory judgment” because it did not “direct[] partition to be made,” § 12-2101(A)(7), nor did it clearly “direct[] an accounting or other proceeding to determine the amount of the recovery,” § 12-2101(A)(6), (8); see *Bilke v. State*, 206 Ariz. 462, ¶ 18 (2003) (under § 12-2101(A)(6), formerly § 12-2101(G), the order must

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<sup>4</sup> The October order, while signed, does not include language certifying it as final pursuant to Rule 54(c). Final judgments appealed pursuant to § 12-2101(A)(1) are “appealable when ‘the court states that no further matters remain pending and that the judgment is entered pursuant to Rule 54(c).’” *Brumett*, 240 Ariz. 420, ¶ 1 (quoting Ariz. R. Civ. P. 54(c)).

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include some express language that the only issue remaining is the amount of recovery).

¶9 Further, to the extent this action could be seen as a formal proceeding under title 14, *see* § 12-2101(A)(9), we still lack jurisdiction.<sup>5</sup> “The Civil Rules apply to probate proceedings unless they are inconsistent with the[] probate rules or A.R.S. Title 14.” Ariz. R. Prob. P. 4(a)(1); *see also* A.R.S. § 14-1304 (“Unless specifically provided for to the contrary . . . the rules of probate procedure govern formal proceedings under [title 14].”). Because the order appealed from was not signed, nor certified as final under Rule 54(b), it is not appealable under § 12-2101(A)(9). *See Brumett*, 240 Ariz. 420, ¶ 13 (an order entered in formal title 14 proceedings is not appealable absent compliance with Rule 54(b), (c)); *Klebba*, 213 Ariz. 91, ¶ 6 (order must be signed). Accordingly, we lack jurisdiction over this appeal.

**Disposition**

¶10 For the foregoing reasons, this appeal is dismissed.

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<sup>5</sup> “‘Formal proceedings’ means proceedings that are conducted before a judge with notice to interested persons.” A.R.S. § 14-1201(26).