IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

TIMOTHY GRIVOIS-SHAH,
Petitioner/Appellant,

and

RAVI GRIVOIS-SHAH,
Respondent/Appellee.

No. 2 CA-CV 2022-0009-FC
Filed February 14, 2023

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NOT FOR PUBLICATION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. D20210213
The Honorable Cynthia T. Kuhn, Judge

APPEAL DISMISSED

COUNSEL

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and

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MEMORANDUM DECISION

Vice Chief Judge Staring authored the decision of the Court, in which Judge Sklar and Judge O'Neil concurred.

S T A R I N G, Vice Chief Judge:

¶1 Timothy Grivois-Shah appeals from the trial court's grant of partial summary judgment in favor of Ravi Grivois-Shah as to the date of the parties' marriage for purposes of property division upon dissolution. For the following reasons, we dismiss this appeal for lack of jurisdiction.

Factual and Procedural Background

¶2 Timothy and Ravi entered into a civil union in Illinois on June 5, 2011. They later moved to Arizona, where they married on August 8, 2015. In January 2021, Timothy filed for dissolution. Several months later, both parties moved for partial summary judgment regarding the date of their marriage. Timothy argued the date of marriage was June 5, 2011, the date the parties had entered into the civil union in Illinois. Ravi asserted the date of marriage was August 8, 2015, the date they had legally married in Arizona. In granting Ravi's motion, the trial court concluded the date of the parties' marriage for purposes of property division was August 8, 2015, and certified its ruling as "a final appealable order" pursuant to Rule 78(b), Ariz. R. Fam. Law P.[1] Timothy appealed.

[1]In August 2022, our supreme court adopted amendments to Rule 78. Ariz. Sup. Ct. Order R-22-0005 (Aug. 29, 2022). The amendments apply

Discussion

¶3 Timothy maintains the trial court properly certified its grant of Ravi's motion for partial summary judgment under Rule 78(b) and we therefore have jurisdiction over this appeal pursuant to A.R.S. § 12-2101(A)(1). To be appealable under § 12-2101(A)(1), a judgment must be final. Typically, the decree of dissolution constitutes the "final judgment" in a family law case for purposes of appellate jurisdiction under § 12-2101(A)(1). *Yee v. Yee*, 251 Ariz. 71, ¶ 2 & n.3 (App. 2021). However, Rule 78(b) allows a trial court to certify a pre-decree ruling as final even if other claims in the proceeding remain pending. *See id.* ¶ 11 ("For an appeal from a decree or a pre-decree order, it may be that a certification of finality would be required for such an order to become an appealable 'final judgment' under A.R.S. § 12-2101(A)(1).").

¶4 Notwithstanding a trial court's certification of its ruling as final and appealable under Rule 78(b), such certification must be correct for us to exercise jurisdiction over an appeal. *See Grand v. Nacchio*, 214 Ariz. 9, ¶ 17 (App. 2006) (reviewing certification under Rule 54(b), Ariz. R. Civ. P.); *see also* Ariz. R. Fam. Law P. 1(c) ("If language in these rules is substantially the same as language in the civil rules, case law interpreting the language of the civil rules will apply to these rules."); Ariz. R. Civ. P. 54(b) (substantially similar to Rule 78(b) after 2022 amendment); *Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 420, ¶¶ 4-6 (App. 2016) (Rule 54(b) and (c) "define what constitutes an appealable 'final judgment'" under § 12-2101(A)(1)). We review such certification de novo, in keeping with our "independent obligation to determine whether we have appellate jurisdiction." *Dabrowski v. Bartlett*, 246 Ariz. 504, ¶ 13 (App. 2019).

¶5 As relevant here, Rule 78(b) permits a trial court to "direct the entry of an appealable judgment as to one or more, but fewer than all, claims," but "only if the court expressly determines there is no just reason for delay and recites that the judgment is entered under Rule 78(b)." Accordingly, certification under Rule 78(b) does not provide us with jurisdiction to consider an appeal if the ruling does not dispose of at least one claim in a multi-claim action. *See Grand*, 214 Ariz. 9, ¶ 17. "[A] claim is separable from others remaining to be adjudicated when the nature of the claim already determined is 'such that no appellate court would have to decide the same issues more than once even if there are subsequent

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to "all cases pending in the superior courts and appellate courts on the filing date of this order," which includes the matter before us. *Id.*

appeals.'" *Cont'l Cas. v. Superior Court*, 130 Ariz. 189, 191 (1981) (quoting *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 6 (1980)).

¶6 Timothy argues "the issue of the parties' date of marriage finally determines the characterization of community assets, debts, and obligations, which is separate from the remaining claims to be adjudicated." We disagree. The trial court's ruling does not fully resolve any claims related to the dissolution proceedings, instead determining only a predicate issue to division of the parties' property. *See Deal v. Deal*, 252 Ariz. 387, ¶ 8 (App. 2021) (grant of partial summary judgment not an appealable order where court failed to dispose of any claims). Thus, the court's certification under Rule 78(b) was improper, and we lack appellate jurisdiction. *See Grand*, 214 Ariz. 9, ¶ 17.

¶7 Alternatively, for the first time in supplemental briefing, Timothy asks us to "accept special action jurisdiction to evaluate this purely legal issue of statewide importance." In deciding whether to exercise special-action jurisdiction, we consider whether there is "an equally plain, speedy, and adequate remedy by appeal," Ariz. R. P. Spec. Act. 1(a), and if such review is necessary to address recurring legal questions of statewide importance, *State ex rel. Romley v. Fields*, 201 Ariz. 321, ¶ 4 (App. 2001). In our discretion, we decline to accept special-action jurisdiction. *See id.* (special-action review highly discretionary).

Attorney Fees

¶8 Both Timothy and Ravi request attorney fees on appeal pursuant to A.R.S. § 25-324. Although we lack jurisdiction to consider this appeal, in our discretion, we may nevertheless enter an award for attorney fees and costs. *See Carlson v. Carlson*, 75 Ariz. 308, 311 (1953). A court may award fees and expenses under § 25-324 "based on consideration of financial resources and . . . on consideration of reasonableness of positions."

¶9 We deny Timothy's request for attorney fees, which was improperly raised for the first time in his reply brief. *See* Ariz. R. Civ. App. P. 13(a)(8), (c) (opening brief must contain notice of party's intent to claim attorney fees and reply brief "must be strictly confined to rebuttal of points made in the appellee's answering brief"). In the exercise of our discretion, we also deny Ravi's request for fees. *See Backstrand v. Backstrand*, 250 Ariz. 339, ¶ 33 (App. 2020). However, Ravi is entitled to his costs on appeal upon compliance with Rule 21, Ariz. R. Civ. App. P. *See* A.R.S. § 12-341.

Disposition

¶10 For the foregoing reasons, we dismiss this appeal for lack of jurisdiction.