

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000441-001 DT

03/07/2019

HONORABLE PATRICIA ANN STARR

CLERK OF THE COURT

C. Avena

Deputy

DEBORAH MINAMYER

DEBORAH MINAMYER
6945 E COCHISE RD #136
SCOTTSDALE AZ 85253

v.

MONTELENA VILLAS HOMEOWNERS
ASSOCIATION (001)

PETER C BROWN

JUDGE STARR
MCDOWELL MOUNTAIN JUSTICE
COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case No. CC2018019841.

Pending before the Court is an appeal brought by Appellant Deborah Minamyer from the trial court's order dismissing all claims against the individual defendants with prejudice, and dismissing the claims against Appellee Montelena Villas Homeowners Association ("the Association") without prejudice. (Ruling, August 24, 2018.)

For the following reasons, the Court affirms the decision of the trial court.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

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I. FACTS AND PROCEDURAL BACKGROUND

Minamyler brought suit on January 30, 2018, seeking compensation for alleged water damage to her condominium unit. She named the Association and individual defendants; she did not name the management association, Scottsdale Condominium Management, LLC (“Scottsdale Management”) as a defendant in the case.

In her Complaint, Minamyler alleged that her living room roof had “leaked for ten years,” and that her bedroom roof had “been leaking since I moved in (1999). . .” (Complaint, filed January 30, 2018.)

The trial court granted a motion to dismiss the individual defendants in June of 2018. The matter proceeded to trial as to the Association. During trial, the trial court granted the Association’s motion to dismiss based on application of the statute of limitations, A.R.S. § 12-548.

II. LEGAL ANALYSIS

As a preliminary matter, the Association asks the Court to dismiss the appeal because Minamyler did not file a transcript of the proceedings, and because Minamyler failed to file a designation of items to be included in the record on appeal.

The Court finds that dismissal is not warranted. Rule 2 of the Superior Court Rules of Appellate Procedure - Civil (“SCRAP Rules”) allows the Court, with exceptions not applicable here, to “suspend the requirements or provisions of any of” the rules in a particular case. The rules “shall be liberally construed in the furtherance of justice.” *Id.*

Moreover, the record on appeal is “the recording **or** certified transcript of the trial.” Rule 7(b)(10), SCRAP Rules – Civil. Here, the record is the recording. See also Rule 9.4(b), Local Rules of Practice, Maricopa County Superior Court (“[t]he verbatim record in limited jurisdiction courts may consist of audio, video, digital, transcription, or other method of recording as approved by the Supreme Court.”) And the Association has not shown that any document that should have been included in the record has been omitted.

Minamyler raises several issues on appeal.

First, Minamyler argues that she was not permitted to cross-examine the Association’s witness. But the trial court dismissed the suit against the Association on the ground that the

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000441-001 DT

03/07/2019

statute of limitations had expired, based on evidence and testimony produced during Minamyers case in chief. Minamyers has not shown that any failure to allow further examination of a defense witness caused her any prejudice, or affected the trial courts ruling regarding the application of the statute of limitations.

Second, Minamyers contends that the trial court erred by not letting her discuss the lien on her house. But Minamyers has failed to show how the lien, whether it was part of a separate lawsuit or not, was relevant in this matter.

Third, Minamyers argues that the evidence shows that her roof continued to leak after 2007. But the trial court was the proper fact-finder in this matter, not this Court. An appellate court should not overturn a trial courts findings of fact unless clearly erroneous, giving due regard to the opportunity of the court to judge the credibility of witnesses.” *In re Estate of Zaritsky*, 198 Ariz. 599, 601, ¶ 5 (App. 2000). Here, Minamyers has not established that the trial courts findings were clearly erroneous.

Moreover, it appears that Minamyers is attempting to introduce new evidence on appeal. An “appeal must be determined solely on the evidence produced in the court below and shown by the record.” *Garcia v. City of Tucson*, 1 Ariz. App. 83, 84 (1965).

Finally, Minamyers asks this Court to order Scottsdale Management pay for her alleged damages and allow her to use her own contractors to complete repairs. As an appellate court, this Court cannot grant such relief. Moreover, Scottsdale Management was not a party below, and is not a party to this appeal. The Court has no jurisdiction over a non-party, and thus cannot order Scottsdale Management to take any action in this matter.

III. CONCLUSION

Based on the foregoing, the Court finds that the trial court did not err when it dismissed the matter against the individual defendants with prejudice, and against the Association without prejudice.

Therefore,

IT IS ORDERED affirming the order of the McDowell Mountain Justice Court

IT IS FURTHER ORDERED remanding this matter to the McDowell Mountain Justice Court for all further proceedings.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2018-000441-001 DT

03/07/2019

IT IS FURTHER ORDERED signing this minute entry as a formal order of the Court.

/s/ Patricia A. Starr

THE HON. PATRICIA A. STARR
JUDGE OF THE SUPERIOR COURT

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