IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

NITIN ("BOBBY") PATEL, AN INDIVIDUAL,
Plaintiff/Judgment Creditor/Appellee,

v.

GREENMED INC., PURPLEMED INC., MKHS LLC, KM MANAGEMENT SERVICES LLC, KITTRELL CHILDREN'S TRUST, BARBARA AND MURPHY KITTRELL LIVING TRUST, MKHS HOLDING COMPANY LLC, MKHS CULTIVATION SERVICES LLC, MKHS DISPENSARY SERVICES LLC, KRS TUCSON MANAGEMENT LLC, MJB MANAGEMENT LLC, AND WHITE BEARD MANAGEMENT LLC,
Defendants/Judgment Debtors/Appellants.

No. 2 CA-CV 2022-0126
Filed April 11, 2024

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NOT FOR PUBLICATION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. C20160596
The Honorable Michael J. Butler, Judge

DISMISSED IN PART; AFFIRMED IN PART

COUNSEL

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MEMORANDUM DECISION

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

G A R D, Judge:

¶1 This case involves multiple garnishment and sanctions judgments, all arising from Nitin "Bobby" Patel's efforts to collect on a 2016 judgment against Murphy and Barbara Kittrell. In this proceeding, numerous entities connected to the Kittrells appeal from the superior court's orders denying their motion for relief from judgment, *see* Ariz. R. Civ. P. 60, and directing that certain disputed funds held in escrow be distributed to Patel. For the following reasons, we dismiss for lack of jurisdiction the entities' challenge to the denial of their motion for relief from judgment. We affirm the court's order distributing the escrow funds.

I. Factual and Procedural Background[1]

¶2 In 2014, Murphy executed a promissory note to Patel for the repayment of a $340,000 loan. After Murphy failed to make any payments, the full amount under the note was accelerated and began to accrue interest. In April 2015, months after the note's maturity date, Murphy wrote and signed a post-dated check for $25,000, but it was returned for insufficient funds.

¶3 In 2016, Patel filed a complaint against Murphy and Barbara, alleging breach of contract under the promissory note and issuing a bad check with the intent to defraud. The superior court granted summary judgment in Patel's favor and entered judgment against the Kittrells for the

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[1]This matter has a lengthy and contentious history. We set forth that history in detail, as it is relevant to the issues presented. In addition, to avoid confusion, we refer to Murphy and Barbara Kittrell by their first names when discussing them individually.

principal amount of the loan, as well as additional damages, fees, and costs, for a combined amount of $402,905.50, plus interest.

A. Applications for Writs of Garnishment to Four Kittrell Entities and January 2018 Sanctions Order

¶4 Over the next few years, Patel attempted to collect the judgment from the Kittrells. He requested supplemental proceedings to obtain information regarding the Kittrells' assets, income, tax returns, any entities they owned or controlled, and any other resources with which they could pay the judgment. The superior court granted the request and ordered the Kittrells to provide a signed Internal Revenue Service (IRS) release form for tax years 2014 through 2016 by a date certain. The court cautioned the Kittrells that it would assess sanctions in the amount of $300 for every day the release was past due. The Kittrells did not comply with the order and, in January 2018, the court sanctioned them $28,500 to reflect their ninety-five days of non-compliance. The court set a new deadline and again cautioned the Kittrells that non-compliance would result in accruing sanctions.

¶5 During this same period, in October 2017, Patel applied for writs of garnishment directed to four trusts and entities controlled by the Kittrells, each of which Patel alleged was indebted to the Kittrells for non-earnings: Murphy Kittrell Health Systems, LLC (MKHS), the Kittrell Children's Trust (KCT), the Barbara and Murphy Kittrell Living Trust (BMKLT), and KM Management Services, LLC (KMM). The garnishees submitted identical answers, each denying being indebted to or in possession of the Kittrells' money or property. Patel thereafter requested a garnishment hearing, arguing that, contrary to the garnishees' responses, Murphy had admitted under oath at a deposition that he and Barbara received income from KMM and the trusts and that they used the garnishees' assets to pay personal expenses. But before the hearing, the parties—along with two licensed medical marijuana entities operated by the Kittrells, Purplemed Inc. and Greenmed Inc.—reached a settlement and stipulated to stay the garnishment and collection proceedings. The court vacated the garnishment hearing and stayed all proceedings, including the entry of judgment on its January 2018 order imposing sanctions.

¶6 A few months later, Patel moved to terminate the stay and requested a hearing in the garnishment proceedings due to a "material breach of non-payment under the enforceable settlement." Patel also moved to amend his complaint to join Purplemed and Greenmed as successor defendants, alleging that those entities had guaranteed a portion

of the judgment debt under the settlement and then refused to honor their guaranty. The court granted Patel's motions, and he amended his complaint to include Purplemed and Greenmed, a count of breach of settlement agreement against the Kittrells, and a count of breach of guaranty against Purplemed and Greenmed.

B. Garnishment Judgments Against Kittrell-Owned Business Entities and Sanctions Orders of January 2019 and March 2021

¶7 After amending his complaint, Patel moved for an order to show cause why the Kittrells should not be held in contempt and asked the superior court to appoint a receiver over the Kittrells' entities, including Purplemed and Greenmed. Patel argued that the Kittrells had been thwarting his collection efforts by holding their assets in the garnishee entities, which Patel maintained they had created specifically to evade collection.

¶8 Relying again on Murphy's deposition testimony, Patel explained the purported organization of the Kittrells' entities. Another Kittrell business, Turnkey Development LLC, operated and managed Purplemed and Greenmed from April 2013 until it became insolvent in 2014. In October 2014, Purplemed and Greenmed terminated their contracts with Turnkey and contracted with MKHS to provide management services. Murphy was the sole member and manager of MKHS. KMM had been formed solely to "hold funds that belong[ed] to MKHS" and its investors, as well as to manage payroll. Patel alleged that income flowed "from Purplemed and Greenmed to MKHS through KMM, and [was] shuffled back and forth between the [g]arnishees like an elaborate carnival shell game."

¶9 Patel also argued that garnishees BMKLT and KCT were invalid trusts that had been established "for the fraudulent purpose of evading creditors," and he urged the superior court not to consider any assets titled under them to be trust assets. Murphy testified in his deposition that the Kittrells had changed BMKLT from a revocable to an irrevocable trust "for tax purposes." But he admitted to never having signed any tax returns and could not remember an existing taxpayer identification number. In addition, Murphy admitted the Kittrells regularly used BMKLT's account for personal expenses, including to pay their mortgage and utilities, and to purchase groceries and other items.

¶10 Based on this information, Patel requested that the superior court find the trusts and corporate entities to be the Kittrells' alter egos and thus liable for their debts, and that the court appoint a receiver over Greenmed and Purplemed. He also urged the court to order the Kittrells to show cause why they should not be held in civil contempt and subject to sanctions for their continued failure to execute the IRS forms. While the motion was pending, Patel moved for summary judgment against Greenmed and Purplemed for their failure to honor their guaranty under the settlement.

¶11 The parties, except Barbara, appeared for a hearing on the pending motions in October 2018. At the start of the hearing, the parties informed the superior court of a bankruptcy filing that prevented it from proceeding as to both Murphy and Barbara. The court, however, denied Patel's application to appoint a receiver as to Greenmed and Purplemed, and it granted summary judgment in Patel's favor and against those defendants. Those entities eventually paid and satisfied in full the judgments entered against them.

¶12 Shortly after the hearing, Patel discovered that Barbara had not filed for bankruptcy, and moved for sanctions against her for her continued non-compliance with the superior court's September 2017 and January 2018 orders to execute the IRS release forms. He also asked the court to enter judgment against garnishees MKHS, KMM, BMKLT, and KCT based on Murphy's testimony that Barbara received $2,000 every two weeks from the garnishees. In November 2018, the court entered judgment against the garnishee entities in the amount of $2,000 every two weeks until any and all judgments against Barbara were satisfied.

¶13 In January 2019, the superior court held a hearing regarding Patel's request for an order to show cause and for sanctions. The court granted Patel's motion for sanctions and entered judgment against the Kittrells in the amount of $69,600, and against garnishees MKHS, KMM, KCT, and BMKLT in the amount of $3,500 every two weeks until any and all judgments against Murphy were satisfied.[2]

¶14 In December 2020, Patel moved for sanctions in the amount of $210,000 for the Kittrells' continued failure to comply with the superior court's three-year-old order requiring them to sign and deliver IRS release

[2]The Kittrells filed a notice of appeal regarding the two judgments, but ultimately did not pursue that appeal.

forms. In March 2021, the court found the Kittrells had failed to comply with its order for an additional 749 days. The court ordered the Kittrells to provide the signed IRS forms for years 2014 through 2019 within ten days, appointed counsel to execute the forms if the Kittrells failed to do so, and entered judgment against Murphy and Barbara in the amount of $224,700. By this point, Patel had obtained three separate sanctions awards based on the September 2018 order, in the amounts of $28,500, $69,600, and $224,700.[3]

C. September 2021 Charging Order

¶15 In September 2021, Patel applied for a charging order under A.R.S. § 29-3503(A) against judgment debtors MKHS and KCT, arising out of the November 2018 and January 2019 garnishment judgments. Patel alleged that those entities, which were the only remaining garnishees actively owning assets or conducting business, held transferable interests in several limited liability companies: MKHS Holding Company, MKHS Cultivation Services (MKHS-CS), MKHS Dispensary Services (MKHS-DS), KRS Tucson Management, MJB Management, and White Beard Management. Patel explained that MKHS-CS and MKHS-DS were expected imminently to sell Purplemed to another entity, Harvest, for $15 million ("the Harvest Sale"). In response, the Kittrells and their entities challenged the garnishment judgments as invalid and argued that, if valid, Arizona's statutes governing wage garnishment required that they be reduced by seventy-five percent.

¶16 The superior court, however, granted Patel's application, requiring that the Kittrells, MKHS, KMM, KCT, BMKLT, "and/or their representatives, agents, servants, employees, and attorneys, and any and all persons working or participating with them shall not transfer, move, or re-direct any money or assets that avoids, thwarts, or misdirects the interests of or distributions to or for the benefit of [Patel] from application" of the judgments. At the hearing on the issue, counsel also stipulated that "[i]f the charging order result[ed] in an amount that is beyond the undisputed amount of the remaining judgment, it [would] remain in a mutually agreed upon escrow account until that issue [was] resolved."

[3]The Kittrells appealed the March 2021 sanctions order. We issued a memorandum decision in January 2022 dismissing that appeal for lack of jurisdiction. *Patel v. Kittrell*, No. 2 CA-CV 2021-0069 (Ariz. App. Jan. 24, 2022) (mem. decision).

D. Escrow Agreement and Rule 60 Motion

¶17 About three months later, garnishees MKHS, KMM, and KCT requested a hearing, noting that there was an ongoing dispute between the parties "as to the amounts that [were] properly at issue under the laws related to garnishment and supplemental proceedings." While the garnishees' motion was pending, Patel applied for a writ of garnishment for non-earnings against garnishee Pima Federal Credit Union (PFCU), for an account that held proceeds from the Harvest Sale. PFCU answered that it held an account "for a defendant named in the case" but not for either of the Kittrells. Patel objected and requested a hearing, reporting to the superior court that the PFCU account was titled in Greenmed's name and proposing that the Kittrells had directed the Harvest Sale's proceeds to Greenmed's account because Greenmed was "the only entity against which there does not appear to be an outstanding judgment."

¶18 In April 2022, Patel; MKHS; KMM; KCT; BMKLT; ADND Payroll, an entity operated by the Kittrells' daughter; and Greenmed entered into an agreement to dismiss Patel's garnishment application related to the PFCU account and to place all disputed funds from that account, amounting to $683,294.25, into escrow pending resolution of the parties' dispute (the "Escrow Agreement"). The Escrow Agreement also required Patel to make no further efforts to garnish the PFCU account, or any other account not specifically under the name of a judgment debtor or garnishee, until the dispute was resolved. In accordance with the parties' stipulation, the superior court dismissed the writ of garnishment involving PFCU.

¶19 The superior court set a deadline for the parties to submit briefing regarding who was entitled to own the funds held in the escrow account. Patel posited that he was entitled to the funds because they had never actually belonged to Greenmed, but to judgment debtors MKHS and KCT, and that the Kittrells and their entities had "conspired" to divert funds from Greenmed's sale to evade the charging order. Patel claimed that an "asset purchase agreement and funds flow memorandum" from the Harvest Sale showed that proceeds had been deposited into Greenmed's account even though no party was indebted to Greenmed and, in fact, Greenmed owed a substantial amount of money to Purplemed. Patel also argued that any challenge to the underlying wage garnishment judgments should have been raised in a timely Rule 59 or Rule 60 motion, but that it was now "too late to reopen final, non-appealable judgments."

¶20 The Kittrells' entities—consisting at this point of Greenmed, MKHS, KMM, KCT, BMKLT, MKHS Holding, MKHS-CS, MKHS-DS, KRS Tucson Management, MJB Management, and White Beard Management—responded, arguing that the escrow funds belonged to MKHS-DS, which was not subject to any garnishment order. The entities also contended that the garnishment orders were "not actual judgments" against the garnishees but instead required them to pay amounts to Patel that otherwise would have been paid to the Kittrells. And they posited that it was not too late to challenge the validity and enforceability of the garnishment orders because Patel's counsel had agreed that the amount owed remained in controversy.

¶21 The entities also moved to "clarify, reconsider, vacate, and/or set aside" the November 2018 and January 2019 garnishment orders, citing Rule 60(a) and (b)(1), (4), and (6), Ariz. R. Civ. P., and making arguments similar to those they had made in response to Patel's pleading on the ownership dispute. The entities first argued that Patel had originally requested a hearing on garnishment of *non-earnings*, and that their initial answers had not been incorrect in light of Murphy's testimony but rather were correct answers to Patel's inquiry regarding non-earnings. They therefore contended that wage garnishment had never been requested and no substantive hearing had been held on that type of garnishment, despite the court signing Patel's proposed orders. The entities further argued that the orders violated A.R.S. § 12-1598 and A.R.S. § 33-1131 by garnishing all of the Kittrells' wages because only twenty-five percent of their disposable income could lawfully be garnished. Thus, the entities claimed that the garnishment orders should be vacated as void or, alternatively, reduced to twenty-five percent of their disposable earnings. In a notice treating the motion as one to reconsider under Rule 7.1, Ariz. R. Civ. P., Patel argued that the motion was untimely, that MKHS and KCT were proper judgment debtors, and that the escrow funds should be diverted to him.

¶22 At oral argument in July 2022, the entities agreed the Rule 60 motion was untimely on the basis of subsection (b)(1) because more than six months had passed after entry of the relevant judgments. *See* Ariz. R. Civ. P. 60(c)(1). The entities proceeded only as to subsection (b)(4), arguing that the superior court had lacked jurisdiction to enter the garnishment orders because it ignored the wage garnishment statutes in violation of Arizona law. The court, however, distinguished between a void judgment under Rule 60(b)(4) and a *voidable* judgment, stating the latter is "one with which the [c]ourt has jurisdiction over the subject matter and parties but is otherwise erroneous and subject to reversal." It concluded that it had jurisdiction to enter the garnishment orders and that Rule 60(b)(4) therefore

did not apply. It further concluded that relief was not appropriate under any other subsection, including (b)(6), because the entities had not sought relief within a reasonable period of time; accordingly, although it did not expressly do so, the court essentially denied the entities' motion.

¶23 In August 2022, the entities moved to reconsider the motion's denial, contending that the superior court had not addressed the argument that it lacked jurisdiction over the particular judgment or order entered. They reiterated that the judgments were void because the court had disregarded statutory requirements governing earnings and non-earnings garnishments, and that Patel had filed only a non-earnings garnishment that did not satisfy the requirements for a wage garnishment. As a result, they argued, neither the debtors nor the garnishees had received notice that the Kittrells' wages could be garnished on the basis of non-earnings applications, violating due process.

¶24 On August 15, 2022, the court denied the motion to reconsider, explaining:

> It cannot be disputed . . . that [the judge] had the authority as a superior court judge to issue non-earnings garnishments, earnings garnishments, or both, depending upon his determination of the relevant facts. Defendant's assertions that [the judge] issued these garnishments in error does not mean he lacked jurisdiction to issue the garnishments in the first place. The Court today makes no determination whether [the judge's] orders are correct, and it need not do so. Orders that one party in a lawsuit believe are not correct are appealable, not void.

The entities filed a notice appealing this ruling on September 15, 2022.

E. Ownership of Escrow Funds

¶25 Separately from the Rule 60 motion, the parties addressed the ownership of the escrow funds at the July 2022 hearing. Patel explained that after the superior court had entered the November 2018 and January 2019 judgments based on Murphy's testimony that MKHS employed the Kittrells, the Kittrells "changed who their employer was by the next payroll time period" to ADND Payroll, operated by their daughter. In October

2019, the judge who entered the garnishment judgments had found, in a separate case, that "MKHS, among other entities, are alter-egos of these judgment debtors" as a result of "fraudulent transfers in which [the Kittrells] secrete their assets." Patel alleged that the Kittrells often "flip-flopped" on the ownership of certain assets depending on whether a creditor had a judgment against them personally or one of their entities. And in this case, he explained, the Kittrells had originally claimed that the money in the PFCU account was wired to Greenmed on behalf of MKHS-DS, but Greenmed later changed position and claimed the money belonged to it and not MKHS. Greenmed stated it had assumed $3.69 million in debt during the Harvest Sale and, in turn, it was entitled to the $1.97 million from the PFCU account.

¶26 Patel argued he was entitled to the escrow money regardless whether it belonged to MKHS, Purplemed, or Greenmed. He first introduced evidence that Greenmed and Purplemed owed MKHS about $6.2 million. He presented more than fifty exhibits, including tax returns and balance sheets that Greenmed and Purplemed had provided to PFCU, demonstrating that Greenmed was indebted to MKHS and Purplemed and that Purplemed was indebted to MKHS. Patel then explained the allocation of proceeds from the Harvest Sale, asserting that most of the amounts paid were to MKHS's creditors. Although the Kittrells and their entities had claimed that all the tax returns were inaccurate and were subsequently "fixed with the IRS," an amended tax return had not been filed. And even the purportedly corrected documents showed that Purplemed owed MKHS about $2.3 million. Thus, Patel proposed that, if the money belonged to Greenmed or Purplemed, both of those entities were obligated to Patel's judgment debtor—MKHS. And if the money belonged solely to Greenmed, and Greenmed had assumed Purplemed's debt, Patel could reach into Greenmed's account to garnish the money.

¶27 The entities argued that the "garnishments stem[med] from underlying personal judgments" and that Greenmed and MKHS-DS were not garnishees. The entities explained that under the Harvest Sale agreement, MKHS-DS, as the entity holding management rights, was the seller; it is wholly owned by MKHS, which in turn is wholly owned by MKHS Holding Company, which is eighty-five percent owned by KCT. The seller parties included MKHS-CS, Purplemed, MKHS, MKHS Holding Company, and KCT. According to the entities, those seller parties did not have any "sort of freestanding right to receive any of the proceeds or incomes," only "the right to authorize the sale." Thus, the entities maintained, it was "clear" that MKHS-DS had been the seller, and that the

proceeds had been paid into Greenmed's account because it was the only entity with a bank account.

¶28 The entities further contended there had been an agreement between Greenmed and Purplemed to "pay off debts and liabilities, inner-company debts, unsecured liabilities, vendors, [etc.], that were owed by MKHS Dispensary." They contended that dealing with those debts was a condition to the purchase by Harvest which led to Greenmed agreeing to assume the debt. They argued that "Purplemed owed a lot of money to Greenmed and owed a lot of money to MKHS Dispensary" and that the sale proceeds would be used to pay those debts. Ultimately, the entities maintained that Patel could not obtain the funds from Greenmed "without any order against Greenmed." The court granted the entities leave to review Patel's exhibits and file any objections, and took the matter under advisement.

¶29 The entities subsequently objected to Patel's exhibits, arguing that the garnishments could be enforced only against garnishees, which did not include Greenmed or MKHS-DS, and that the garnishments were not personal judgments against the garnishees. They concluded that "MKHS LLC has no legal mechanism with which to force MKHS[-DS] or Greenmed to distribute any of the money from the Purplemed sale to . . . allow MKHS LLC to make those payments to [Patel]" nor is there any "legal mechanism with which to force MKHS[-DS] or Greenmed to perform on a garnishment entered against MKHS." Instead, they argued Patel should be "required to comply with the garnishment statutes and must apply for writs of garnishment against those entities."

¶30 Patel responded that MKHS and KCT were listed as seller entities in the Harvest sale and that $12 million of the $15 million sale proceeds were used to satisfy MKHS and KCT's debt obligations; as a result, he proposed, Patel could "satisfy the [j]udgments obligations against the same proceeds." In response to the entities' contention that he must file new applications for writs of garnishment, Patel referred to the terms of the Escrow Agreement under which the parties had agreed that there would be no further garnishment proceedings and that the court would be authorized to make the ownership determination. He pointed out that Greenmed was a signatory to the agreement, and that he had not known before the agreement that the funds belonged to Greenmed, as the entities previously claimed that Greenmed was holding them for MKHS-DS. And Patel argued that the debt assumption agreement did not mention any

payments from MKHS-DS to Greenmed—just that Greenmed would assume Purplemed's debt to MKHS.

¶31 In September 2022, the superior court ordered the escrow funds be released to Patel in accordance with the Escrow Agreement. The court again refused to "re-litigate orders and rulings by another judge that are almost four years old," and determined there was "no appropriate procedural avenue to disturb those [garnishment] orders." The court found that Patel had sufficiently established the escrow funds were subject to the garnishment judgments and that he was entitled to collect them. As to the entities' position that the funds belonged to Greenmed or MKHS-DS, the court concluded that, either way, "the road leads back to MKHS."

¶32 In its ruling, the superior court specifically relied on the entities' admission that MKHS-DS was wholly owned by MKHS, which was a judgment debtor under the garnishment orders. And the court alternatively found that, even if Greenmed owned the funds, it was indebted to MKHS-DS for the $3.69 million debt it had assumed, making the funds chargeable because, again, MKHS-DS was wholly owned by MKHS. The court further found that the entities' actions, including "conveniently [choosing] an entity that was unaffiliated with the garnishments" to hold the sale proceeds, as well as Greenmed's assumption of Purplemed's debt with "no logical business purpose," demonstrated "their intent to indiscriminately use the various entities they control to avoid paying judgments to [Patel]."

¶33 On October 4, 2022, the superior court entered final judgment pursuant to Rule 54(c), Ariz. R. Civ. P., "as to all matters relating to the garnishment issued on December 30, 2021 of the funds held originally by Pima Federal Credit Union," and ordered the release of $683,294.25 to Patel. The entities filed a notice of appeal from that order on October 9, 2022.

II. Discussion

¶34 On appeal, the entities claim the superior court erred as a matter of law by: (1) denying their Rule 60 motion, in which they alleged the court had improperly ordered the garnishment of wages; and (2) enforcing a charging order against the interest of a limited liability company member by compelling funds to be distributed to that member. We address each issue in turn.

A. Denial of Rule 60 Motion for Relief from Judgment

¶35 The entities first argue the superior court erred by denying their Rule 60 motion, which alleged error in the November 2018 and January 2019 garnishment orders. They contend the court violated the garnishment statutes by ordering wage garnishment based on a non-earnings application and by failing to apply the disposable earnings exemption. *See* § 33-1131(A). We dismiss this portion of the appeal for lack of jurisdiction.

¶36 The entities challenged the garnishment orders in their Rule 60 motion, which the court appears to have denied during oral argument in July 2022. The reporter's transcript, however, does not contain an explicit statement denying the motion, and neither does the accompanying minute entry. And there is no written or signed order denying the motion. *See* Ariz. R. Civ. P. 58(b)(1); *see also* Ariz. R. Civ. P. 54(a) (defining "judgment" broadly to include "any order from which an appeal lies"). Nonetheless, the parties understood the motion to be denied. In fact, two weeks later, the entities moved to reconsider the denial; the court denied that motion in a written and signed ruling, from which the entities filed a notice of appeal.

¶37 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. § 12-2101(A). Under Rule 9(a), Ariz. R. Civ. App. P., an appellant must file a notice of appeal "no later than 30 days after entry of the judgment from which the appeal is taken." "It is settled in Arizona that the perfecting of an appeal within the time prescribed is jurisdictional; and, hence, where the appeal is not timely filed, the appellate court acquires no jurisdiction other than to dismiss the attempted appeal." *Edwards v. Young*, 107 Ariz. 283, 284 (1971).

¶38 A motion to reconsider is generally "not in itself an appealable order." *Spradling v. Rural Fire Prot. Co.*, 23 Ariz. App. 549, 551 (1975); *see Arvizu v. Fernandez*, 183 Ariz. 224, 226 (App. 1995) (for a post-judgment order to be appealable, the issues raised on appeal from the order "must be different from those that would arise from an appeal from the underlying judgment"). However, because the court did not enter a signed order denying the Rule 60 motion, on the record before us and under the specific circumstances of this case, we view the signed order denying the motion to reconsider as the equivalent of a denial of the Rule 60 motion. *See Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 420, ¶ 15 (App. 2016) (finality language not required for special orders made after final

judgment). Nonetheless, the notice is untimely because the entities filed it thirty-one days after the court signed the order denying the motion to reconsider.[4] We therefore lack jurisdiction to consider the merits of the entities' arguments.[5] *See* Ariz. R. Civ. App. P. 8(d), 9(a).

¶39 Moreover, we lack jurisdiction for an additional reason. "The scope of an appeal from a denial of a Rule 60 motion is restricted to the questions raised by the motion to set aside and does not extend to a review of whether the [superior] court was substantively correct in entering the judgment from which relief was sought." *Hirsch v. Nat'l Van Lines, Inc.*, 136 Ariz. 304, 311 (1983). As detailed above, the entities' Rule 60 motion challenged the previously entered garnishment orders by arguing that Rule 60(a) required the superior court to "correct a material mistake," and by asserting that Rules 60(b)(1), (4), and (6) entitled them to relief based on mistake, voidness, or for "any other reason justifying relief."

¶40 In their opening brief, the entities again argue that the 2018 and 2019 judgments were not "substantively correct." *See Hirsch*, 136 Ariz. at 311. They do not cite Rule 60, much less address any "questions raised by the motion to set aside" that are cognizable under that rule. *See id*. Instead, they recount their general displeasure with the court's wage garnishment orders from 2018 and 2019, which cannot serve as the basis for relief under Rule 60. *See Aloia v. Gore*, 252 Ariz. 548, ¶ 20 (App. 2022) (Rule 60(b)(6) does not "provide an alternative to appeal"); *Tippit v. Lahr*, 132 Ariz. 406, 408 (App. 1982) (Rule 60 is "not a device for reviewing or correcting legal errors that do not render the judgment void"); Ariz. R. Civ. P. 60(a)

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[4]The entities cite language in the superior court's final judgment entered on October 4, 2022, referring to "all matters relating to the garnishment issued on December 20, 2021" as the basis for appellate jurisdiction over both issues raised on appeal. To the extent the entities rely on their second notice of appeal filed on October 9, 2022 as the basis for their appeal from the August 15 ruling, we still lack jurisdiction. *See* Ariz. R. Civ. App. P. 8(c)(3) (notice of appeal must "[d]esignate the judgment or portion of the judgment from which the party is appealing"); *Lee v. Lee*, 133 Ariz. 118, 124 (App. 1982) (jurisdiction limited to matters specified in notice of appeal); *see also* Ariz. R. Civ. App. P. 9(a).

[5]Patel argues this court lacks jurisdiction to consider the appeal based on his classification of the underlying judgments as sanctions judgments and not garnishment orders. Because we deem the appeal untimely, we need not reach this issue.

(providing for correction of "a clerical mistake"). Thus, their argument on this point is outside the scope of review on appeal from the denial of their Rule 60 motion and, in any event, is waived. *See Modular Sys., Inc. v. Naisbitt*, 114 Ariz. 582, 587 (App. 1977) (issue deemed abandoned where failure to state with particularity how court erred); *Stafford v. Burns*, 241 Ariz. 474, ¶ 34 (App. 2017) (argument waived when not developed in "meaningful way"). Therefore, even if the entities' notice of appeal had been timely, their claims regarding the 2018 and 2019 judgments would not be properly before us on appeal, and we would still dismiss.

B. Judgment Directing Distribution of Escrow Funds

¶41 The entities also appeal from the superior court's October 2022 judgment ordering the escrow funds to be distributed to Patel, arguing the court erred by misapplying A.R.S. § 29-3503(A). We have jurisdiction under A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

¶42 The entities assert that the superior court erroneously "enforce[ed] a charging order against the interest of a limited liability company member by compelling a distribution of funds to that member." According to the entities, the court "concluded that because MKHS wholly owned MKHS Dispensary, the Charging Order required the latter to pay over the sale proceeds to Mr. Patel as MKHS' garnishment creditor." The entities interpret § 29-3503(A) to require a limited liability company to pay a judgment creditor any distribution that "otherwise would be paid" to the judgment debtor—not to "*compel* the limited liability company to make such a distribution so that it can be captured by the charging order." We agree with Patel, however, that the superior court's determination rests on the parties' Escrow Agreement—not the charging order.

¶43 We review de novo questions of law, including issues of statutory and contract interpretation. *Town of Marana v. Pima County*, 230 Ariz. 142, ¶¶ 20-21 (App. 2012). "When the terms of an agreement are clear and unambiguous, we give effect to the agreement as written." *Id.* ¶ 21. The parties' Escrow Agreement provides, in relevant part, as follows:

> The Parties all agree that the Escrow Funds shall be held in escrow until such time as the Parties can reach a written agreement that resolves the Dispute, or the entry of a valid Court order which adjudicates the Dispute following reasonable discovery and an opportunity to

> present evidence with regard to the claims of ownership of the Escrow Funds.

¶44 The terms of this agreement are clear and unambiguous—the escrow funds are to be distributed only if the parties reach a written agreement *or* a court enters an order adjudicating the funds' ownership. Patel and the entities did not reach an agreement, so they submitted briefing to the superior court regarding who was legally entitled to the funds.[6] And in accordance with the agreement's requirement that they have "reasonable discovery and an opportunity to present evidence," the parties participated in oral argument, submitted exhibits and evidence, and filed post-argument briefs.

¶45 In its ruling, the court noted the Escrow Agreement's provision for a court order, stating, "This is that ruling." The court therefore determined ownership of the escrow funds and distributed them under the Escrow Agreement—not the charging order—and based its distribution order on the parties' briefing, oral arguments, and evidence presented. Although the court referred to the charging order that had specifically charged MKHS's eighty percent interest in MKHS-DS, it did not rely on it. It instead relied on the entities' admission at oral argument that MKHS-DS was *wholly owned* by MKHS, along with other evidence. Thus, it is clear that the court's order distributing the funds was made in the context of the parties' Escrow Agreement, and not the September 2021 charging order. In any event, to the extent the entities attempt to challenge the charging order, we lack jurisdiction to consider such a challenge as the time for that appeal has passed. *See* § 12-2101(A)(2), (4).

¶46 The only other argument the entities raise, albeit in a footnote, is that Patel "made no attempt to demonstrate that MKHS Dispensary was the alter ego of MKHS to allow the piercing of its corporate veil (nor could he do so)." The entities cite no supporting authority or provision in the Escrow Agreement that required Patel make such a showing. *See* Ariz. R. Civ. App. P. 13(a)(7); *Modular Sys. Inc.*, 114 Ariz. at 587; *Stafford*, 241 Ariz. 474, ¶ 34. Nonetheless, in our discretion, we address this argument.

¶47 We review the superior court's determination of the escrow funds' ownership and its subsequent judgment for an abuse of discretion.

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[6]The entities admit in their opening brief that the funds were "to be held there until the [superior] court resolved the competing claims to that money."

Cf. Carey v. Soucy, 245 Ariz. 547, ¶ 19 (App. 2018) (applying abuse-of-discretion standard in reviewing court's determination of fraudulent transfer in garnishment proceeding). "A court abuses its discretion where the record fails to provide substantial support for its decision or the court commits an error of law in reaching the decision." *Id.* We view the evidence in the light most favorable to affirming the court's ruling, *id.*, and "[w]here there is conflicting evidence, we do not substitute our judgment for the [superior] court's and will reverse only where the findings are clearly erroneous," *Great W. Bank v. LJC, Dev., LLC*, 238 Ariz. 470, ¶ 22 (App. 2015).

¶48 In determining the escrow funds' ownership, the superior court found that the debtors' acts had "establish[ed] their intent to indiscriminately use the various entities they control to avoid paying judgments to [Patel]." The court detailed how it had weighed the evidence, including considering the different entities' ownership interests, the entities' explanations as to why the proceeds had been placed in Greenmed's account, when that account had been established, and the purpose of Greenmed's assumption of debt. The court concluded that the identity of the entities' ownership and their "unified actions" to protect the Kittrells' interests "belie[d] any notion that [they] are separately operating entities," concluding instead that "they are all part of the shell game." Ultimately, the court determined that "the road leads back to MKHS" regardless whether the funds belonged to Greenmed or MKHS-DS, and thus, Patel had "sufficiently established" he was entitled to reach those funds to collect the judgments.

¶49 The superior court was in the best position to weigh the evidence and its credibility, and "we will not disturb the judgment if there is evidence to support it." *Carey*, 245 Ariz. 547, ¶ 19. Based on our review of the record, Patel presented sufficient evidence to support the court's finding that the funds could be traced back to MKHS, and thus, entitled him to ownership. The entities have pointed to no evidence or authority demonstrating error in the court's findings. Because those findings were not clearly erroneous, and its judgment was supported by sufficient evidence, the court did not abuse its discretion by ordering the distribution of funds to Patel pursuant to the parties' agreement.

III. Attorney Fees and Costs

¶50 Patel requests reasonable attorney fees and costs pursuant to A.R.S. § 12-341.01 and the written terms of the Escrow Agreement. Paragraph six of the agreement provides, "The prevailing party shall be entitled to reimbursement of its reasonable legal fees and costs for any

dispute arising out of this Agreement." As the prevailing party on appeal, Patel is entitled to those fees and costs, upon compliance with Rule 21(b), Ariz. R. Civ. App. P. *See Bennett v. Appaloosa Horse Club*, 201 Ariz. 372, ¶ 26 (App. 2001) (court has no discretion to deny award where parties' contract directs award to prevailing party).

Disposition

¶51 For the foregoing reasons, we dismiss the entities' challenge to the denial of their Rule 60 motion for lack of jurisdiction, and we affirm the superior court's judgment ordering the distribution of escrow funds to Patel.