

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

SEP 27 2013

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

|                                      |   |                            |
|--------------------------------------|---|----------------------------|
| In re the Marriage of:               | ) | 2 CA-CV 2013-0042          |
|                                      | ) | DEPARTMENT A               |
| MICHAEL BELL,                        | ) |                            |
|                                      | ) | <u>MEMORANDUM DECISION</u> |
| Petitioner/Appellee,                 | ) | Not for Publication        |
|                                      | ) | Rule 28, Rules of Civil    |
| and                                  | ) | Appellate Procedure        |
|                                      | ) |                            |
| PENNEY L. BELL,                      | ) |                            |
|                                      | ) |                            |
| Respondent,                          | ) |                            |
|                                      | ) |                            |
| and                                  | ) |                            |
|                                      | ) |                            |
| JIM SELF and LINDA SELF, husband and | ) |                            |
| wife,                                | ) |                            |
|                                      | ) |                            |
| Third-Party Respondents/Appellants.  | ) |                            |
| _____                                | ) |                            |

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. DO201000040

Honorable Ann R. Littrell, Judge

APPEAL DISMISSED

Pahl & Associates  
By Danette R. Pahl

Tucson  
Attorneys for Petitioner/Appellee

H O W A R D, Chief Judge.

¶1 Appellants Jim and Linda Self (“the Selves”) appeal from the trial court’s signed order in favor of appellee Michael Bell on his claim for unjust enrichment. We lack jurisdiction and therefore dismiss the appeal.

### **Factual and Procedural Background**

¶2 The record reflects the following procedural background. Michael Bell petitioned for dissolution of his marriage with Penney Bell in January 2010. Michael later moved to join the Selves as a third party so that he could bring claims against them, including a claim for unjust enrichment. The court granted Michael’s motion, and later granted summary judgment to the Selves on all claims except the one for unjust enrichment. Michael later filed what appears to be an amended third-party complaint against the Selves claiming only unjust enrichment. Penney filed for bankruptcy the following year, staying all proceedings in the dissolution proceeding except the third-party claim against the Selves for unjust enrichment. After a bench trial, the court resolved that claim in favor of Michael and awarded him \$33,425.00 in a signed order. The Selves appeal from that order.

### **Discussion**

¶3 Both Michael and the Selves failed to specify any jurisdictional basis for this appeal, as required under Rule 13(a)(3), Ariz. R. Civ. App. P. Nevertheless, “we have an

independent duty to determine whether we have jurisdiction.” *In re Marriage of Kassa*, 231 Ariz. 592, ¶ 3, 299 P.3d 1290, 1291 (App. 2013). We have jurisdiction only pursuant to statute and have no authority to hear an appeal over which we do not have jurisdiction. *See Hall Family Props., Ltd. v. Gosnell Dev. Corp.*, 185 Ariz. 382, 386, 916 P.2d 1098, 1102 (App. 1995).

¶4 Pursuant to A.R.S. § 12-2101(A)(1), we have jurisdiction only over final judgments disposing of all claims and all parties. *Maria v. Najera*, 222 Ariz. 306, ¶ 5, 214 P.3d 394, 395 (App. 2009). The superior court, however, has discretion to designate a judgment that disposes of fewer than all claims and parties as final “upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.” Ariz. R. Civ. P. 54(b). But in the absence of such a determination in an action containing multiple claims for relief and multiple parties, including third-party claims, “any order or other form of decision . . . shall not terminate the action as to any of the claims or parties.” *Id.* The same principles apply under Rule 78(B), Ariz. R. Fam. Law P. *Kassa*, 231 Ariz. 592, n.1, 299 P.3d at 1291 n.1.

¶5 Nothing in the record shows that the petition for dissolution of marriage has been resolved. Therefore at least one unresolved claim involving two parties, Michael and Penney, remains. Although the third-party claim was resolved on the merits, the court did not make the express determination required under Rule 78(B) to render the judgment final as to that claim. Accordingly, no final judgment exists, and we lack jurisdiction to consider the appeal.

### Attorney Fees on Appeal

¶6 Michael requests an award of attorney fees and costs incurred on appeal pursuant to Rule 21, Ariz. R. Civ. App. P. and A.R.S. § 25-324. The Selfs also request an award of attorney fees and costs incurred on appeal, but fail to state the basis for their request. In the exercise of our discretion, we decline to award attorney fees to either party.

### Conclusion

¶7 For the foregoing reasons, we dismiss the appeal.

*/s/ Joseph W. Howard*  
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JOSEPH W. HOWARD, Chief Judge

CONCURRING:

*/s/ Garye L. Vásquez*  
\_\_\_\_\_  
GARYE L. VÁSQUEZ, Presiding Judge

*/s/ Michael Miller*  
\_\_\_\_\_  
MICHAEL MILLER, Judge