

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**  
*See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.*

**FILED BY CLERK**

**OCT 25 2010**

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

MARY A. JUTRAS,	)	
	)	
Plaintiff/Appellee,	)	2 CA-CV 2010-0057
	)	DEPARTMENT B
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
LeROY L. WOODS,	)	Rule 28, Rules of Civil
	)	Appellate Procedure
Defendant/Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CV200902260

Honorable Robert Carter Olson, Judge

APPEAL DISMISSED

Barry Becker, P.C.  
By Barry Becker

Phoenix  
Attorney for Plaintiff/Appellee

LeRoy L. Woods

Apache Junction  
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 In this foreclosure action, LeRoy Woods appeals from the trial court's order denying his motion for reconsideration following the entry of default judgment in favor of appellee, Mary Jutras. For the reasons that follow, we dismiss the appeal for lack of jurisdiction.

### **Factual and Procedural History**

¶2 We view the facts in the light most favorable to upholding the trial court's ruling. *Safeway Stores, Inc. v. Ramirez*, 1 Ariz. App. 117, 118, 400 P.2d 125, 126 (1965). Jutras purchased various parcels of real property located in Pinal County at a delinquent tax sale conducted by the Pinal County Treasurer. On June 9, 2009, she filed a lawsuit against the property owners, including Woods, to foreclose their rights to redeem the properties. After attempts to serve Woods personally were unsuccessful because he apparently was avoiding service, the court authorized service by the alternate means of posting the summons and complaint at his residence.

¶3 Woods failed to file a timely answer to the complaint and Jutras filed an application for entry of default, which the trial court entered on November 16, 2009. Woods subsequently filed a motion to proceed in forma pauperis, which was accompanied by an answer and counterclaim that he submitted for filing. On December 15, 2009, the trial court issued a minute entry denying Woods's motion and striking his answer, finding he willfully had failed both to pay the filing fee and to follow the correct procedure in applying for a deferral. Woods filed a motion for reconsideration on December 24, 2009, which the court denied on January 5, 2010. He

then requested and obtained a deferral of fees on January 13, and on January 19, filed a motion opposing entry of default judgment.

¶4 However, Woods failed to attend the default judgment hearing on January 22, 2010, and the trial court entered judgment foreclosing his right to redeem the property. Woods then filed a motion for reconsideration on February 2, which the court denied on February 23. On March 3, he filed a notice of appeal from the court's denial of his motion for reconsideration.

### Discussion

¶5 In her answering brief, Jutras contends we lack jurisdiction to consider this appeal because the notice of appeal was untimely filed.<sup>1</sup> “Generally, a notice of appeal must be filed within 30 days after the entry of the judgment from which the appeal is taken.” *State ex rel. Corbin v. Tolleson*, 152 Ariz. 376, 380, 732 P.2d 1114, 1118 (App. 1986); *see* Ariz. R. Civ. App. P. 9(a). We lack jurisdiction to consider appeals that are not timely filed. *See James v. State*, 215 Ariz. 182, ¶ 11, 158 P.3d 905, 908 (App. 2007). Woods's notice of appeal was filed on March 3, 2010, more than thirty days after the trial court entered default judgment against him. However, Woods is appealing the February 23, 2010, denial of his motion for reconsideration, not the default judgment, and the notice of appeal was filed within thirty days of that ruling.

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<sup>1</sup>Jutras also asserts that the minute entry dated January 5, 2010, is unsigned, and we lack jurisdiction on that basis. Although Woods is appealing from the February 23, 2010, minute entry, that minute entry is also unsigned. Pursuant to Rule 58(a), Ariz. R. Civ. P., “a judgment is not final for appeal purposes unless it is in writing, signed by a judge or commissioner, and filed with the clerk of the court.” *Haywood Secs., Inc. v. Ehrlich*, 214 Ariz. 114, ¶ 8, 149 P.3d 738, 739 (2007). But because we conclude that we lack jurisdiction on other grounds, we need not address this issue.

¶6 Nevertheless, motions for reconsideration are not among the motions that extend the time for appeal. *See Corbin*, 152 Ariz. at 380, 732 P.2d at 1118 (listing time-extending motions; motion for reconsideration that does not refer to time-extending motions does not extend time to file appeal); *see also James*, 215 Ariz. 182, ¶ 16, 158 P.3d at 909 (no appellate jurisdiction when appellant’s objection to final judgment neither cited nor otherwise referred to Rule 59, Ariz. R. Civ. P., or any other civil procedure rule that might make it a time-extending motion).

¶7 Although A.R.S. § 12-2101(C) permits an appeal “[f]rom any special order made after final judgment” and an order denying a motion for reconsideration conceivably could fall under this category, “[a]n order made after judgment is not appealable if the appeal presents the same question as would be presented on an appeal from the judgment.” *Reidy v. O’Malley Lumber Co.*, 92 Ariz. 130, 136, 374 P.2d 882, 886 (1962); *see also In re Marriage of Dorman*, 198 Ariz. 298, ¶ 3, 9 P.3d 329, 331 (App. 2000) (“[t]o be appealable, . . . special order after judgment must raise different issues than those that would be raised by appealing the underlying judgment”).

¶8 Here, Woods’s appeal from the trial court’s denial of his motion for reconsideration raises the same issues that could have been raised in an appeal from the default judgment. Thus, the denial of the motion for reconsideration is not independently reviewable and, in the absence of a time-extending motion, Woods was required to file his notice of appeal from the default judgment no later than February 22, 2010. Because the notice of appeal was not timely filed, we lack jurisdiction to consider the appeal. *See James*, 215 Ariz. 182, ¶ 11, 158 P.3d at 908.

**Disposition**

¶9 For the reasons stated above, this appeal is dismissed.

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge