

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2014-000179-001 DT

05/19/2014

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT

J. Eaton

Deputy

VELDA ROSE ESTATES HOME OWNERS
ASSOCIATION

CHARLES E MAXWELL

v.

EDITH POGGI (001)

EDITH POGGI
4132 N 3RD AVE #2
PHOENIX AZ 85013

MESA JUSTICE CT-EAST
REMAND DESK-LCA-CCC

MINUTE ENTRY

Lower Court Case No. CC2012–132551.

Introduction

Defendant-Appellant Edith Poggi (Defendant) filed a series of combined motions as well as responsive motions and reply motions. In addition, Plaintiff-Appellee filed a procedural motion. To date, the parties have filed more than five procedural motions in this case. In order to expedite ruling on these various motions, conserve judicial resources, and avoid needless duplication of law, this Court shall combine the rulings on the pending motions into one minute entry ruling.

The April 30, 2014 Motions

The first set of motions was filed on April 30, 2014, and included (1) a Motion for Accelerated Review of Defendant's Appeal To Avoid Irreparable Injury That Will Occur on 5/14/14 (See Exhibit A) [sic.]; (2) a Motion for Stay All Court Orders Pending Appeal; and (3) Motion for Relief of Posting Bond. This Court ruled on this first set of motions on May 1, 2014. Although this Court determined it would expedite its ruling on the appeal, Defendant's continual filing of additional motions delays this Court from ruling on Defendant's appeal. When a party files a procedural motion, the opposing side has 14 days in which to respond. Superior Court Rules of Appellate Procedure—Civil (SCRAP—Civ.) Rule 8(c)(2). In addition, while a procedural motion is pending, any further preparation of the record is suspended. SCRAP—Civ. Rule 8(c)(2). Thus, each procedural motion further delays this Court's ability to rule on the appeal. A summary of the other procedural motions is included below.

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The May 5, 2014 Motions

On May 5, 2014, Defendant-Appellant filed her second set of procedural motions: (1) Motion to Bifurcate Appeal (Jury Trial Request), Motion To Amend Independent Action Including Claim Against Maxwell & Morgan, P.C. and Its Attorneys [sic.]; and (2) Motion To Accept This Reply To “Procedural Motion Response—Refer To Superior Court.

On May 8, 2014, Plaintiff-Appellee filed its “Appellee’s Response In Opposition To Appellant’s “Motion To Bifurcate Appeal (Jury Trial Requested), Motion To Amend Independent Action Including Claim Against Maxwell & Morgan, P.C. And Its Attorneys.” Plaintiff included a request for sanctions in this Response.

On May 15, 2013, Defendant filed a Reply to her Motion To Bifurcate Appeal (Jury Trial Requested, Motion To Amend Independent Action Including Claim Against Maxwell & Morgan and Its Attorneys combined with a Motion To Accept This Reply to Procedural Motion Response—Refer To Superior Court. She combined this Reply with her Response to Plaintiff’s request for sanctions.

That same day Plaintiff filed Appellee’s Response In Opposition To Appellant’s “Motion For Procedural Order To Accept Following Supplemental Reply And Motion To Supplement Motion To Bifurcate.”

Defendant’s Motion to Bifurcate Appeal/Motion To Amend Independent Action Including Claim Against Maxwell & Morgan and Its Attorneys

In her Motion To Bifurcate her case, Defendant requested a ruling from this Court as to whether the Justice Court judgment should be set aside because she claimed there was newly discovered evidence. This Court does not, in its appellate context, rule on motions to set aside. A Motion To Set Aside a Justice Court ruling must be brought to the Justice Court pursuant to Rule 141, Justice Court Rules of Civil Procedure (JCTCP). However, the Justice Court in this case no longer has the jurisdiction to consider a Motion To Set Aside a Judgment pursuant to Rule 141, JCRCP, because Defendant filed an appeal and the Justice Court case has been transferred to the Appeals Division of the Superior Court.

Defendant also requested that her fraud claims “referenced in its Appeal Memorandum be separately tried before a jury against the Association, the Association attorneys Maxwell & Morgan, P.C. the Management Company, the developer/builder of said property, and Velda Rose Inc.” This request is (1) procedurally improper; and (2) is denied. Defendant is requesting a new proceeding. Defendant cannot combine new claims with an appeal. An appellate court does not provide a jury trial and does not offer the opportunity to raise new claims against parties who were not involved in the underlying litigation.

A litigant cannot raise new issues or bring in new evidence on appeal and an appellate court normally does not consider any issue or evidence not first raised at the trial court. “Thus, although Arizona appellate courts have the discretion to hear arguments first raised on appeal, we rarely exercise that discretion.” *Harris v. Cochise Health Systems*, 215 Ariz. 344, 160 P.3d 223 ¶ 17 (Ct. App. 2007). In *Town of South Tucson v. Board of Sup’rs of Pima County*, 52 Ariz. 575, 582, 84 P.2d 581, 584 (1938), our Supreme Court ruled:

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. . . One of the rules of well-nigh universal application established by courts in the administration of the law is that questions not raised and properly presented for review in the trial court will not be reviewed on appeal. 3 C. J. 689. The reason for the rule is plain. If the question had been raised below, the situation might have been met by the opposite party by way of amendment or of additional proof. In such circumstances, therefore, for the appellate court to take up and decide on an incomplete record questions raised before it for the first time would, in many instances at least, result in great injustice, and for that reason appellate courts ordinarily decline to review questions raised for the first time in the appellate court. . . . Whether this court should review a question raised here for the first time depends upon the facts and circumstances disclosed by the particular record. It undoubtedly has the power, but ordinarily will not exercise it.

Defendant claims the attorneys representing Plaintiff have been found to have committed fraud in a separate case. Any disciplinary matters against those attorneys are part of a separate proceeding. As stated earlier, this Court's jurisdiction is to consider and rule on any improper legal rulings or abuse of discretion on the part of the trial court in the handling of the case CC2012-132551. This Court will rule on those claims when this Court considers Defendant's appeal, her appellate memoranda, and Plaintiff's responsive memorandum. This Court will not rule on these issues in the guise of a procedural motion. Furthermore, this Court shall not order any new trial against any party who was not a party to the Justice Court action in CC2012-132551. Such orders exceed the scope of the Appeals Division's jurisdiction.

Rule 9.4 of the Superior Court Local Rules—Maricopa County discusses the record used for an appeal. This rule states:

- a. All cases shall be submitted for determination based upon a verbatim record of proceedings, and those written matters consisting of the pleadings and papers designated or required by rule to be included within the record on appeal from the limited jurisdiction court or administrative agency or administrative law judge. The parties may stipulate to a determination upon less than a complete record.

An appeal is not the same as a new claim or action. Should Defendant wish to proceed with new claims or causes of action against any additional party(ies) Defendant will need to comply with applicable procedural rules and file appropriate requests. These claims and actions cannot be combined with her appeal from the East Mesa Justice Court's ruling. Similarly, the Appeals Division will not address any of Defendant's requests that relate to any other case.

Defendant's Request To Accept This Reply

This Court denies Defendant's request to file a Reply memorandum for this group of motions. Rule 8(c)(2) SCRAP—Civ. states no reply shall be filed unless permitted by the trial court. Defendant's Reply adds nothing new to her argument and, as will be seen below, provides no new legal authority or support for her claim. However, although this Court denies Defendant's request for file a Reply, this Court has considered or shall consider the portions of the pleading that relates to (1) Defendant's request to bifurcate the case; or (2) Plaintiff's request for sanctions.

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Plaintiff-Appellee's Request For Sanctions

Plaintiff requested sanctions pursuant to Rule 16, SCRAP—Civ. because Plaintiff claimed Defendant's motions are frivolous and caused needless delay. While this Court agrees the listed motions lack merit, this Court does not believe they were filed to either cause unnecessary delay or needlessly increase the costs associated with the present appeal. In response to the request for sanctions, Defendant claimed her motions resulted from Plaintiff's Motion To Dismiss her appeal, and her claims about Rule 60(c). This Court finds Defendant's Rule 60(c) claim is inapposite because (1) the Arizona Rules of Civil Procedure did not govern the Justice Court action; (2) the Arizona Rules of Civil Procedure are not applicable to an appeal to the Appeals Division of the Superior Court; and (3) Defendant cannot combine her various claims into a single action before this appellate court. This Court also finds Defendant's claim about the timeliness of the appeal to be moot.

Although Defendant's motions are procedurally unfounded, Plaintiff has not demonstrated the purpose of the motions was to either cause unnecessary delay or to increase the costs associated with the appeal. This Court notes Defendant is a *pro se* litigant and the interrelationship between various procedural rules can be complex. However, Defendant is cautioned that Arizona treats *pro se* litigants (those who represent themselves) according to the same standards used for attorney representation and courts do not excuse the failure to conform to mandated rules because a litigant represents himself or herself. In *In re Marriage of Williams*, 219 Ariz. 546, 200 P.3d 1043, ¶ 13 (Ct. App. 2008) the Arizona Court of Appeals held:

Parties who choose to represent themselves "are entitled to no more consideration than if they had been represented by counsel" and are held to the same standards as attorneys with respect to "familiarity with required procedures and . . . notice of statutes and local rules." A party's ignorance of the law is not an excuse for failing to comply with it.

[Citations omitted.] Similarly, in *Higgins v. Higgins*, 194 Ariz. 266, 279, 981 P.2d 134, 138 (Ct. App. 1999) the Court of Appeals ruled:

One who represents herself in civil litigation is given the same consideration on appeal as one who has been represented by counsel. She is held to the same familiarity with court procedures and the same notice of statutes, rules, and legal principles as is expected of a lawyer.

[Citations omitted.] Accord, *Kelly v. NationsBanc. Mortg. Corp.*, 199 Ariz. 284, 17 P.3d 790, 793, ¶ 16 (Ct. App. 2001). Consequently, Defendant is cautioned against the filing of procedurally improper motions as these require the opposing litigant to expend sums for defense that otherwise may not be required. Furthermore, although this Court is denying Plaintiff sanctions at this time, Plaintiff may be eligible to request reimbursement for the time spent defending against Defendant's motions should Plaintiff prevail on appeal. In addition, Defendant is now apprised that she will be treated in the same manner as a litigant who is represented by counsel and she may be subject to sanctions if she continues to file procedurally improper motions or requests with this Court.

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The May 12, 2014 Motions

On May 12, 2014, Defendant Poggi filed another set of motions denominated Motion To Accelerate Ruling on Below Motions, Motion For Procedural Order To Accept Following Supplemental Reply and Motion To Supplement Motion To Bifurcate. Plaintiff maintained the motion was based on “newly discovered information obtained in May, 2014.” This motion referred to a separate proceeding before Commissioner Morrow and claimed Commissioner Morrow “accidentally did not know that he was using the incorrect mailing address for Home Owner despite the correct information filed with the Clerk of Court/Administration (Exhibit A).” Defendant’s Exhibit A refers to Case No. TJ2013–003854. Defendant also included documents from Superior Court CV2012–096070.

TJ2013–003854 is a separate proceeding that occurred in the Superior Court. Similarly, CV2012–096070 is also a separate case that was filed at Superior Court. This Court has no jurisdiction to consider what occurred in TJ2013–003854 or CV2012–096070 in the context of a lower court appeal from a Justice Court ruling. This Lower Court of Appeals division of the Civil Department of Superior Court (Appeals Department) is only empowered to consider matters relating to Defendant’s appeal from the East Mesa Justice Court’s ruling that occurred in CC2012–132551. See SCRAP—Civ. Rule 1, stating in relevant part:

- (a) These rules govern the procedures in all civil appeals, except as provided otherwise by law, taken to the Superior Court from an order or the final justice of a justice court pursuant to A.R.S. § 22–261, or municipal court pursuant to A.R.S. § 22–425(B)

Similarly, Rule 9.1 of the Superior Court Local Rules—Maricopa County also specifically indicates the limited power for the Appeals Department. That rule states—in relevant part:

- b. The Appeals Department shall exercise the appellate and special action jurisdiction of the Superior Court over all criminal, civil, (including Orders of Protection and Injunctions Against Harassment), and civil traffic cases from the limited jurisdiction courts within Maricopa County.

Therefore any claim relating to improper addresses or the proceeding before Commissioner Morrow in TJ2013–003854 or any claim relating to CV2012–096070 cannot be considered in the context of this appeal and is denied.

Plaintiff/Appellee’s Motion

Plaintiff filed a Motion to strike all references from the pleadings about the Report and Order Imposing Sanctions. Defendant responded to this Motion. On May 7, 2014, this Court, by minute entry ruling, denied Plaintiff’s request but determined it might disregard the Report if a review of the Report indicated it was not relevant to the case before this Court. This Court noted the report is currently on appeal and is not final.

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III. CONCLUSION.

Based on the foregoing, this Court denies Defendant Edith Poggi's request to bifurcate her appeal and her Motion To Amend her "Independent Action" as procedurally improper requests. This Court also denies Defendant's further request to be allowed to file a Reply to her Motion re the timeliness of Defendant's appeal. This request is moot. This Court already determined Defendant timely filed her appeal in this Court's minute entry ruling dated May 2, 2014 and filed on May 5, 2014, and no further argument about this point is needed. Defendant may not file any second Reply in this matter.

This Court has already ruled on Plaintiff's Motion To Strike and no further ruling about this request is needed at this time.

This Court also denies Defendant's Motion To Accelerate Ruling on Below Motions, Motion For Procedural Order To Accept Following Supplemental Reply and Motion To Supplement Motion To Bifurcate—the May 12, 2014 motions—as this Division cannot consider claims about any case(s) that was/were litigated in the Superior Court.

This Court finds sanctions are not warranted at this time. However, Defendant is again cautioned that a litigant who represents herself is held to the same standard as an attorney. Further filings of improper requests with this Court may subject Defendant to sanctions for filing frivolous motions or requests with this Division.

IT IS THEREFORE ORDERED denying Defendant's Motion To Bifurcate Appeal (Jury Trial Requested), Motion To Amend Independent Action Including Claim Against Maxwell & Morgan, P.C. And Its Attorneys; Motion To Accept This Reply To "Procedural Motion Response—Refer To Superior Court."

IT IS FURTHER ORDERED striking Defendant's Reply To Motion To Bifurcate Appeal (Jury Trial Request), Motion To Amend Independent Action Including Claim Against Maxwell & Morgan, P.C. and Its Attorneys; and Defendant's Motion To Accept This Reply To "Procedural Motion response—Refer To Superior Court."

IT IS FURTHER ORDERED denying Defendant's Motion To Accelerate Ruling on Below Motions, Motion For Procedural Order To Accept Following Supplemental Reply and Motion To Supplement Motion To Bifurcate—the May 12, 2014 Motions.

IT IS FURTHER ORDERED denying Plaintiff's request for sanctions.

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

/s/ Myra Harris

THE HON. MYRA HARRIS
Judicial Officer of the Superior Court

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NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any filings.