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SUMMARY
June 8, 2023

2023COA51

No. 22CA0232, *Marriage of James* — Colorado Rules for Magistrates — Magistrate has no Authority to Consider a Petition for Rehearing; Civil Procedure — Post-Trial Motions — Motion for Reconsideration; Colorado Rules of Appellate Procedure — Appeals in Civil Cases — Running of Time for Filing Notice of Appeal

A division of the court of appeals concludes that under the Colorado Rules for Magistrates, specifically C.R.M. 5(a), and the applicable Colorado Appellate Rules, a party in a proceeding before a magistrate acting with the parties' consent may not file a C.R.C.P. 59 motion for reconsideration and thereby toll the forty-nine-day deadline for filing a notice of appeal pursuant to C.A.R. 4(a)(3). Accordingly, the division dismisses a party's appeal of the permanent orders of a magistrate, acting with the consent of the parties, as untimely because (1) the party filed the notice of appeal more than forty-nine days after the entry of the magistrate's

permanent orders and (2) the party's C.R.C.P. 59 motion was not permitted under C.R.M. 5(a) and thus did not toll the forty-nine-day deadline to file the notice of appeal.

Court of Appeals No. 22CA0232
Arapahoe County District Court No. 20DR31968
Honorable Cynthia Mares, Judge

In re the Marriage of

Tahlia Denee James,

Appellee,

and

David James,

Appellant.

APPEAL DISMISSED

Division II
Opinion by JUDGE FURMAN
Tow and Johnson, JJ., concur

Announced June 8, 2023

Tahlia Denee James, Pro Se

Kilby Law, LLC, Matthew A. Kilby, Denver, Colorado, for Appellant

¶ 1 May a party in a proceeding before a magistrate acting with the parties' consent file a C.R.C.P. 59 motion for reconsideration, thus tolling the time in which to file a notice of appeal pursuant to C.A.R. 4(a)(3)? Based on our review of the Colorado Rules for Magistrates, combined with the applicable Colorado Appellate Rules, we conclude that the answer is no.

¶ 2 David James (husband) appeals certain portions of the permanent orders issued by a magistrate acting with the parties' consent under C.R.M. 7(b). We dismiss his appeal as untimely.

I. Husband's Untimely Notice of Appeal

¶ 3 In December 2020, husband petitioned for the dissolution of his marriage to Tahlia Denee James (wife). The parties thereafter consented to a magistrate presiding over their permanent orders hearing, which was held on October 5, 2021. The magistrate issued written permanent orders on November 3, 2021. Later that same day, husband filed a C.R.C.P. 59 motion for the magistrate to reconsider the permanent orders, alleging that the magistrate had ignored his objection to the proposed form of permanent orders filed by wife.

¶ 4 On December 20, 2021, a district court judge issued an order dismissing husband’s C.R.C.P. 59 motion for lack of jurisdiction. Forty-nine days later, on February 7, 2022, husband filed his notice of appeal, seeking this court’s review of the permanent orders. This court then issued an order requiring husband to show cause why the appeal should not be dismissed given that the notice of appeal was filed more than forty-nine days after the entry of permanent orders. After husband filed a response to the show cause order, a motions division of this court deferred consideration of the timeliness of husband’s appeal to this division.

¶ 5 We now hold that because husband’s appeal was untimely, we lack jurisdiction for appellate review and must dismiss his case.

II. Discussion

A. Principles of Interpretation

¶ 6 Our review of the timeliness of husband’s appeal requires us to interpret both the Colorado Rules for Magistrates and the Colorado Rules of Appellate Procedure.

¶ 7 We must interpret court rules consistently with principles of statutory construction, giving words their plain and ordinary meanings. *See* § 2-4-101, C.R.S. 2022; *Hiner v. Johnson*, 2012 COA

164, ¶ 13. When construing the rules, we should give effect to each word and interpret each provision in harmony with the rules' overall design, whenever possible. *In re Marriage of Rozzi*, 190 P.3d 815, 819 (Colo. App. 2008). If different rules conflict or cannot be harmonized, more specific provisions control over more general provisions. *Id.*

B. A Timely Notice of Appeal as a Jurisdictional Prerequisite

¶ 8 The timely filing of a notice of appeal is a jurisdictional prerequisite for appellate review. *In re Marriage of Buck*, 60 P.3d 788, 789 (Colo. App. 2002). Pursuant to C.A.R. 4(a)(1), a party has forty-nine days after the entry of the judgment or order in which to file a notice of appeal.

¶ 9 Husband's notice of appeal was filed on February 7, 2022, which is outside the forty-nine-day window for him to appeal the November 3, 2021, permanent orders under C.A.R. 4(a)(1).

¶ 10 Husband contends that his notice of appeal filed on February 7, 2022, was timely because his C.R.C.P. 59 motion for reconsideration filed with the magistrate tolled the C.A.R. 4(a)(1) deadline until the district court issued its order of dismissal.

Husband relies on C.A.R. 4(a)(3), which provides that the deadline

for the filing of a notice of appeal is tolled while a C.R.C.P. 59 motion is pending. We are unpersuaded because a further examination of the magistrate rules reveals that the magistrate was precluded from considering husband’s C.R.C.P. 59 motion in the first instance.

C. The Intersection of the Colorado Rules for Magistrates and Colorado Appellate Rules

1. Authority of Magistrates

¶ 11 A magistrate may exercise only those powers provided by statute or court rule. *See In re Parental Responsibilities Concerning M.B.-M.*, 252 P.3d 506, 509 (Colo. App. 2011); § 13-5-201(3), C.R.S. 2022 (“District court magistrates may hear such matters as are determined by rule of the supreme court, subject to the provision that no magistrate may preside in any trial by jury.”); *see also In re R.G.B.*, 98 P.3d 958, 960 (Colo. App. 2004) (a magistrate is a hearing officer who acts with limited authority). This is because magistrates are statutorily authorized members of the judiciary who enter orders or judgments in judicial proceedings and are supervised by district court judges. *M.B.-M.*, 252 P.3d at 509; C.R.M. 1 (“Although magistrates may perform functions which

judges also perform, a magistrate at all times is subject to the direction and supervision of the chief judge or presiding judge.”).

¶ 12 District court magistrates have different powers depending on the nature of the proceeding over which they preside. In domestic relations cases, a magistrate has the power to conduct various preliminary proceedings and to resolve certain post-decree motions, regardless of the parties’ consent to the magistrate’s authority. C.R.M. 6(b)(1). Yet a magistrate has the power to only preside over a contested permanent orders hearing, as occurred here, with the consent of the parties. C.R.M. 6(b)(2).

¶ 13 A magistrate who is without authority as to a particular action lacks the jurisdiction to act, meaning that any corresponding action taken by the magistrate is null and void. *In re Marriage of Phelps*, 74 P.3d 506, 509 (Colo. App. 2003) (where a magistrate was not authorized to act on a motion, the magistrate’s corresponding order was void); *People v. Widhalm*, 991 P.2d 291, 293 (Colo. App. 1999) (recognizing that “any action taken by a court when it lacks jurisdiction is a nullity”).

2. Review of Magistrate Orders and Judgments

¶ 14 The procedure for review of a magistrate’s order or judgment is also governed by whether the consent of the parties was required. If the adjudication of the matter by a magistrate did not require the consent of the parties, a party must first seek review of the magistrate’s order or judgment by a district court judge; only after the party has obtained the district court’s review does this court have jurisdiction to hear an appeal. C.R.M. 7(a); *In re Marriage of Moore*, 107 P.3d 1150, 1151 (Colo. App. 2005) (dismissing the appeal in a matter heard without regard to consent of the parties where the appellant had not first obtained final district court review under C.R.M. 7(a)).

¶ 15 Conversely, under C.R.M. 7(b), where an order or judgment was entered in a proceeding requiring the consent of the parties, district court review is not available. Instead, the matter “shall be appealed pursuant to the Colorado Rules of Appellate Procedure in the same manner as an order or judgment of a district court.” *Id.*

3. C.R.M. 5(a)’s Prohibition on Postjudgment Motions

¶ 16 Because the powers of district court magistrates are limited, *see R.G.B.*, 98 P.3d at 960, the actions that a magistrate may take

are generally circumscribed by the Colorado Rules for Magistrates and other statutory provisions, *see* § 13-5-201(3).

¶ 17 As is relevant to husband’s appeal, district courts have a limited ability to reconsider their judgments within the confines of C.R.C.P. 59 and 60. But, as to magistrates, C.R.M. 5(a) provides as follows:

An order or judgment of a magistrate in any judicial proceeding shall be effective upon the date of the order or judgment and shall remain in effect pending review by a reviewing judge unless stayed by the magistrate or by the reviewing judge. Except for correction of clerical errors pursuant to C.R.C.P. 60(a), a magistrate has no authority to consider a petition for rehearing.

Other divisions of this court have held that, under C.R.M. 5(a), “[a] magistrate may not entertain a motion for reconsideration under C.R.C.P. 59 or for relief from a judgment under C.R.C.P. 60.” *M.B.-M.*, 252 P.3d at 510.

¶ 18 But the divisions of this court that have considered and applied C.R.M. 5(a)’s prohibition for magistrates to rule on postjudgment motions have done so only in the context of proceedings where the parties’ consent was not required. For

example, in *M.B.-M.*, the court held that because of C.R.M. 5(a), the magistrate was without jurisdiction to sua sponte reverse a contempt order in a proceeding that did not require the parties' consent under C.R.M. 5(b). 252 P.3d at 509-10. The division in *M.B.-M.* specifically limited its discussion of the magistrate rules to "situations where consent of the parties is not required, and d[id] not consider the effect of a magistrate's ruling where the parties have given consent for a magistrate to hear and decide matters ordinarily decided by a district court." *Id.* at 509; *see also Phelps*, 74 P.3d at 509 (declaring magistrate's ruling on motion for reconsideration void in a non-consent proceeding); *In re Marriage of Tonn*, 53 P.3d 1185, 1187 (Colo. App. 2002) (rules governing magistrates do not authorize any motion respecting a magistrate's order except a motion for review in proceeding involving post-decree entry of support judgment); *In re Marriage of Roosa*, 89 P.3d 524, 530 (Colo. App. 2004) (magistrate had no power to decide motion for reconsideration of magistrate's order resolving various post-decree motions).

D. Husband's Appeal in This Case

¶ 19 We now resolve the question left unanswered by *M.B.-M.*: even where a magistrate's actions require the parties' consent, C.R.M. 5(a) prohibits the magistrate from entertaining C.R.C.P. 59 postjudgment motions. We acknowledge that husband's C.R.C.P. 59 motion, if permitted under C.R.M. 7(b), would have tolled the deadline for him to file his notice of appeal, and thus his appeal would have been timely. But husband, in effect, asks us to interpret the rule to create an exception to the plain text of C.R.M. 5(a), and allow postjudgment motions in magistrate proceedings where the consent of the parties was necessary.

¶ 20 We are unpersuaded by husband's argument because the language of C.R.M. 5(a) disallowing postjudgment motions in magistrate proceedings is unequivocal and contains no exceptions for proceedings where the parties' consent was necessary.

¶ 21 C.R.M. 5(a) provides that an order or judgment of a magistrate becomes effective upon its issuance in "any judicial proceeding," indicating that the rule is applicable in all types of proceedings, regardless of whether consent of the parties was required. The rule then unambiguously provides that a magistrate has "no authority"

to consider petitions for rehearing, with the narrow exception of C.R.C.P. 60(a) petitions as to clerical errors. C.R.M. 5(a). Nowhere does C.R.M. 5, or any provision of the magistrate rules, limit the applicability of C.R.M. 5(a) to only magistrate proceedings where the parties' consent was not required.

¶ 22 We presume that, in drafting the Colorado Rules for Magistrates, if the Colorado Supreme Court had intended to exclude proceedings where consent was necessary from C.R.M. 5(a)'s prohibition on postjudgment motions, it would have done so. *Cf. Dubois v. Abrahamson*, 214 P.3d 586, 588 (Colo. App. 2009) (“[W]here the legislature could have restricted the application of a statute, but chose not to, we will not read additional restrictions into the statute.”); *Mason v. People*, 932 P.2d 1377, 1380 (Colo. 1997) (courts presume that if the legislature intended the statute to achieve a particular result, it would have employed terminology clearly expressing that intent). Therefore, we decline to create such an exception in this instance.

¶ 23 We also disagree with husband's contention that, because C.R.M. 7(b) requires a magistrate's judgment to be appealed in an identical fashion to a district court judgment, he must have been

able to file a valid C.R.C.P. 59 motion for the magistrate's consideration, thus tolling the appellate deadline. To hold that the magistrate could have entertained husband's C.R.C.P. 59 motion would require us to disregard C.R.M. 5(a)'s clear prohibition of the same.

¶ 24 We also conclude that the Rules for Magistrates and C.A.R. 4(a)(3) can be read harmoniously. While C.A.R. 4(a)(3) provides that a "timely" C.R.C.P. 59 motion tolls the time to file an appeal, given C.R.M. 5(a)'s unequivocal prohibition on petitions for rehearing in magistrate proceedings, C.R.C.P. 59 does not apply in this circumstance. In other words, because of the plain language of C.R.M. 5(a), C.A.R. 4(a)(3) is simply inapplicable to the appeal of magistrate orders and judgments. To the extent such an outcome results in a different treatment of husband's appeal compared to the appeal of a district court's judgment, we conclude that the more specific rule controls over the more general one. *See, e.g., Spiremedia Inc. v. Wozniak*, 2020 COA 10, ¶ 18 (motion for reconsideration treated as a motion under C.R.C.P. 59); *cf. Rozzi*, 190 P.3d at 819 (specific provisions control over more general provisions). *Compare* C.R.M. 5(a) (prohibits C.R.C.P. 59 motions in

magistrate proceedings), *with* C.R.M. 7(b) (the judgment of a magistrate acting where consent was necessary shall be appealed in the same manner as a district court judgment).

¶ 25 We acknowledge husband’s concerns that litigants may be disincentivized from consenting to a magistrate if relief under C.R.C.P. 59 is unavailable. But it is not our role to “judicially legislate” to address husband’s concerns by interpreting C.R.M. 5(a) “to accomplish something the plain language does not suggest, warrant or mandate.” *Scoggins v. Unigard Ins. Co.*, 869 P.2d 202, 205 (Colo. 1994).

¶ 26 We therefore conclude that husband’s notice of appeal, which was filed more than forty-nine days after the November 3, 2021, permanent orders, was untimely. As a result, his appeal must be dismissed because we lack jurisdiction over it. *See Buck*, 60 P.3d at 789; C.A.R. 4(a)(1).

III. Conclusion

¶ 27 The appeal is dismissed.

JUDGE TOW and JUDGE JOHNSON concur.