

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 08/14/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

ALEJANDRINA VASQUEZ, a single ) 1 CA-CV 11-0483  
woman, )  
) DEPARTMENT D  
Plaintiff/Appellant, )  
) **MEMORANDUM DECISION**  
v. ) (Not for Publication-  
) Rule 28, Arizona Rules  
BORDER FITNESS GYM, LLC, an ) of Civil Appellate  
Arizona limited liability ) Procedure)  
company; JUAN CAUDILLO, a single )  
man; MIGUEL ANGEL ALVAREZ )  
CASTELLANOS and MARIA ALVAREZ, )  
husband and wife, )  
)  
Defendants/Appellees. )  
\_\_\_\_\_ )

Appeal from the Superior Court of Yuma County

Cause No. S1400CV201001563

The Honorable John N. Nelson, Judge

**AFFIRMED**

---

Hunt, Gale, Meerchaum, Orduño & Hossler Yuma  
By John E. Meerchaum  
And Candice L. Orduño-Crouse  
Attorneys for Plaintiff/Appellant

Garcia, Hengl, Kinsey, Farrar & Villarreal, P.L.C. Yuma  
By Ryan C. Hengl  
Attorneys for Defendants/Appellees

---

**T H O M P S O N, Judge**

¶1 Alejandrina Vasquez, fka Alejandrina Caudillo

(Vasquez) appeals from the trial court's order dismissing her complaint against defendants Border Fitness Gym, LLC (Border Fitness), Juan Caudillo (Caudillo), Miguel Angel Alvarez Castellanos (Castellanos), and Malva Alvarez (Alvarez). For the reasons that follow, we affirm.

¶2 Vasquez filed a complaint in the superior court in S1400CV2009-01469 in October 2009, seeking partition of Border Fitness, LLC, a gym co-owned by Vasquez's ex-husband Caudillo, and Castellanos. The trial court granted summary judgment to the defendants in that case, after the defendants argued that Vasquez lacked standing to file an action for partition because she was neither an owner or member of the Border Fitness LLC, and that the superior court lacked the authority to overturn the bankruptcy court's sale of Caudillo's fifty percent interest in the LLC. The trial court specifically found that "[Vasquez] in no way has any rights under that LLC at all, zero." Vasquez did not appeal from the grant of summary judgment. Seven months later, Vasquez filed the complaint in this action, S1400CV2010-01563, against the same defendants, suing for conversion, replevin, breach of contract, piercing the corporate veil/alter ego liability, and promise without intent to perform/intentional misrepresentation.

¶3 The defendants filed a motion to dismiss the second complaint, which the trial court granted based on the doctrine

of res judicata. Vasquez timely appealed. We have jurisdiction.<sup>1</sup>

¶4 Under the doctrine of res judicata, when there has been a "judgment on the merits" in a prior lawsuit involving the same parties, a second suit based on the same cause of action is not permitted. *Chaney Bldg. Co. v. City of Tucson*, 148 Ariz. 571, 573, 716 P.2d 28, 30 (1986) (citations omitted). In *Gould v. Soto*, 14 Ariz. 558, 133 P. 410 (1913), our supreme court discussed the meaning of "judgment on the merits," stating:

"To create such a judgment, it is by no means essential that the controversy between the plaintiff and the defendant be determined 'on the merits,' in the moral or

---

<sup>1</sup> Appellees have raised the issue of our jurisdiction over this appeal. There are three signed orders in this case. Appellant appealed from the third order. The first order, entitled "Order Granting Dismissal" and filed 5/3/12, dismissed the case but did not address attorneys' fees. The second order, entitled "Order RE Attorneys' Fees" and filed 5/23/11, awards attorneys' fees and costs to the defendants. The third order, entitled "Judgment" and filed 6/20/11, reiterates the dismissal and award for attorneys' fees and costs. The notice of appeal, filed 6/29/11, is only timely if appellants properly appealed from the third order.

It is clear that the first order, though signed, was not the final order because it didn't address attorneys' fees. See Ariz. R. Civ. P. 58(g) ("Except as provided in Rule 54(b), a judgment shall not be entered until claims for attorneys' fees have been resolved and are addressed in the judgment. Entry of judgment shall not be delayed nor the time for appeal extended in order to tax costs.") Thus, the question is, whether the second order, together with the merits dismissal on 5/3/11, was the final judgment as of the date of its entry on 5/23/11. Or, was there no final order until all of the issues were resolved in one signed document such as the judgment dated 6/20/11?

We conclude that the third order was the final judgment. Thus, we have jurisdiction.

abstract sense of those words. It is sufficient that the status of the action was such that the parties might have had their lawsuit disposed of according to their respective rights, if they had presented all their evidence . . . . But if either party fail to present all his proofs, or improperly manage his case, or afterward discover additional evidence in his behalf, or if the court find contrary to the evidence, or misapply the law, in all these cases the judgment, until corrected or vacated in some appropriate manner, is as conclusive upon the parties as though it had settled their controversy in accordance with the principles of abstract justice."

*Id.* at 562, 133 P. at 411 (quoting A.C. Freeman on Judgments § 260 (3d Ed.)). Vasquez argues that the current action should not have been dismissed because the court granted summary judgment in her first suit based on lack of subject matter jurisdiction because of the bankruptcy sale, and because she lacked standing to bring a partition action.

¶5 We disagree. Vasquez could have brought all of her claims in the first lawsuit, and she failed to appeal from the trial court's summary judgment ruling. That the trial court's ruling was based primarily on Vasquez's lack of standing does not mean there was not a final judgment on the merits in the res judicata sense. See *Gould v. Soto*, 14 Ariz. at 562-63, 133 P. at 412 (dismissal in an action where plaintiff did not have standing was judgment on the merits barring any further suit based on res judicata).

¶6 For the foregoing reasons, we affirm the trial court's order dismissing the complaint.

/s/

---

JON W. THOMPSON, Judge

CONCURRING:

/s/

---

PETER B. SWANN, Judge

/s/

---

MICHAEL J. BROWN, Judge