IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

IN RE THE GUARDIANSHIP OF AND CONSERVATORSHIP FOR
RHODA SHAW, AN ADULT,

CYNTHIA BECK,
Petitioner/Appellee,

v.

BOBBY SHAW,
Respondent/Appellant.

No. 2 CA-CV 2024-0119
Filed November 29, 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NOT FOR PUBLICATION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 Cochise County
No. S0200GC202100194
The Honorable David Thorn, Judge

APPEAL DISMISSED

COUNSEL

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By Douglas J. Newborn
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By James R. Schmillen and Erica Leavitt
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MEMORANDUM DECISION

Presiding Judge O'Neil authored the decision of the Court, in which Judge Vásquez and Judge Kelly concurred.

O' N E I L, Presiding Judge:

¶1 Bobby Shaw appeals from the superior court's order granting his sister Cynthia Beck's petition to establish the date of their mother Rhoda Shaw's incapacity. We dismiss for lack of jurisdiction.

Background

¶2 Cynthia filed a petition requesting that the superior court appoint her as her mother's guardian and conservator in November 2021, around two months after Rhoda had transferred title to real property in Idaho to Bobby. The court found that Rhoda was incapacitated as defined under A.R.S. § 14-5101(3) and that the appointment of a guardian and conservator was necessary. The court entered a final judgment appointing Cynthia as guardian of and conservator for Rhoda in March 2022. In July of the same year, Cynthia filed a separate lawsuit in Idaho as Rhoda's guardian and conservator, seeking to void the 2021 transfer of title from Rhoda to Bobby and quiet title to the property.

¶3 In April 2023, while the Idaho lawsuit was pending, Cynthia filed a petition in Cochise County Superior Court to establish the date of her mother's incapacity. She requested that the court declare Rhoda "an incapacitated person who lacked both testamentary capacity and contractual capacity as of no later than August 31, 2021." Bobby filed a motion to dismiss, arguing the Arizona court was not a proper forum because of the ongoing Idaho proceeding and asserting Cynthia's petition failed to state a claim upon which relief could be granted. After a hearing, the court denied Bobby's motion to dismiss.

¶4 Cynthia filed a notice that no party had filed a timely responsive pleading or objection after the superior court's order denying Bobby's motion to dismiss, and therefore, she asked the court to "approve" her petition. In response, Bobby asserted that his motion to dismiss constituted a timely written objection and argued that the court should therefore deny Cynthia's "request to enter a default declaration." He also filed a responsive pleading, denying Cynthia's allegations that venue and jurisdiction were proper in Cochise County.

¶5 After "noting that no written objection was timely filed," the superior court entered an order in January 2024, finding that Rhoda lacked testamentary and contractual capacity as of August 31, 2021, and awarding Cynthia her attorney fees in defending against Bobby's motion to dismiss, in an amount to be determined later. In February, Bobby moved to set aside the order pursuant to Rule 60, Ariz. R. Civ. P., maintaining he had timely submitted a response to Cynthia's petition and it was improper for the court to enter what he asserted was a default judgment. The court entered an order in March with the same language as the January order except for an additional statement that it was "a final and appealable order under Ariz. R. Civ. P. 54(b)." Bobby appealed.

Discussion

¶6 "[W]e have an independent obligation to determine whether we have appellate jurisdiction . . . ." *Dabrowski v. Bartlett*, 246 Ariz. 504, ¶ 13 (App. 2019). Under A.R.S. § 12-2101(A)(1), we have jurisdiction over final judgments. A final judgment is one that "dispose[s] of all claims and all parties." *Maria v. Najera*, 222 Ariz. 306, ¶ 5 (App. 2009) (quoting *Musa v. Adrian*, 130 Ariz. 311, 312 (1981)). However, a court may "direct entry of a final judgment as to one or more, but fewer than all, claims or parties" if it "expressly determines there is no just reason for delay and recites that the judgment is entered under Rule 54(b)." Ariz. R. Civ. P. 54(b). Notwithstanding a court's certification of its ruling as final and appealable under Rule 54(b), we have jurisdiction only if the certification is correct. *See Grand v. Nacchio*, 214 Ariz. 9, ¶ 17 (App. 2006). We review certifications of finality de novo. *Dabrowski*, 246 Ariz. 504, ¶ 13.

¶7 Although the superior court stated the order was a "final and appealable order under Ariz. R. Civ. P. 54(b)," it failed to "expressly determine[] there is no just reason for delay" as is required for a court to enter judgment under Rule 54(b). Even had the court expressly made this determination, certification under the rule was still improper because the court ordered attorney fees without resolving the amount. In general, "claims for attorney's fees and costs must be resolved before any judgment may be entered under Rule 54(b) or (c)," and "any award of attorney's fees or costs must be included in the judgment." Ariz. R. Civ. P. 54(h). A court may certify a judgment as final under Rule 54(b) without resolving attorney fees only if the judgment "adjudicates fewer than all of the claims and liabilities of any party." Ariz. R. Civ. P. 54(g)(3)(B), (i)(2). That exception does not apply here. We conclude the court's Rule 54(b) language was improper, as the judgment could not be final absent a determination of the amount of attorney fees, and we thus lack jurisdiction. *See* Ariz. R. Civ. P.

54(h)(1); Ariz. R. Civ. P. 54(h)(1) cmt. ("The amount of [attorney's] costs and fees must be included in the judgment.").

¶8 The superior court had long since entered a final judgment as to Cynthia's petition to be appointed guardian of and conservator for Rhoda, leaving no remaining matters pending until Cynthia filed her petition to establish the date of incapacity more than a year later. The sole matter raised in that petition was Cynthia's request to declare the date of Rhoda's incapacity. When the court's March 2024 order decided that matter, implicitly resolving Bobby's motion to set aside the January 2024 order, it resolved the only matter pending.[1] Any certification under Rule 54(b), therefore, necessarily would have been incorrect, because the petition did not present more than one claim for relief, it did not involve multiple parties, and the March 2024 order did not resolve fewer than all the claims or fewer than all the parties' rights and liabilities. It follows that because the March 2024 order did not resolve "fewer than all claims and liabilities of a party" as provided in Rule 54(g)(3)(B), the court was required to resolve attorney fees before entering a final judgment.[2] *See* Ariz. R. Civ. P. 54(h)(1).

¶9 Although Bobby requests that we "stay the appeal to permit the trial court to finalize the determination on the fee award amount or bifurcate the appeal, dismissing it only with respect to the issue of fees," we must dismiss the appeal for lack of jurisdiction because there is no final

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[1]We assume without deciding that Cynthia's request that the court declare the date of Rhoda's incapacity constitutes a "claim" as contemplated by Rule 54(b). *See generally* A.R.S. §§ 12-1831, 12-1834; *Black v. Siler*, 96 Ariz. 102, 105 (1964) (declaratory action "simply declares the rights of the parties or expresses the opin[i]on of the court on a question of law, without ordering anything to be done" (quoting *Clein v. Kaplan*, 40 S.E.2d 133, 137 (Ga. 1946))).

[2]Bobby's reliance on *NextGear Cap., Inc. v. Owens*, No. 1 CA-CV 22-0662 (Ariz. App. Oct. 19, 2023), to argue that the order is final and appealable even absent a resolution of attorney fees is misplaced. In *NextGear*, we applied Indiana law to determine that a judgment was final and appealable absent a resolution of attorney fees. *Id.* ¶¶ 2, 15, 17. Bobby's reliance on cases interpreting a prior version of Rule 54 is also misplaced. *See Fields v. Oates*, 230 Ariz. 411, ¶ 10 & n.3 (App. 2012); *Kim v. Mansoori*, 214 Ariz. 457, ¶¶ 8-9 (App. 2007); *Nat'l Broker Assocs., Inc. v. Marlyn Nutraceuticals, Inc.*, 211 Ariz. 210, ¶ 33 (App. 2005).

judgment.[3] *See* § 12-2101(A)(1); *Madrid v. Avalon Care Ctr.-Chandler, L.L.C.*, 236 Ariz. 221, ¶¶ 10-11 (App. 2014) (requiring dismissal where there is "Rule 54(b) deficiency").

Disposition

¶10 We dismiss this appeal for lack of jurisdiction.

[3]In his notice of appeal, Bobby stated that he was also appealing from the superior court's order denying his motion to dismiss. We cannot review the interlocutory order denying his motion to dismiss where there is no final judgment. *See* A.R.S. § 12-2102(A); *Motley v. Simmons*, 256 Ariz. 286, ¶ 7 (App. 2023).