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SUMMARY  
August 1, 2024

**2024COA81**

**No. 23CA0937, *Marriage of Matheny* — Colorado Rules for Magistrates — Review of District Court Magistrate Orders or Judgments; Appeals — Final Appealable Order**

A division of the court of appeals determines that when a district court rejects a magistrate's order under C.R.M. 7(a)(10), the court cannot remand the case for the magistrate to reconsider the ruling or conduct further proceedings; instead, the district court must enter a ruling that constitutes a final appealable order. Because the district court did not resolve the matter when it rejected the magistrate's order, the division concludes it lacks a final order and dismisses the appeal without prejudice.

Court of Appeals No. 23CA0937  
El Paso County District Court No. 17DR847  
Honorable Chad Miller, Judge

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In re the Marriage of

Eric Michael Matheny,

Appellant,

and

Kristine Nicole Matheny,

Appellee.

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APPEAL DISMISSED

Division IV  
Opinion by JUDGE JOHNSON  
Navarro and Pawar, JJ., concur

Announced August 1, 2024

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Byrnes Law Firm, James A. Yontz, Colorado Springs, Colorado, for Appellant

No Appearance for Appellee

¶ 1 In this contempt proceeding arising from an allocation of parental responsibilities (APR) order, Eric Michael Matheny (father) appeals a district court's order reviewing a magistrate's order. The magistrate had dismissed the request of Kristine Nicole Matheny (mother)<sup>1</sup> for a contempt finding against father because she had not proved that father violated the APR order on the specific dates or instances alleged in her motion. She filed a petition for review, and the district court reversed the magistrate's dismissal and remanded the case so that the magistrate could conduct further proceedings.

¶ 2 We conclude that the district court improperly remanded the case to the magistrate. Under C.R.M. 7(a)(10), a district court may adopt, modify, or reject a magistrate's order. When a district court rejects a magistrate's order, it cannot remand the case for the magistrate to reconsider his ruling or conduct further proceedings; instead, the district court must enter a ruling that constitutes a final appealable order, meaning it must fully adjudicate the rights and liabilities of the parties on the specific issue or claim that had

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<sup>1</sup> At a January 10, 2023 hearing, mother referred to herself as Kristine Nicole Haakma. We refer to mother by her former name because the case caption does not appear to be updated.

been presented to the magistrate. Because the district court reversed the magistrate's finding that father was not in contempt of the APR order, it was required to resolve mother's request for contempt on the merits, which it did not do. Thus, because we lack a final appealable order, we dismiss the appeal without prejudice.

### I. Background

¶ 3 This case has been a highly contentious matter between mother and father as it relates to the parties' minor child. As relevant here, the district court entered an APR order on January 2, 2019, which awarded father sole decision-making authority over the parties' minor child but required him to keep mother informed of all major decisions and to allow mother access to all records regarding the child. At an April 9, 2021 hearing, the district court slightly modified the January 2019 APR order.

¶ 4 The April 2021 APR order (1) maintained that father had sole decision-making authority but also had to keep mother apprised of all activities and appointments regarding the child through the Talking Parents application and (2) required the parents to respond to each other's communications on the Talking Parents application

within forty-eight hours and provided that failure to do so could be a factor in reconsidering decision-making authority.<sup>2</sup>

¶ 5 On September 13, 2022, mother filed a verified motion for contempt alleging that father had violated the April 2021 APR order. Specifically, she alleged that on various dates from May 2019 to April 2022, she had communicated with father through the Talking Parents application and “requested information[,] and those requests were either ignored or the resulting answer was not complete or [was] inaccurate.”

¶ 6 A magistrate held a hearing on the contempt motion in January 2023. At the hearing, mother offered into evidence all communications between her and father from June 17, 2017 to January 1, 2023. The magistrate entered an order dismissing mother’s contempt motion with prejudice, finding that, although father admitted to violating the April 2021 APR order, mother had not proved the specific violations alleged in her motion.

¶ 7 Mother timely filed a petition with the district court seeking review of the magistrate’s order. The district court granted mother’s

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<sup>2</sup> The court later issued a comprehensive order on May 3, 2021, *nunc pro tunc* to April 3, 2021.

petition, finding that the magistrate “erroneously found that there was no evidence to support a contempt finding,” and remanding the case to the magistrate for “further proceedings and findings,” presumably for the magistrate to determine whether a sanction should be imposed for father’s violations of the APR order.

¶ 8 Father sought reconsideration, a remand, or dismissal of the district court’s order, which the court summarily denied. He now appeals, alleging that the district court erred by (1) violating his double jeopardy rights; (2) rejecting the magistrate’s findings; (3) remanding the case to the magistrate; and (4) substituting its judgment for that of the magistrate’s. Although we agree with father that the district court improperly remanded the matter to the magistrate, we do not address any of father’s issues on the merits because we lack a final appealable order.

## II. Appellate Jurisdiction

¶ 9 “Because we must always satisfy ourselves that we have jurisdiction to hear an appeal, we may raise jurisdictional defects sua sponte, regardless of whether the parties have raised the issue.” *People v. S.X.G.*, 2012 CO 5, ¶ 9.

## A. Magistrate Order

¶ 10 As relevant here, magistrates have authority to preside over contempt proceedings without the consent of the parties. C.R.M. 5(b); *In re Marriage of Stockman*, 251 P.3d 541, 542 (Colo. App. 2010).

¶ 11 Following the contempt hearing in this case, the magistrate formalized his ruling in a written order. In that order, the magistrate determined that as to both remedial and punitive contempt, mother had proved by a preponderance of the evidence that there was a lawful order in place and that father had knowledge of that order. *See* C.R.C.P. 107(a)(1); *People v. Allen*, 868 P.2d 379, 383 n.10 (Colo. 1994) (the party seeking contempt must prove that the contemnor did not comply with a lawful order and that the contemnor was aware of that lawful order); C.R.C.P. 107(a)(4) (Punitive contempt constitutes “[p]unishment by unconditional fine, fixed sentence of imprisonment, or both, for conduct that is found to be offensive to the authority and dignity of the court.”); C.R.C.P. 107(a)(5) (Remedial contempt constitutes the imposition of “[s]anctions . . . to force compliance with a lawful

order or to compel performance of an act within the person’s power or present ability to perform.”).

¶ 12 But the magistrate determined that for both punitive and remedial contempt, even though father had admitted to violations of the April 2021 APR order, “the evidence presented was for violations of the Order that were not specifically outline[d] in the Citation for contempt,” and thus, he could not “find that [father] was in violation of the Order on the specific dates in the Contempt Motion.” As a result, the magistrate concluded that mother had not proved that father was in either remedial or punitive contempt, and the magistrate dismissed her contempt motion with prejudice.

¶ 13 Recently, our supreme court in *People v. Maes*, 2024 CO 15, ¶ 12, clarified what constitutes a magistrate’s final order for appellate review, noting that a final order is different depending on whether the proceeding requires the parties’ consent or may be conducted without the parties’ consent. *Maes* stated that when a magistrate hears a matter in place of a district court with the consent of the parties, “a magistrate’s decision is treated like a district court decision and may be appealed in the same manner under the Colorado Rules of Appellate Procedure.” *Id.* But in



instances where the consent of the parties is not required, such as here, the rules allow a district court to review the magistrate's order if it is a "final order or judgment," which C.R.M. 7(a)(3) defines as one that "fully resolves an issue or claim." *Maes*, ¶¶ 12-13 (quoting C.R.M. 7(a)(3)). Because C.R.M. 7(a)(3) defines a final order as one that resolves an issue or claim, the court reasoned that "an action is the whole, and issues and claims are the building blocks that comprise it." *Maes*, ¶ 18. In other words, a magistrate's order that resolves an "issue or claim" may be a "final order" for purposes of district court review because it "resolve[s] an individual component of an action without resolving the action in its entirety." *Id.*

¶ 14 Here, the magistrate's order was a final reviewable order for purposes of C.R.M. 7(a) review because the magistrate made extensive findings as to why mother had proved neither punitive contempt nor remedial contempt, and the magistrate dismissed mother's contempt motion with prejudice. *See People v. Proffitt*, 865 P.2d 929, 931 (Colo. App. 1993) (where contemnor is unable to reinstate request to issue a contempt citation by addition of further factual allegations or by correcting a procedural defect, denial of the request is final for purposes of appeal). Indeed, once the magistrate

dismissed mother's motion with prejudice, he resolved mother's claim. *See Maes*, ¶ 18.

#### B. District Court Order

¶ 15 Having concluded that the magistrate's order was final and therefore reviewable by the district court, we must now determine whether the district court's order was final for purposes of appellate review by this court. C.R.M. 7(a)(11) specifies that, in circumstances such as this where no consent was required for the magistrate's dismissal order, no appeal of the magistrate's order may "be taken to the appellate court unless a timely petition for review has been filed *and decided by a reviewing court in accordance with these Rules.*" (Emphasis added.) The district court had three dispositional options to resolve mother's petition for review: adopt, reject, or modify the magistrate's order. *See* C.R.M. 7(a)(10). While the district court unambiguously rejected the magistrate's findings that mother had failed to prove specific instances in which father's actions constituted contempt, it erroneously did not resolve mother's request in a manner that constituted a final appealable order.

¶ 16 Without resolving whether the district court correctly decided the merits of mother’s request for contempt, we describe the court’s ruling. The district court noted that mother had alleged in her motion two specific dates — May 7, 2021 and April 27, 2022 — that father had allegedly violated the APR order. And it found that mother both testified about and provided documentary proof at the contempt hearing that father had not fully communicated with her about the child on those two specific dates. Based on the magistrate’s findings that a lawful order existed, father was aware of the order, and father even admitted at the hearing that he violated the order, the district court concluded that “there was evidence presented at the hearing related to violations as alleged in” mother’s motion. Accordingly, the district court determined that the magistrate’s findings were clearly erroneous and thus rejected them.

¶ 17 The court continued that, because the magistrate had not reached “whether any contempt was or could have been purged or what, if any, sanctions may have been appropriate,” it likewise would not decide these issues and would remand the case to the magistrate to conduct further proceedings and findings with respect

to mother's motion. Presumably, the district court remanded the case for the magistrate to determine whether the contempt was purged and what, if any, sanctions should be imposed.

¶ 18 We acknowledge that the magistrate rules continue to sow confusion amongst courts and litigants alike. But for at least two reasons, we conclude that the district court's order reviewing the magistrate's order is not final or appealable.

¶ 19 First, except for correction of clerical errors under C.R.C.P. 60(a), C.R.M. 5(a) prohibits magistrates from reconsidering their rulings or imposing postjudgment relief. Case law interpreting C.R.M. 5(a) has consistently held that "[a] magistrate may not entertain a motion for reconsideration under C.R.C.P. 59 or for relief from a judgment under C.R.C.P. 60." *In re Marriage of James*, 2023 COA 51, ¶ 17 (quoting *In re Parental Responsibilities of M.B.-M.*, 252 P.3d 506, 510 (Colo. App. 2011)); see *In re Marriage of Phelps*, 74 P.3d 506, 509 (Colo. App. 2003) (declaring that any magistrate's ruling on a motion for reconsideration is considered void). Similar to those unauthorized procedures, remanding a case to a magistrate, as the court did here, would invite the magistrate to conduct further proceedings that are not specifically contemplated

in C.R.M. 5(a). We conclude that if a magistrate cannot entertain motions by a party who files the request directly with the magistrate (postjudgment or otherwise), a district court likewise cannot remand or order the magistrate to do indirectly what the rules do not authorize the magistrate to do. *See In re Marriage of Thorburn*, 2022 COA 80, ¶ 23 (a district court cannot remand a matter for a magistrate to reconsider their ruling).

¶ 20 Second, while a district court takes on a quasi-appellate capacity when it reviews a magistrate order, that role differs from traditional appellate review. We have consistently said that, as an appellate body, we do not engage in factfinding. *See Martinez v. Reg'l Transp. Dist.*, 832 P.2d 1060, 1061 (Colo. App. 1992) (“There is no principle more fundamental to appellate jurisprudence than the maxim that an appellate court does not decide the facts and may not substitute its judgment for that of the fact-finder.”). But the magistrate rules specifically contemplate a district court judge conducting additional proceedings if necessary. Under C.R.M. 7(a)(10), “[t]he reviewing judge shall adopt, reject, or modify the initial order or judgment of the magistrate by written order, which order shall be the order or judgment of the district court.” In

deciding the proper disposition on review, though, C.R.M. 7(a)(8) states that “[t]he reviewing judge shall consider the petition for review on the basis of the petition and briefs filed, together with such review of the record as is necessary. The reviewing judge also may conduct further proceedings, take additional evidence, or order a trial de novo in the district court.”

¶ 21 In instances where the district court adopts a magistrate’s order, additional proceedings are likely unnecessary for the district court’s order to be final and appealable. But that may not be true when a district court modifies or rejects the magistrate’s order. Because the district court here rejected the magistrate’s finding, it recognized that additional proceedings needed to be conducted. The court’s error, though, was not recognizing that it — not the magistrate — was required to conduct those additional proceedings.

¶ 22 We take no position as to what further proceedings the district court may need to undertake to resolve mother’s petition for review, but it must do so in a manner that fully adjudicates the rights and liabilities of the parties as raised in mother’s motion for contempt. As *Maes*, ¶ 18, stated, a magistrate’s final order for purposes of district court review may only resolve one component of a larger

action that does not resolve the entire matter. But for purposes of appellate review by this court, C.A.R. 1(a)(1) requires “a final judgment,” which means a ruling or order that disposes of the litigation and leaves nothing further for the court to do. *L.H.M. Corp., TCD v. Martinez*, 2021 CO 78, ¶ 14; *S.X.G.*, ¶¶ 3, 19-20 (where the district court erroneously concluded it lacked authority to review a magistrate’s order and therefore did not adopt, reject, or modify the order as required by the magistrate rules, the supreme court lacked appellate jurisdiction); *In re Marriage of Moore*, 107 P.3d 1150, 1151 (Colo. App. 2005) (“[O]nce a motion for review is filed, a district court reviewing judge must take action upon that motion pursuant to C.R.M. 7(a)(2) to enter a final appealable order.”).

¶ 23 Thus, because the district court has not fully resolved mother’s petition for review, we lack a final appealable order.<sup>3</sup>

### III. Conclusion

¶ 24 The appeal is dismissed without prejudice.

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<sup>3</sup> Although a motions division of this court reached a contrary conclusion on this court’s jurisdiction, we are not bound by that division’s determination. See *Chavez v. Chavez*, 2020 COA 70, ¶ 13.

JUDGE NAVARRO and JUDGE PAWAR concur.