

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

SLIGO, LLC,
Plaintiff/Appellant,

v.

EVA Q. DOMINGUEZ, AKA EVA BARREDA-CAPERON,
Defendant/Appellee.

No. 2 CA-CV 2013-0121
Filed February 27, 2014

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NOT FOR PUBLICATION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); Ariz. R. Civ. App. P. 28(c).

Appeal from the Superior Court in Pima County

No. C20121970

The Honorable Ted B. Borek, Judge

APPEAL DISMISSED

COUNSEL

Law Office of James R. Vaughan, P.C., Scottsdale
By Brian K. Partridge
Counsel for Plaintiff/Appellant

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Miller and Judge Brammer concurred.

V Á S Q U E Z, Presiding Judge:

¶1 In this contract action, appellant Sligo, LLC appeals from the trial court’s denial of its motion for reconsideration of the post-judgment interest rate contained in the default judgment entered against appellee Eva Dominguez.¹ For the reasons that follow, we dismiss the appeal for lack of jurisdiction.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the trial court’s decision. *See Safeway Stores, Inc. v. Ramirez*, 1 Ariz. App. 117, 118, 400 P.2d 125, 126 (1965). In March 2012, Sligo filed a complaint against Dominguez, alleging failure to pay a credit card debt. Dominguez did not file an answer and, on February 15, 2013, the court entered a default judgment in the amount of \$14,313.39 plus prejudgment interest calculated at eighteen percent and post-judgment interest at 4.25 percent.

¶3 On June 12, 2013, Sligo filed a motion for reconsideration pursuant to Rule 60(a), Ariz. R. Civ. P., claiming the trial court’s default judgment “incorrectly states the applicable rate of interest on the principal balance after judgment” and Sligo “seeks to correct this oversight.” The court denied the motion on June 25, 2013. This appeal followed.

¹Dominguez has never made an appearance in this case, either below or on appeal.

Appellate Jurisdiction

¶4 According to its notice of appeal, Sligo is challenging “the Court’s June 25, 2013 denial of [its] Motion for Reconsideration of the interest rate provided by the Court on the Judgment entered on February 15, 2013.” Although Sligo asserts that we have jurisdiction pursuant to A.R.S. § 12-120.21(A)(1), “this court has an independent duty to determine whether it has jurisdiction over an appeal.” *McMurray v. Dream Catcher USA, Inc.*, 220 Ariz. 71, ¶ 4, 202 P.3d 536, 539 (App. 2009).

¶5 “The general rule is that an appeal lies only from a final judgment.” *Davis v. Cessna Aircraft Corp.*, 168 Ariz. 301, 304, 812 P.2d 1119, 1122 (App. 1991); see A.R.S. § 12-2101(A)(1). Pursuant to § 12-2101(A)(2), parties may also appeal from a special order made after judgment. *In re Marriage of Dorman*, 198 Ariz. 298, ¶ 3, 9 P.3d 329, 331 (App. 2000). But, “not every order following a final judgment is appealable.” *Arvizu v. Fernandez*, 183 Ariz. 224, 226, 902 P.2d 830, 832 (App. 1995).

¶6 Here, Sligo’s motion for reconsideration was filed pursuant to Rule 60(a), and the trial court treated it as a motion to correct a clerical mistake under that rule.² Generally, an order denying a Rule 60(a) motion is an appealable special order after judgment. See *Crye v. Edwards*, 178 Ariz. 327, 329, 873 P.2d 665, 667 (App. 1993) (appeal from grant of Rule 60(a) motion). “The scope of an appeal from a denial of a Rule 60 motion . . . does not extend to a review of whether the trial court was substantively correct in entering the judgment from which relief was sought.” *Hirsch v. Nat’l Van Lines, Inc.*, 136 Ariz. 304, 311, 666 P.2d 49, 56 (1983). Thus, to be appealable under § 12-2101(A)(2), a post-judgment order must raise different issues than would be raised in an appeal from the underlying judgment. *Arvizu*, 183 Ariz. at 226-27, 902 P.2d at 832-33.

²Rule 60(a) provides: “Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on motion of any party and after such notice, if any, as the court orders.”

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¶7 Although Sligo referred to Rule 60(a) in its motion for reconsideration, it did not argue the judgment contained “[c]lerical mistakes . . . arising from oversight or omission” as contemplated by the rule. “[T]he nature of a motion will be determined by its substance and not by its title.” *State ex rel. Corbin v. Tolleson*, 152 Ariz. 376, 380-81, 732 P.2d 1114, 1118-19 (App. 1986). Nothing in the record suggests the judgment failed to contain what the trial court actually decided. Indeed, Sligo argued, contrary to the provisions of Rule 60(a), that the “judgment granting [Sligo] only a 4.25% interest rate after judgment is not supported by the contract or Arizona law.”

¶8 “Rule 60(a) allows the court to correct clerical mistakes arising from oversight or omission.” *Minjares v. State*, 223 Ariz. 54, ¶ 23, 219 P.3d 264, 270 (App. 2009). But, as we have noted, the trial court intended the judgment to include the post-judgment interest rate that Sligo now challenges. If there was error, the error was “judgmental” and not “clerical.” See *Ace Auto. Prods., Inc. v. Van Duynes*, 156 Ariz. 140, 142-43, 750 P.2d 898, 900-01 (App. 1987) (“Whether error is judgmental or clerical turns on the question whether the error occurred in rendering judgment or in recording the judgment rendered.”). Because Sligo’s appeal does not raise different issues than would be raised in an appeal from the underlying judgment, see *Arvizu*, 183 Ariz. at 226-27, 902 P.2d at 832-833, the denial of its motion for reconsideration is not an appealable special order after judgment, and we lack jurisdiction, see *Lally v. Lally*, 228 Ariz. 269, ¶¶ 5, 7, 265 P.3d 1068, 1069-70 (App. 2011).

Disposition

¶9 For the reasons stated above, we dismiss the appeal.