

District Court, Larimer County, State of Colorado 201 LaPorte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 494-3500	DATE FILED: December 6, 2018 CASE NUMBER: 2018CV149 <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiff: Eric Sutherland</p> <p>v.</p> <p>Defendants: The City of Fort Collins, et al.</p>	
ORDER GRANTING MOTION FOR RECONSIDERATION	

Plaintiff filed a Notice of Appeal on October 23, 2018. Among other things, Plaintiff appeals this Court’s: Order Granting Defendants’ Motions to Dismiss as to Defendants City of Fort Collins, Steve Miller, and Irene Josey; Order Granting Defendants’ Timnath Development Authority and Compass Mortgage Corporation’s Joint Motion to Dismiss, and the related Order Denying Reconsideration; and Order Granting Timnath Development Authority’s and Compass Mortgage Corporations’ Motion for Attorneys’ Fees and Bill of Costs. Notice of Appeal at 3.

On October 29, 2018, this Court issued a Status Order Regarding Notice of Appeal. In that Order, the Court stated that it “does not have jurisdiction to consider any of the motions pending before it” and that “the Court will not consider any of the[] pending motions further until the Court reacquires jurisdiction.” Order at 2. Two of the motions the Court declined to consider further were motions for attorney fees filed by the City of Fort Collins and by Steve Miller and Irene Josey. *Id.*

The City of Fort Collins filed a motion to reconsider on November 14, 2018. Plaintiff did not file a response. After reviewing the motion and applicable law, the Court finds and orders as follows.

I. Legal Standards

“Upon the filing of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal...”. C.A.R. 3(a). This provision “must be read as requiring transfer of jurisdiction to the court of appeals ‘[u]pon the filing of the notice of appeal’ of a final judgment.” *Musick v. Woznicki*, 136 P.3d 244, 249 (Colo. 2006) (quoting C.A.R. 3(a)) (alteration and emphasis in original).

“Generally, the filing of a notice of appeal shifts jurisdiction to the appellate court, thus divesting the trial court of jurisdiction to conduct further substantive action related to the judgment on appeal.” *Id.* at 246. “[A] trial court retains jurisdiction to act on matters that are not relative to and do not affect the judgment on appeal.” *Id.* at 248 (quoting *People v. Stewart*, 55 P.3d 107, 126 (Colo.2002)). “[A] trial court loses jurisdiction to determine substantive matters related to the judgment on appeal once the appeal is filed only if the appeal is of a final judgment.” *Id.* at 250.

“A trial court has continuing jurisdiction to determine attorney fee issues after a notice of appeal is filed to review the merits judgment.” *A. Tenenbaum & Co. v. Colantuno*, 3 P.3d 456, 458 (Colo. App. 1999), *as modified on denial of reh'g* (Dec. 23, 1999), *aff'd*, 23 P.3d 708 (Colo. 2001).

II. Application of Law

The Court retains jurisdiction to consider the motions for attorney fees filed by the City of Fort Collins and by Steve Miller and Irene Josey. As the Motion filed by the City of Fort Collins for fees and costs is ripe, the Court issues its Order.

Any response to Miller and Josey’s motion for fees and costs is due no later than December 20, 2018.

Dated: December 6, 2018.

BY THE COURT:



Gregory M. Lammons
District Court Judge