

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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IN RE THE MARRIAGE OF

DONDRA CRUSENBERRY,  
*Appellee,*

*and*

CHARLES GRANT,  
*Appellant.*

No. 2 CA-CV 2014-0141  
Filed November 24, 2015

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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NOT FOR PUBLICATION  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).*

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Appeal from the Superior Court in Pima County  
No. D20110287  
The Honorable Stephen C. Villareal, Judge

**DISMISSED**

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COUNSEL

Richard W. Glenn, Tucson  
*Counsel for Appellee*

Charles M. Grant, Tucson  
*In Propria Persona*

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**MEMORANDUM DECISION**

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

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M I L L E R, Presiding Judge:

¶1 Charles Grant appeals the family court ruling holding him in contempt and entering judgment against him for spousal maintenance arrearages and other debts to Dondra Crusenberry. We dismiss the appeal because we lack jurisdiction and we deny the parties' requests for attorney fees on appeal.

**Factual and Procedural Background**

¶2 The family court entered a decree of dissolution of Charles and Dondra's marriage in February 2013. In December 2013, Dondra filed a motion asking the court to modify parenting time, hold Charles in contempt for failure to abide by court orders regarding spousal maintenance and parenting time, rectify certain financial disputes, and award her attorney fees and costs. The court held various hearings on these issues, and on September 2, 2014, issued an under-advisement ruling resolving the financial matters and parenting time issues, and holding Charles in contempt for failure to pay spousal maintenance. The September 2 ruling also granted Dondra's request for attorney fees and costs, but left the amount to be determined and directed Dondra's attorney to submit an affidavit of attorney fees within fifteen days. Dondra's attorney submitted the affidavit on September 15. Charles filed a notice of appeal on October 1. On October 9, the family court issued a signed ruling awarding attorney fees and costs to Dondra, and directing that the award be reduced to a judgment.

**Jurisdictional Analysis**

¶3 This court has an independent duty to determine whether we have jurisdiction over matters on appeal. *Camasura v.*

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*Camasura*, \_\_\_ Ariz. \_\_\_, ¶ 5, 358 P.3d 600, 602 (App. 2015). Our jurisdiction is defined by statute, and if we lack jurisdiction then we are without authority to entertain an appeal. *In re Marriage of Kassa*, 231 Ariz. 592, ¶ 3, 299 P.3d 1290, 1291 (App. 2013). Appellate jurisdiction cannot be created by agreement of the parties, just as the parties may not waive its absence. *Natale v. Natale*, 234 Ariz. 507, ¶ 8, 323 P.3d 1158, 1160 (App. 2014). We ordered supplemental briefing to address the issue of jurisdiction in this case. In her supplemental brief, Dondra argues we lack jurisdiction. We agree.

¶4 “As a general rule, only final judgments are appealable.” *Camasura*, \_\_\_ Ariz. \_\_\_, ¶ 6, 358 P.3d at 602. Where a family law action<sup>1</sup> involves multiple claims for relief, “the court may direct the entry of final judgment as to one or more but fewer than all of the claims . . . only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.” Ariz. R. Fam. Law P. 78(B). Absent such determination and direction, an order “that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties,” and that order “is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.” *Id.* In other words, “the family court must ‘resolve all issues raised in a post-decree petition before the filing of an appeal,’ in the absence of a Family Rule 78(B) certification of finality for appeal.” *Natale*, 234 Ariz. 507, ¶ 11, 323 P.3d at 1161 (internal citation omitted), *quoting Kassa*, 231 Ariz. 592, ¶ 4, 299 P.3d at 1291. A notice of appeal filed before a final judgment is entered is “premature, ineffective, and a nullity.” *Kassa*, 231 Ariz. 592, ¶ 5, 299 P.3d at 1292.

¶5 Here, the family court’s September 2 ruling was not final and appealable when entered because it did not determine the amount of attorney fees, nor did it include Rule 78(B) language

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<sup>1</sup>A post-decree petition such as Dondra’s December 2013 motion is an “action” for relevant purposes. *See Kassa*, 231 Ariz. 592, ¶ 4, 299 P.3d at 1291, *citing* Ariz. R. Fam. Law P. 3(B)(5) and 23.

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stating that there is no just reason for delaying appeal on the other issues. *See Camasura, \_\_\_ Ariz. \_\_\_, ¶¶ 7-8, 358 P.3d at 602-03; Natale, 234 Ariz. 507, ¶¶ 11-12, 323 P.3d at 1161-62.* The court did not resolve the issue of the amount of attorney fees until October 9. Additionally, it is arguable whether the ruling constitutes a final judgment in view of its language directing preparation of a judgment. We need not resolve this issue because the notice of appeal predated the October 9 ruling and was, therefore, premature. *Camasura, \_\_\_ Ariz. \_\_\_, ¶¶ 7-8, 358 P.3d at 602-03; Kassa, 231 Ariz. 592, ¶ 6, 299 P.3d at 1292.*

¶6 Implicitly acknowledging that his notice was premature, Charles argues in the alternative that we should nonetheless assume jurisdiction. First, he contends that this case falls within the limited “*Barassi* exception,” which holds that a notice of appeal filed after the trial court’s final decision but before it has formally entered judgment is valid “if no decision of the court could change and the only remaining task is merely ministerial.” *Camasura, \_\_\_ Ariz. \_\_\_, ¶ 9, 358 P.3d at 603, quoting Ghadimi v. Soraya, 230 Ariz. 621, ¶ 12, 285 P.3d 969, 971 (App. 2012); see generally Barassi v. Matison, 130 Ariz. 418, 422, 636 P.2d 1200, 1204 (1981).* But the September 2 ruling was still “subject to revision” and change at the time Charles filed his notice of appeal; therefore, it was not a final judgment. *Ariz. R. Fam. Law P. 78(B).* Furthermore, as we have held on multiple occasions, “the remaining task of determining the amount of attorney fees and costs to be awarded ‘was discretionary and not merely ministerial.’” *Camasura, \_\_\_ Ariz. \_\_\_, ¶ 10, 358 P.3d at 603, quoting Ghadimi, 230 Ariz. 621, ¶ 13, 285 P.3d at 971; see Bollerman v. Nowlis, 234 Ariz. 340, ¶ 8, 322 P.3d 157, 159 (2014).*

¶7 Charles contends we should reject a blanket application of *Barassi* because “substantive decisions and ministerial acts are the endpoints on a continuum, with multiple points in between.” Because he did not contest the amount of attorney fees below but only the fee award itself which was in the September 2 ruling he appealed from, he maintains that the amount of attorney fees was an issue more toward “the ministerial end of the *Barassi* spectrum.” He

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cites no authority for the proposition that there is a continuum between discretionary and ministerial acts, but even if we were to assume for the sake of argument that he is correct, our precedents are clear that the amount of attorney fees is discretionary and not ministerial. *See, e.g., Camasura*, \_\_\_ Ariz. \_\_\_, ¶ 10, 358 P.3d at 603; *Ghadimi*, 230 Ariz. 621, ¶ 13, 285 P.3d at 971.

¶8 Nor does Rule 9(c), Ariz. R. Civ. App. P., furnish jurisdiction in this case, as Charles suggests.<sup>2</sup> This court recently rejected an identical argument from a party in a family law case who appealed from a judgment without Rule 78(B) language before the trial court determined the amount of attorney fees to be awarded. *Camasura*, \_\_\_ Ariz. \_\_\_, ¶ 15 & n.4, 358 P.3d at 604 & n.4. We held that Rule 9(c) did not provide a basis for jurisdiction. *See id.* *Camasura* is precisely on point and we see no basis to depart from its holding.<sup>3</sup>

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<sup>2</sup>Charles cites former Rule 9(b)(2)(B), Ariz. R. Civ. App. P., the rule that was in effect when Charles filed his notice of appeal. Former Rule 9(b)(2)(B) read, in relevant part: “A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry of the judgment or order.” Ariz. Sup. Ct. Order R-13-0005 (Aug. 28, 2013). The current rule, renumbered as Rule 9(c), reads: “A notice of appeal or cross-appeal filed after the superior court announces an order or other form of decision—but before entry of the resulting judgment that will be appealable—is treated as filed on the date of, and after the entry of, the judgment.” Ariz. R. Civ. App. P. 9(c); *see also* Ariz. Sup. Ct. Order R-14-0017 (Sept. 2, 2014) (amending Rule 9). The former and current rules are “substantively equivalent” for present purposes, but this case is actually governed by Rule 9(c), because this purported appeal was pending on January 1, 2015. *Camasura*, \_\_\_ Ariz. \_\_\_, n.1, 358 P.3d at 602 n.1.

<sup>3</sup>Although this court once observed, in dicta, that former Rule 9(b)(2)(B) arguably might grant us jurisdiction in a case like this one, *see Lopez v. Food City*, 234 Ariz. 349, ¶ 6, 322 P.3d 166, 168 (App.

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¶9 Because the notice of appeal was premature, and neither the *Barassi* exception nor Rule 9(c) applies, we dismiss the appeal for lack of jurisdiction. *Accord Camasura*, \_\_\_ Ariz. \_\_\_, ¶ 17, 358 P.3d at 604-05; *Kassa*, 231 Ariz. 592, ¶ 6, 299 P.3d at 1292.

**Attorney Fees**

¶10 Both parties request attorney fees and costs pursuant to A.R.S. § 12-349. We deny Charles’s request for attorney fees because he is a pro se litigant.<sup>4</sup> *See Connor v. Cal-Az Props., Inc.*, 137 Ariz. 53, 56, 668 P.2d 896 (App. 1983) (“[A] party who represents himself in litigation has no right to be compensated by the payment of attorneys’ fees because of the absence of an attorney-client relationship.”).

¶11 We deny Dondra’s request for attorney fees because she has failed to carry her burden of proving by a preponderance of the evidence that Charles did not bring this appeal in good faith. *See* § 12-349(A)(1), (F); *see also Reynolds v. Reynolds*, 231 Ariz. 313, ¶ 16, 294 P.3d 151, 156 (App. 2013) (failure to prove lack of good faith fatal to attorney fees request under materially identical former version of § 12-349). Nor has she offered any evidence to support an award under the other prongs of § 12-349(A).

¶12 Dondra also argues she is entitled to attorney fees and costs on appeal under the express terms of the parties’ marital separation agreement (MSA). The MSA, incorporated by reference into the dissolution decree, provides in relevant part: “In the event any [c]ourt proceedings are instituted for the purpose of enforcing the provisions of this Agreement, it is agreed that the party determined to have breached the Agreement shall be liable for the

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2014), that argument has since been foreclosed, *see Camasura*, \_\_\_ Ariz. \_\_\_, ¶ 15; 358 P.3d at 604.

<sup>4</sup>The fact that Charles was formerly a practicing attorney does not change this result. *See Munger Chadwick, P.L.C. v. Farwest Dev. & Constr. of the Sw., LLC*, 235 Ariz. 125, ¶ 11, 329 P.3d 229, 232 (App. 2014).

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reasonable attorney's fees and costs of the non-breaching party." However, "A.R.S. § 25-324 overrides the provision in the [MSA] awarding attorneys' fees solely on the basis that one is the prevailing party." *Edsall v. Superior Court*, 143 Ariz. 240, 249, 693 P.2d 895, 904 (1984), *superseded in part by statutory amendment to § 25-324(A)*. Rather, § 25-324(A) requires a court to consider the financial resources of both parties before awarding attorney fees in dissolution proceedings.<sup>5</sup> As we have recognized, "[I]n some situations an appellate court may not be aware of the financial resources of both parties and thus it would be impossible for the court to award attorney's fees since the financial resources of both parties must be considered." *Countryman v. Countryman*, 135 Ariz. 110, 111, 659 P.2d 663, 664 (App. 1983). This is just such a situation. Because we have no jurisdiction over the appeal, there is no record of the parties' financial resources before us. Therefore, it is impossible for us to award Dondra attorney fees under the MSA with proper consideration of § 25-324 factors.

**Disposition**

¶13 Because we lack jurisdiction, we hereby dismiss the appeal.

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<sup>5</sup>We lack jurisdiction to consider whether the trial court properly applied this rule.