Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000034-001 DT 06/21/2013

CLERK OF THE COURT
COMMISSIONER MYRA HARRIS J. Eaton
Deputy

SUNRISE MEADOWS ESTATES COMMUNITY ASSOCIATION
v.
ERLINDA B ISIP (001)

CHANDLER W TRAVIS

KEVIN R HARPER

REMAND DESK-LCA-CCC
SAN MARCOS JUSTICE COURT

RECORD APPEAL RULING / REMAND

Lower Court Case No. CC2012–518257.

Plaintiff-Appellant Sunrise Meadow Estates Community HOA (Plaintiff) appeals the San Marcos Justice Court's determination that (1) set aside its default judgment after more than six months had passed; and (2) found service of process was improper. Plaintiff contends the trial court erred. For the reasons stated below, the court (1) finds Plaintiff timely filed its appeal; and (2) affirms the trial court's judgment.

I. FACTUAL BACKGROUND.

This appeal resulted from the trial court's setting aside a default judgment previously awarded to Plaintiff because the trial court found service of process was improper. Plaintiff sued Defendant alleging (1) Defendant owed unpaid HOA assessments because Defendant inherited the premises under intestate succession;[1] and (2) the previous owner had not paid these charges. Plaintiff had Defendant served by substituted service and, when Defendant failed to respond, defaulted Defendant. After filing a writ of garnishment against Defendant's earnings, Defendant filed a Motion To Set Aside the Default Judgment (Motion To Set Aside) alleging she was improperly served and had no responsibility for any debt to the HOA because she did not own the property. In her various pleadings, Defendant consistently asserted (1) she had no interest in the Sunrise Meadow premises and (2) she executed a waiver of her interest in the property in 2005—prior to her marriage—and this waiver governed. Plaintiff challenged the validity of Defendant's waiver as Defendant listed herself as married to the decedent at the time of the waiver although she did not marry him until 2008—three years later. The parties continued to disagree about (1) the validity of service; and (2) whether Defendant effectively waived her rights to the subject property.[2]

[1] Plaintiff later asserted Defendant failed to execute a valid waiver to this property as required by A.R.S. 14–2207.
[2] The premises were owned by Defendant's husband—decedent, Rodel Valencia—and were purchased as his sole and separate property in 2005. Although Defendant and decedent variously referred to themselves as married or spouses in their real estate transactions, the parties did not marry until 2008. Decedent died intestate in 2009.

The Affidavit of Service indicated Defendant—a widow—was served by substituted service. In the Affidavit of Service the process server stated he served Defendant at 3425 East Raven Drive, on Nov. 6, 2010, at 9:00 am by:

> Substitute Served by leaving true copies of this SUMMONS AND COMPLAINT with MADELYN MAGDELENA, DAUGHTER who is of suitable age and resides therein.

The process server described Ms. Magdelena as (1) Age 18; (2) Race/Skin "Unknown"; (3) height of 5"5"; (4) black hair; and (5) no glasses.

Approximately eight months after Plaintiff received a default judgment, Defendant—on August 15, 201,—filed the Motion to Set Aside and claimed (1) invalid service; and (2) no interest in the subject property.[3]

On Sept. 8, 2011, the trial court held a hearing on Defendant's Motion To Set Aside the Default Judgment. At the hearing, the trial court established the Raven Drive address was Defendant's sole and separate property and home in 2005.[4] The trial court noted the Defendant's property was sold on 9-22-2010,[5] and Defendant stated that on Nov. 6, 2010,—the date of service—she was renting a room from a friend and living in Gilbert.[6] Defense counsel referenced Defendant's Declaration—Exhibit A—where Defendant denied (1) living at the Raven Drive address on Nov. 6, 2010; or (2) having an 18 year-old daughter named Madelyn Magdelena.[7] Defense counsel argued service was improper and asserted Defendant provided two Declarations showing Defendant did not know the person who was allegedly served and the person did not reside there.[8] Plaintiff argued (1) the process server's affidavit can only be overcome by clear and convincing evidence; (2) process server affidavits are generally reliable; and (3) the bank that took over the property filed a forcible detainer action against Defendant after the service date.[9] The trial court asked for documents about the forcible detainer but Plaintiff did not bring these with her.[10] Plaintiff's counsel argued the details that Defendant was a widow and the statement that the person served was Defendant's daughter provided facts that could only be overcome by clear and convincing evidence.[11]

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[3] In a related case filed in the Superior Court, TJ2011–004569, Defendant signed the Declaration of Erlina B. Isip on August 3, 2011, and claimed (1) she owned separate property in the Paseo Trails community at the time of the service of process; (2) she did not live at the Paseo Trails residence at the time of service—Nov. 6, 2010—as she was in the process of moving and only had some possessions remaining in the home; (3) she had no 18 year old daughter named Madelyn Magdelena at the time of service; (4) she had completely moved by Nov. 18, 2010; and (5) service was attempted at the Paseo Trails property. She asserted lot 27 of Sunrise Meadows Estates—and the subject property in this case—was decedent's property. This Declaration was incorporated into the trial court proceedings as Exhibit A.

[4] Audio recording, Disc 1, at 20:05–21:15.

[5] *Id*. at 27:23–55; 28:49–29:40.

[6] *Id*. at 30:07–31:46.

[7] *Id*. at 31:46–33:36.

[8] *Id*. at 38:58–39:44.

[9] *Id*. at 43:05–44:22.

[10] *Id*. at 44:23–46:45.

[11] Audio recording, Disc 2, at 0:00–40.

Defense counsel maintained (1) Defendant did not inherit the property because she renounced any interest she might have had; (2) Arizona law does not require a person to accept an inheritance; (3) sole and separate property retains its sole and separate characteristic; and (4) Defendant had no responsibility for decedent's sole and separate debt.[12] The trial court reviewed the Disclaimer Deed—Exhibit E—and noted Defendant did not refer to herself as "spouse" within the document although decedent—Rodel Valencia—did use the term "spouse" in describing himself.[13]

Plaintiff's counsel asserted Defendant did not properly renounce her interest in the property and the debt Plaintiff sought was incurred after decedent died.[14] Plaintiff claimed Defendant could only seek relief under Rules 60(c)(1–3) because service was valid and argued Defendant could not demonstrate either (1) a viable defense—because the property passed to Defendant by operation of law; or (2) she sought prompt relief—because Plaintiff's counsel allegedly received a telephone call from Defendant telling Plaintiff she would not pay any judgment in February, 2011.[15]

Defense counsel addressed how to renounce an inheritance[16] and the trial court discussed this issue, including a dialogue about *Matter of Beaman's Estate*, 119 Ariz. 614, 617, 583 P.2d 270, 273 (Ct. App. 1978).[17] Plaintiff's counsel argued Defendant had the burden of showing the property was not community property but the trial court found Defendant met its initial burden by providing the original deed and Plaintiff needed to prove any claim about commingling.[18]

Defense counsel contended Defendant requested relief under rules 60(c)(4) and 60(c)(6) and not under rules 60(c)(1–3).[19] In summary, Defendant argued (1) service was improper and (2) Plaintiff was not legally entitled to foist a separate debt emanating from the decedent's property onto Defendant.[20]

The trial court signed an Order re Emergency Motion To Set Aside Default Judgment and Motion for Sanctions on Sept. 12, 2011. The trial court found Defendant—by Disclaimer Deed dated June 2, 2005,—disclaimed any interest in the property[21] and neither the 2008 marriage of

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[12] Disc 1, *id*. at 24:40–26:02; 27:05–17; 35:38–38:55; 40:08–23.
[13] *Id*. at 21:39– 24:02. Defense counsel argued the parties used a standard form and whatever description they may have used to describe their relationship did not affect whether there was a valid marriage at the time.
[14] Disc 2, *id*., at 1:00–2:58.
[15] *Id*. at 5:01–7:22.
[16] *Id*. at 8:00–40. Among other cases, counsel referenced, persuasively, *Mitchell v. DiAngelo*, 787 A.2d 715, 721 (Del. Ch. 2001) aff'd sub nom. *DiAngelo v. Mitchell ex rel. Estate of Jones*, 787 A.2d 100 (Del.) where the Delaware court determined a property settlement agreement in a dissolution operated as a renunciation of rights under the laws of intestate succession.
[17] *Id*. at 8:41–18:35.
[18] *Id*. at 18:35–23:39; 26:00–27:34.
[19] *Id*. at 33:27–35.
[20] *Id*. 33:59–37:12.
[21] The Disclaimer Deed was made by Defendant to decedent who was listed as "the spouse." The Disclaimer Deed indicates the property was the sole and separate property of "the spouse" and Defendant had no "past or present right, title, interest claim or lien or any kind" in the property.

the parties nor the 2009 death of the owner (decedent) negated the legal effect of the Disclaimer Deed. The trial court found Plaintiff was remiss in failing to verify if Defendant appeared on the Deed relating to the property and should have researched the ownership of the property. The trial court determined Madelyn Magdelena was not Defendant's daughter and Defendant did not reside at the Raven Drive address on the date of service.[22] The trial court found the default judgment was void because service was improper. After commenting Plaintiff failed to present any witnesses or affidavits at the hearing, the trial court granted Defendant's Motion to Set Aside the Default Judgment, and ordered Plaintiff to (1) return any money it obtained through its garnishment; and (2) pay Defendant's attorneys' fees.

The trial court signed the Judgment granting (1) Defendant's Motion To Set Aside with prejudice; and (2) attorneys' fees; on Nov. 7, 2011.[23] The date this Judgment was entered into the trial court's computer—Nov. 10, 2011,—became the focus of a procedural issue in this case. The trial court's Calendar Events and Hearings indicates an Event Note of:

> NOTICE OF FILING FORM OF JUDGMENT, STATEMENT OF COSTS
>
> APPLICATION FOR AWARD OF ATTORNEYS [sic.] FEES AND SANCTIONS.

The Calendar also indicates the matter was heard by "Justice Court Pro Tem.[24] The date given to the Calendar Event entry is 10/07/2011,[25] although it was not until one month later—on Nov. 7, 2011,—that the trial court signed the Judgment and two separate Rulings on Motions. One motion denied Plaintiff's request for a new trial and awarded Defendant attorney's fees of $1,220.00 for responding to Plaintiff's Motion for New Trial as part of the total attorney's fee award. The other motion granted Defendant's Motion for Attorney's Fees totaling $5,757.50—an amount which included the prior award of $1,220.00. Both of these Rulings contained mailing certificates from the clerk—MLR—indicating the rulings were mailed to each attorney on Nov. 10, 2011. The Judgment has no mailing certificate and neither the Judgment nor the Rulings bear

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[22] The trial court wrote the date of alleged service as Nov. 15, 2010, in its Order re Emergency Motion To Set Aside Default Judgment and Motion for Sanctions although the Affidavit of Service indicates the alleged service occurred on Nov. 6, 2010.

[23] During the intervening time—on Oct. 6, 2011,—Plaintiff filed a Motion For New Trial and alleged: "The Association served the Defendant by serving a person whom identified herself as the daughter of the Defendant at this address [sic.] *See* Plaintiff's Motion For New Trial, filed Oct. 6, 2011, at p. 2, ll. 13–14 and p. 6, ll.18–19. In response, on Oct. 20, 2011, Defendant filed a "Supplemental Declaration" where she stated her daughter was 30 years old and never resided with her. She added her daughter—Madelyn Buan—was married and lived with Ms. Buan's mother-in-law during the time when she was allegedly served. Defendant signed this Declaration under the penalty of perjury. Madelyn Buan Macasinag also filed a Declaration under penalty of perjury on Oct. 20, 2011. She claimed she never lived at Defendant's previous residence on Raven Drive and was never served with legal paperwork at that location. Ms. Macasinag attached documentation showing an address other than Raven Drive.

[24] An earlier entry for Sept. 8, 2011, shows a hearing was held by Justice Court Pro Tem on Sept. 8, 2011, and the Event Note reveals:

> JUDGE KARP GRANTED DEFENDANT'S MOTION TO SET ASIDE DEFAULT JUDGMENTS AND SANCTIONS. (MLR).

[25] This is the date that is date stamped at the top of the first page of the judgment. The stamp says: "San Marcos Justice Court 2011 Oct.–7 PM 4:03."

any indication of a file or enter date. During post-trial proceedings Plaintiff obtained a screen shot for the trial court's computer system and determined the Nov. 7, 2011, Judgment was input into the trial court's computer system on Nov. 10, 2011.

Plaintiff filed a timely appeal.[26] Defendant filed a responsive memorandum and re-asserted her position that Plaintiff's appeal must be dismissed as it was untimely filed. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUES:

A. Does The Superior Court Have Jurisdiction Over The Appeal.

Defendant filed a procedural motion asking that Plaintiff's appeal be stricken for failing to file a timely notice of appeal. By prior Minute Entry dated Jan. 14, 2013, this Court determined (1) the record was not sufficiently complete to make a final determination about the timeliness of the Notice of Appeal; and (2) the Motion to Dismiss Plaintiff's Appeal was denied without prejudice to raising this issue on appeal. Defendant reasserted this claim in her responsive memorandum.

The trial court signed the Judgment granting Defendant's Motion To Set Aside and awarding Defendant attorneys' fees on Nov. 7, 2011, and signed two Orders that same day. The Orders were mailed to the parties on Nov. 10, 2011, and, according to a computer screen shot, a notation was made in the docket about the Judgment on Nov. 10, 2011. Plaintiff's counsel averred it did not receive the Judgment until Nov. 23, 2011. Counsel filed Plaintiff's Notice of Appeal that same day. Defendant claimed the Notice of Appeal was untimely and the appeal should be dismissed. Plaintiff argued the time to appeal did not begin until the Judgment was input into the trial court's docket.

Justice courts are required to record their judgments. The applicable statute states:

> The judgment shall be ***recorded at length*** in the docket ***and*** signed by the justice of the peace. The judgment shall clearly state the determination of the rights of the parties, who shall pay the costs, and shall direct issuance of such process as necessary to carry the judgment into execution.

A.R.S. § 22–242 (emphasis added). The language of this statute lists a two-step procedure: recording at length in the docket and signing by the justice of the peace.[27] This is reminiscent of the two steps required by A.R.C.P. Rule 58(a). SCRAP—Civ. Rule 4, specifically refers to the "***entry*** of the order, ruling, or judgment appealed from" and not the signing of the judgment (emphasis added). Although Justice of the Peace R.I. Karp filed Findings of Fact with this Court where he stated "the date on which the Justice of the Peace signs the 'order, ruling or judgment' is the date that begins the 14 day calendar period in which a party may file a Notice of Appeal", he indicated no legal authority for this position.

[26] This is the focus of the procedural issue and will be more fully discussed below.

[27] The word "and" is a conjunction. Conjunctions are used to connect words, phrases, clauses or sentences. En.wikipedia.org/wiki/Grammatical_conjunction.

The Arizona Supreme Court specifically addressed the issue of when the time begins to run on a judgment for purposes of appeal and noted the procedures for obtaining a judgment in Justice Court differ significantly from those used in Superior Court. The Supreme Court stated the Justice of the Peace is required to:

> . . . set forth the terms of the judgment in the docket and sign it. The judgment is entered at the time he signs the docket, A.R.S. § 22-242, and the aggrieved party has 10 days in which to perfect his appeal

DNB Const., Inc. v. Superior Court, 125 Ariz. 61, 62, 607 P.2d 380, 381 (1980). The Supreme Court continued:

> We note that, because of the short time (10 days) between the entry of judgment and the time within which the aggrieved party must perfect his appeal, when the Justice of the Peace elects to defer the decision until after trial and to notify the parties by mail, the aggrieved party may find it almost impossible to exercise his right of appeal. He gets no solace from *****Rule 6(e) of the Rules of Civil Procedure, 16 A.R.S., which allows an additional time after service of mail, for the Rule specifically states, "This rule has no application to the mailing of notice of entry of judgment." We can envision situations when the 10 day time limit could operate as a flat denial of a party's right to appeal; for example, mail might be delayed so that the party does not receive notice of judgment within 10 days.
>
> A party should be able to rely upon the mail for notice and should not be required to contact the Justice of the Peace every day to ascertain if judgment has been entered. We believe that upon a proper showing that notice of judgment was received so late as to make appeal within the statutory time limit impossible, that the Superior Court could relieve the appealing party from strict application of the 10 day rule.

DNB Const., Inc., 125 Ariz. at 62-63, 607 P.2d at 381-82.

The Arizona Court of Appeals noted the difference between making a judgment and entering a judgment and held:

> There are several cases from the Arizona Supreme Court which make it clear that 'entry of judgment' and 'rendition of judgment' are not synonymous. In the American Surety Co. case just cited, the distinction is well drawn:
>
> 'The rendition of a judgment is the act of the court in pronouncing its judgment, and differs from the entry or filing of the judgment in that the former act is the declaration of the court from the bench announcing its decision, while the entry is the act of the clerk in writing it upon the records of the court. . . . rendition is generally, if not always, an oral act by the court from the bench, . . .'

. . . . .

. . . . .

Fridena v. Maricopa Cnty., 18 Ariz. App. 527, 531, 504 P.2d 58, 62 (1972) [citations omitted]. The Arizona Supreme Court recognized the two prong approach and held the dates reflected in the civil docket as the date for the entry of judgment should be the actual date on which the clerk is making the notation.

> The clerk, when he enters an order or judgment in the docket, is obliged to show the date that he does it; that is, the date that he is actually entering (noting) the order or judgment. When the clerk notes an order or judgment in the civil docket he is not privileged to date it back to the date that the judge ordered the entry. The dates reflected in the docket should be the actual dates on which the clerk is making the notation or entry.
>
> Judges of the Superior Court should instruct the Clerks of Superior Court that when they make any notation or entry in the civil docket of orders denying motions for new trial and judgments, that the date ascribed to the notation (entry) should reflect the actual date thereof. The civil docket is a public record and should speak the truth. The effective date of such orders and judgment is the date of notation in the civil docket. In the instant case the appeal was timely taken, notice of appeal having been given within sixty days from the entry of the order denying the motion for a new trial.

Harbel Oil Co. v. Steele, 81 Ariz. 104, 105-06, 301 P.2d 757, 758 (1956). Similarly, the Arizona Supreme Court held: "The time of entry is the day when the clerk makes the notation in the civil docket." *Jackson v. Sears, Roebuck & Co.*, 83 Ariz. 20, 23, 315 P.2d 871, 873 (1957). The Arizona Court of Appeals quoted with approval the State Bar Committee Notes to Amended Rule 58(a) and held the purpose of the rule was to fix a date "by reference to the date of its filing." The Court of Appeals stated:

> The spirit of Rule 58(a) is clear:
>
> > "The primary purpose of the amended rule is to formalize by a writing all judgment, decrees and appealable orders, and to fix the crucial act of entry of every judgment, decree or appealable order by reference to the date of its filing . . ." (State Bar Committee Notes to Amended Rule 58(a).)
>
> In order to give full effect to this purpose, such judgments should stand out loud and clear so that the practitioner can ascertain their rendition, they should not be hidden away in a preamble to a judgment upon and entirely separate point.

Apache E., Inc. v. Means, 124 Ariz. 11, 14, 601 P.2d 615, 618 (Ct. App. 1979).

The "crucial act of entry" is not less important in Justice Court even if it takes the form of "recording at length in the docket." Although Defendant argued the single act of the judge in signing an Order or Judgment is synonymous with the two pronged requirement that is otherwise mandated by the A.R.C.P., Justice Court actions were governed by the A.R.C.P. at the time Plaintiff filed its appeal. This was recognized in the new Justice Court Rules of Civil Proce-

dure.[28] While the trial court stated it was the San Marcos Court's practice to consider judgments entered when they are signed, this policy is (1) in derogation of the requirements of A.R.C.P. Rule 58(a) which requires a two-step procedure; and (2) unfair as it may hinder a party's ability to timely file an appeal.

Parties have a right to appeal from adverse judgments. This right is compromised if the party is not apprised of an adverse judgment. A parade of horrors is conceivable if the sign date is equivalent to the date a judgment is entered as there is no way a party or an attorney could know when a judge signed the judgment and the period for filing a Notice of Appeal began. *DNB Const., Inc*., 125 Ariz. at 62-63. Because the time for filing a Notice of Appeal is (1) jurisdictional and (2) not subject to waiver—SCRAP—Civ. Rule 2—parties must have the right to timely discover the date the time to file an appeal begins to run. Here, Plaintiff's counsel averred it did not receive notice of the trial court's judgment until Nov. 23, 2011, the day it filed its Notice of Appeal. If Nov. 7, 2010, was the effective date, the situation would be akin to the events in *DNB Const., Inc*., as Plaintiff would not have received notice until after the time to appeal ended.

The requirement for a "recording at length" separate from the signing of the judgment, appears not to be honored in the day to day practice of the justice courts,—particularly where the two events occur on different days—and this Court cannot discount Justice of the Peace R.I. Karp's Finding of Facts about the procedures actually used. This Court believes the statutes and rules require two separate acts—filing and recording—and, in this case, the recording act did not occur until Nov. 10, 2011. This determination is bolstered by the new Justice Court Rules of Civil Procedure, Rule 139, which specifically adopts language similar to that used in A.R.C.P. Rule 58(a) and requires judgments to be signed by the judge and filed and entered by the court. Presumably, if the signing and the entering of the judgment were a single act in the justice courts, there would be no need for two criteria to be specified. However, even if this Court's belief is erroneous, and the Nov. 7, 2010, signing date is also the date for the entry of judgment, the tenets of *DNB Const., Inc.* allow this Court to find strict time limits should not be enforced in this case.

B. Did The Trial Court Err By Finding Improper Service.

The trial court found service was improper. To do so, the trial court needed to evaluate the Affidavit of Service (AOS) signed by the process server and contrast that with the evidence Defendant provided. The standard is that the return of service can only be impeached by clear and convincing evidence. The Arizona Supreme Court held:

> It is a well-established rule of law that the return of service of process can be impeached only by clear and convincing evidence. The affidavit filed by defendant in support of the motion to vacate the default judgment stated he was under

[28] The A.R.C.P. governed suits in Justice Court prior to the enactment of the Justice Court Rules of Civil Procedure, promulgated August 30, 2012, effective Jan. 1, 2013. Rule 101(d) of the new Justice Court Rules states:

> **Relationship of these rules to the Arizona Rules of Civil Procedure.** These rules replace the Arizona Rules of Civil Procedure ("the superior court rules"). Differences in language between a justice court rule and a superior court rule are intended only to make the justice court rule simpler and easier to understand. . . .

> the belief and yet believes he was never served with summons. We held in *Security Trust & Savings Bank v. Moseley*, 27 Ariz. 562, 234 P. 828, that such language is utterly insufficient to cause the return to be set aside, or to attack its verity. However, at the hearing before the trial judge the following questions and answers of defendant appear from the record:

Eldridge v. Jagger, 83 Ariz. 150, 152, 317 P.2d 942, 943 (1957). The Supreme Court continued and stated:

> The questions propounded to the witness were indecisive in form as they did not present to the witness the direct question of admitting or denying the service of summons. However, the trial judge, in hearing the testimony and in observing the demeanor and manner of the witnesses in testifying as to conflicting facts, concluded that the defendant *Jagger* had not been served with summons and should be given an opportunity to litigate a disputed obligation. We have repeatedly held an application to open, vacate or set aside a judgment is within the sound discretion of the trial court and its action will not be disturbed by this court except for a clear abuse of discretion.

Eldridge v. Jagger, 83 Ariz. at 152, 317 P.2d at 944 (citations omitted). To contrast with the AOS, Defendant supplied her Declaration stating she did not live at the address where the process server served the documents. Defendant (1) provided proof that her home had been foreclosed two months prior to the date of service; and (2) informed the trial court—during the hearing—she was living in a rented room in Gilbert, AZ. at the time of the alleged service. In her Declaration, Defendant indicated she had no 18 year-old daughter and no daughter named Madelyn Magdelena. Although Defendant's testimony conflicts with the AOS, the trial court had the opportunity to consider these contradictory facts and the discretion to make the service determination. This Court does not find the trial court abused its discretion by finding improper service in light of the clear and convincing evidence Defendant produced.

C. Did The Trial Court Err By Allowing Rule 60(c) Relief When Defendant Filed More Than Six Months After The Default Was Granted.

Defendant sought relief from the default judgment based on A.R.C.P. Rules 60(c)(4) and 60(c)(6) and asserted she acted in a timely fashion once she became aware of Plaintiff's default judgment. Plaintiff argued Defendant unreasonably delayed in filing her Motion To Set Aside and the Motion should be denied.

Rule 60(c)(4)

A Rule 60(c)(4) motion can be brought at any time because it seeks relief based on improper service. If service is improper, the trial court never acquires personal jurisdiction and any judgment is void. The Arizona Court of Appeals addressed the question of time limits for bringing a claim based on Rule 60(c)(4) and held:

. . . . .

. . . . .

> However, a critical difference exists between Rule 60(c)(4) and Rule 60(c)(6) grounds for relief. The court must vacate a void judgment even if the party seeking relief delayed unreasonably. In contrast, a party must request relief under Rule 60(c)(6) within a reasonable time.

Brooks v. Consol. Freightways Corp. of Delaware, 173 Ariz. 66, 71, 839 P.2d 1111, 1116 (Ct. App. 1992) [citations omitted]. The Arizona Supreme Court ruled Rule 60(c)(4) relief is available even after a delay of a year. *Master Fin., Inc. v. Woodburn*, 208 Ariz. 70, 90 P.3d 1236, ¶ 20(Ct. App. 2004). Defendant timely brought her Rule 60(c)(4) claim.

Rule 60(c)(6)

Rule 60(c)(6) motions must be brought within a reasonable time but the trial court determines how much time is reasonable in a given situation. The Arizona Court of Appeals noted:

> The trial court has discretion to determine whether or not a delay is reasonable. A delay of five weeks, for example, has been found unreasonable. On review, we assume that the trial court found the necessary facts and drew the necessary inferences if sufficient evidence in the record would support these assumptions

Brooks, 173 Ariz. at 71, 839 P.2d at 1116 [citations omitted]. The trial court did not find Defendant unreasonably delayed.

Waiver of Spouse's Intestate Claim

The trial court determined Defendant waived any claim she might have had to the real property despite Plaintiff's assertion that Defendant inherited the property[29]—and its attendant debt—whether Defendant wanted to or not. Plaintiff maintained Defendant was obliged to show she waived her inheritance. Defendant asserted she waived any rights to this property in 2005. Plaintiff challenged the alleged 2005 waiver because Defendant allegedly signed as decedent's "wife" when she was not legally married to him.[30] The issue is whether Defendant's waiver of any interest in the property effectively waived any potential inheritance of the property. The Disclaimer Deed specifically stated:

> NOW THEREFORE, in consideration of the premises [sic.] the undersigned does hereby disclaim, remise, release and quitclaim unto the spouse and to the heirs and assigns of said spouse forever, all right, title, interest, claim and demand which the undersigned might appear to have in and to the above-described property.

This waiver is distinct from Defendant's ability to inherit. However, the issue in this case is not Defendant's ability to inherit: it is whether Defendant is required to inherit. The Arizona Supreme Court referenced a Wisconsin case—*In re Johnston's Estate*, 186 Wis. 599, 203 N.W. 376 , 377 (1925) where the Wisconsin Supreme Court held:

[29] This Court does not know if decedent had any biological children. If he had biological children who were not common to the parties, Defendant—at most—was eligible to inherit one-half of decedent's sole and separate property. A.R.S. § 14–2101 (2).
[30] The Disclaimer Deed actually refers to Defendant as "undersigned."

> So that while a testamentary provision as a rule is readily accepted, it may be also said that a beneficiary is under no legal obligation to accept.

MacKenzie v. Wright, 31 Ariz. 272, 278–79, 252 P. 521 (1927). The Arizona Court of Appeals found a surviving spouse needed to execute a written waiver of rights and relied on A.R.S. § 14–2204—now numbered as § 14–2207[31]— in making this determination. *Matter of Beaman's Estate,* 119 Ariz. 614, 617, 583 P.2d 270, 273 (Ct. App. 1978). A.R.S. § 14–2207(A) states:

> A surviving spouse may waive the person's homestead allowance, exempt property and family allowance rights in whole or in part either ***before or after marriage*** by a written contract, agreement or waiver that is signed by the surviving spouse.

(Emphasis added). As the trial court found, Defendant waived her rights to the property before marriage by signing the Disclaimer Deed—a written waiver that was (1) signed by Defendant; and (2) notarized. This Court has found—and Plaintiff cited—no authority mandating that an heir is required to accept an inheritance under the laws of intestate succession.

Plaintiff cited A.R.S. § 14–3901 which states heirs are "entitled" to the estate according to a will or the laws of intestate succession. Entitled means allowed, authorized, deserved, eligible, having the right, permitted, qualified and worthy. It is not synonymous with required or mandated. A.R.S. 14–3901 imposes no obligation on Defendant to accept any inheritance and the trial court properly discounted Plaintiff's argument on this point. Additionally, although Plaintiff cited *Stephens v. Constock-Dexter Mines*, 54 Ariz. 519, 97 P.2d 202 (1939) the case is inapposite as the heirs in Stephens were trying to demonstrate their entitlement to the property and not their rejection of it.

Trial Court Discretion In Setting Aside Default

Trial courts have discretion in determining if a default should be set aside and appellate courts accord these determinations great deference. The Arizona Court of Appeals commented on this standard and said:

> We view the facts in the light most favorable to upholding the trial court's ruling on a motion to set aside a default judgment.

Ezell v. Quon, 224 Ariz. 532, 534, 233 P.3d 645, 647 ¶ 2 (Ariz. Ct. App. 2010). Furthermore, when appellate courts review the trial court's decision for an abuse of discretion, the appellate court will uphold the ruling of the trial court if it is supported by any reasonable basis. *Fulton Homes Corp. v. BBP Concrete,* 214 Ariz. 566, 155 P.3d 1090, ¶ 9 (Ct. App. 2007), Accord, *Ad Hoc Comm. of Parishioners of Our Lady of Sun Catholic Church, Inc. v. Reiss*, 223 Ariz. 505, 224 P.3d 1002, ¶40 (Ct. App. 2010), review denied (Sept. 21, 2010). All evidence is viewed in the light most favorable to sustaining the trial court's judgment and the appellate court must not re-weigh the evidence to see if it would reach the same conclusion as the original trier of fact. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). The Arizona Supreme Court discussed situations where an appellate court may find an abuse of discretion and said:

[31] The language of the statute has been modified.

> To find an abuse of discretion, there must either be no evidence to support the superior court's conclusion or the reasons given by the court must be 'clearly untenable, legally incorrect, or amount to a denial of justice.'

Charles I. Friedman, P.C. v. Microsoft Corp., 213 Ariz. 344, 141 P.3d 824, ¶ 17 (Ct. App. 2006) quoting *State v. Chapple*. Defendant provided evidence–in the form of her Declaration—that she did not receive the Complaint; was not living at the location where the Complaint was served; and had no 18 year-old daughter named Madelyn. Although the process server's affidavit contradicted her testimony, the trial court had the discretion to decide if the service was valid. Defendant also provided evidence—the Disclaimer Deed—that she rejected any interest in the property before marriage. The trial court found in Defendant's favor. Because this was a factual determination that was based on:

> . . . an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge, who has a more immediate grasp of all the facts of the case, an opportunity to see the parties, lawyers, and witnesses, and who can better assess the impact of what occurs before him.

State v. Chapple, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n. 18 (1983) (citation omitted), this Court cannot substitute its own analysis of the facts for those of the trial court. An appeal is not a second bite at the apple.

D. Attorneys' Fees On Appeal.

Neither party completely prevailed on appeal. In addition, the research and the language used in the appellate memoranda is almost identical with the research and language used in the many pleadings at the trial court. Consequently, this Court denies attorneys' fees for the appeal.

III. CONCLUSION.

Based on the foregoing, this Court concludes the San Marcos Justice Court did not err.

IT IS THEREFORE ORDERED affirming the judgment of the San Marcos Justice Court.

IT IS FURTHER ORDERED remanding this matter to the San Marcos Justice Court for all further appropriate proceedings.

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 062420131230