

ARIZONA COURT OF APPEALS

DIVISION ONE

LAVEEN MEADOWS HOMEOWNERS'  
ASSOCIATION, INC., an Arizona  
nonprofit corporation,

Plaintiff/Appellee,

vs.

CARLOS MEJIA, a married man, as his  
sole and separate property; et al.,

Defendant/Appellant.

1 CA-CV 18-0276

Maricopa County Superior Court  
No. CV2016-094391

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**APPELLANT'S MOTION FOR RECONSIDERATION OF ORDER  
DISMISSING APPEAL AND TO REINSTATE APPEAL**

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*Attorneys for Appellant Carlos Mejia*

Defendant/Appellant Carlos Mejia hereby moves for reconsideration of the Court's June 12, 2018 order dismissing this appeal and requests reinstatement of the appeal. The Court dismissed the appeal on the basis that the Index of Record reflected that the trial court had not ruled on Plaintiff's post-judgment fee application and, therefore, the Court's minute entry was not an appealable final order under Rule 54.

Unbeknownst to the parties, the trial court actually ruled on Plaintiff's post-judgment application for attorneys' fees in a signed order dated April 19, 2018 (the "Order").<sup>1</sup> Although the signed Order indicates that it was "Filed April 20, 2018," the trial court did not docket the order until May 16, 2018. Neither party had notice of the signed Order, which was signed prior to the Court's receipt of Defendant's timely response filed on April 20, 2018, and Plaintiff's reply filed on May 2, 2018. In fact, Defendant's counsel to this date has never received a copy of the Order and had to retrieve a copy from the clerk. The Order is also inexplicably not listed in the Electronic Index of Record that was certified and transmitted to the Court of Appeals on May 31, 2018.

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<sup>1</sup> Defendant is attaching hereto a copy of the Order as Exhibit 1.

The Court of Appeals has discretion to consider the Notice of Appeal timely and not premature as to the Order awarding fees signed on April 19, 2018, “filed” on April 20, 2018, but not actually entered until May 16, 2018. Defendant filed his Notice of Appeal on April 25, 2018, just six days after the Court signed the Order and five days after it “filed” it. While the Order may not have been docketed in the trial court, the Notice of Appeal was timely as to the Order and there was nothing left to do in the trial court except the ministerial step of entering the Order.

Alternatively, the *Barassi* exception to the final judgment rule applies in this case. *See Barassi v. Matison*, 130 Ariz. 418, 422, 636 P.2d 1200, 1204 (1981); *Smith v. Arizona Citizens Clean Election Commission*, 212 Ariz. 407, 415, 132 P.3d 1187, 1195 (2006) (holding that *Barassi* exception applies only “if no decision of the court could change and the only remaining task is merely ministerial”). Here, all that remained was the ministerial step of the clerk entering the “filed” order into the docket.

The foregoing timeline compels the Court to reconsider its dismissal and reinstate this appeal. Defendant’s Notice of Appeal, filed on April 25, 2018, was timely as to the Order even if none of the parties, or even the clerk, had received a copy or notice. While the Order may not be included in the Electronic Index of

Record that was certified and transmitted on May 31, 2018, this omission should not be the basis for dismissing what is otherwise a mature, timely appeal.<sup>2</sup>

DATED this 13th day of June 2018.

By: /s/ Jonathan A. Dessauls  
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<sup>2</sup> In the alternative and out of an abundance of caution, Appellant has filed a new Notice of Appeal, or, in the Alternative, Amended Notice of Appeal in the Superior Court appealing the Order and the prior related orders, rulings, and judgment.