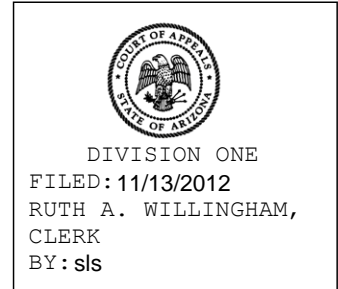


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



In the Matter of the Estate of:) 1 CA-CV 11-0771
)
ARTHUR PAUL BLUNT,) DEPARTMENT B
)
Deceased.) **MEMORANDUM DECISION**
)
_____) (Not for Publication -
) Rule 28, Arizona Rules
DENNIS ANDREW BALL, Trustee of) of Civil Appellate
the Eleanor R. Ball Irrevocable) Procedure)
Trust,)
)
Appellant,)
)
)
v.)
)
)
AMANDA BLUNT, as Personal)
Representative of the ESTATE OF)
ARTHUR PAUL BLUNT,)
)
)
Appellee.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. PB2011-050547

The Honorable John R. Doody, Commissioner

AFFIRMED

Dennis Andrew Ball
Appellant In Propria Persona

Phoenix

Braun, Siler, Kruzell, P.C.
By Kenneth J. Peace
Kelley L. Cathie
Attorneys for Appellee

Scottsdale

H O W E, Judge

¶1 Dennis Andrew Ball ("Ball") appeals from an order denying reconsideration of an order striking his petition for order to show cause that sought an inventory of the Estate of Arthur Paul Blunt from the personal representative ("PR"). For the reasons stated below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND¹

¶2 In 2004, Arthur Blunt, an attorney, began representing the guardian/conservator of Ball's elderly mother, Eleanor Ball. The superior court had established a guardianship because of financial disputes between Eleanor and Ball. Eleanor passed away in May 2006, and the court terminated the guardian/conservatorship and approved Blunt's fees in June 2007. No appeal was filed. Ball, however, had been unsuccessfully filing related actions in district court and bankruptcy court.

¶3 Blunt passed away on March 9, 2011. On April 13, 2011, Ball filed claims in Maricopa County Superior Court against Blunt's Estate for unspecified personal injuries, conspiracy to defraud, and fraud against a vulnerable adult and Eleanor's Trust. The PR disallowed Ball's claim. Ball then

¹ Much of the answering brief relies on pleadings in Eleanor Ball's probate matter, PB2004-001053. Although the PR included these pleadings in its appendix, these documents are not in the record on appeal. However, "this court may take judicial notice of the records of the Superior Court." *State v. Valenzuela*, 109 Ariz. 109, 110, 506 P.2d 240, 241 (1973). Accordingly, we refer to these probate court records.

filed a petition for order to show cause seeking an inventory of Blunt's Estate's assets.

¶4 The trial court granted the PR's motion to strike the petition for order to show cause pursuant to Arizona Rule of Civil Procedure 12(f).² Ball filed a "Reply to Order" that the trial court deemed a motion for reconsideration and denied in an unsigned order. Ball filed a notice of appeal from that order. The trial court subsequently entered and signed an identical order denying the motion for reconsideration.

DISCUSSION

I. JURISDICTION

¶5 The PR contends this court lacks jurisdiction because the notice of appeal was premature. Although Ball filed a notice of appeal from an unsigned order, the trial court filed an identical, *signed*, order two weeks after the notice of appeal. Ball did not amend his notice of appeal to indicate he was appealing from this subsequent signed order. However,

² The PR should have filed a motion to dismiss rather than a motion to strike. See *In re Estate of Shumway*, 197 Ariz. 57, 61, ¶ 6, 3 P.3d 977, 981 (App. 1999) (holding that a motion to strike that "directly attacked the merits of [the] petition" was inappropriate and a motion for summary judgment should have been used), *vacated in part on other grounds by*, 198 Ariz. 323, 9 P.3d 1062 (2000); see also *Colboch v. Aviation Credit Corp.*, 64 Ariz. 88, 92, 166 P.2d 584, 587 (1946) (holding motion to strike does not serve the same purpose as a motion to dismiss, which tests the sufficiency of a pleading). Nonetheless, Ball's "motion for reconsideration" addressed the merits of the issue raised in the motion to strike, therefore, he was not prejudiced.

Barassi v. Matison, 130 Ariz. 418, 422, 636 P.2d 1200, 1204 (1981), establishes "a *limited exception* to the final judgment rule that allows a notice of appeal to be filed after the trial court has made its final decision, but before it has entered a formal judgment, if no decision of the court could change and the only remaining task is merely ministerial." *Craig v. Craig*, 227 Ariz. 105, 107, ¶ 13, 253 P.3d 624, 626 (2011) (emphasis added). No motions were pending when Ball filed his notice of appeal. The trial court's completion of the ministerial act of signing an identical copy of a previously unsigned order *after* the notice of appeal does not deprive this court of appellate jurisdiction. The *Barassi* exception applies, and the premature notice of appeal is effective in this case.

¶6 Ball asked this Court to sanction the PR pursuant to "Rule 12(b)(6)" for arguing that the premature notice of appeal was ineffective. This citation does not support Ball's request for sanctions. Furthermore, the PR's argument does not constitute sanctionable conduct.

¶7 The PR also argues that we lack jurisdiction because the order on appeal was not a final order; it merely confirmed Ball's status as a non-claimant. Ball appealed from the October 27, 2011, order that concluded that Ball's petition for order to show cause did not constitute an action on his claim against the Estate, which the PR had previously disallowed. The court had

previously ruled that Ball lacked standing to demand an order to show cause because he had no claim against the Estate. The October 27 order was final and appealable because it conclusively disposed of Ball's claims against the Estate. See *Musa v. Adrian*, 130 Ariz. 311, 312, 636 P.2d 89, 90 (1981) (holding that "jurisdiction of appeals is limited to final judgments which dispose of all claims and all parties"). This order effectively disposed of all Ball's claims against the Estate. No claims remain before the trial court after the October 27 order. Therefore, we conclude it was a final, appealable order and we have jurisdiction over this appeal pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1) (Westlaw 2012).³

II. DENIAL OF MOTION FOR RECONSIDERATION

¶8 As noted above, the trial court treated Ball's "Reply to Order (Hearing)" as a motion for reconsideration. We review the trial court's ruling on a motion for reconsideration for an abuse of discretion. See *McGovern v. McGovern*, 201 Ariz. 172, 175, ¶ 6, 33 P.3d 506, 509 (App. 2001).

¶9 Ball argues that he was entitled to receive a copy of the inventory of Estate assets pursuant to a March 2011 order to the PR that required the PR to provide an inventory to any

³ Absent material revisions to this decision, we cite the current version of applicable statutes.

interested persons who requested a copy. See A.R.S. § 14-3706(B). But Ball had no legitimate interest in Blunt's Estate. An "interested person" is defined in A.R.S. § 14-1201(28) as

any trustee, heir, devisee, child, spouse, creditor, beneficiary, person holding a power of appointment and other person who has a property right in or claim against a trust estate or the estate of a decedent, ward or protected person. . . .

Ball had no action or claim pending against Blunt's Estate in any court when the PR mailed the inventory and moved to strike the petition for order to show cause. The PR had disallowed Ball's claim on May 11, 2011. By that time, all of the related actions had been dismissed or terminated.

¶10 Ball contends he was an interested party with a pending claim because he responded to the denial of his claim in a timely manner by filing a petition for order to show cause within sixty days from the date his claim was disallowed, as A.R.S. § 14-3806(A) requires. Once the PR disallows a claim, the claimant has sixty days under § 14-3806(A) to file "a petition for allowance in the court or commence[] a proceeding against the [PR]."

¶11 But as the trial court concluded, Ball's petition for order to show cause did not constitute "an action of his claim against [Blunt's] estate[.]" The petition for order to show cause merely cited the Arizona federal court proceedings filed

April 4, 2011. This did not satisfy § 14-3806(A). Furthermore, this proceeding terminated on August 2, 2011, and because all claims had been either disallowed or terminated, Ball was not an "interested person" entitled to a copy of the inventory.⁴ See A.R.S. §§ 14-1201(28), -3706(B).

III. Attorneys' Fees on Appeal

¶12 The PR requests an award of damages and attorneys' fees on appeal as a sanction pursuant to A.R.S. § 14-1105 and Arizona Rule of Civil Appellate Procedure ("ARCAP") 25. Section 14-1105(A) authorizes an award of attorneys' fees and expenses to the estate when the opposing party has engaged in unreasonable conduct. Sanctions are authorized under ARCAP 25 when an appeal or motion is frivolous or taken solely for the purpose of delay, or when a party is guilty of an unreasonable infraction of the rules of appellate procedure.

¶13 Ball's appeal is frivolous. Since 2005, Ball has filed numerous petitions, actions and pleadings against Blunt and his Estate in the Maricopa County Superior Court, United States District Court for the District of Arizona, United States Bankruptcy Court, and United States District Court for the Southern District of Illinois, all of which arose from the same

⁴ On appeal, Ball refers to A.R.S. § 46-456, which provides a civil remedy for financial exploitation of vulnerable adults. No such claim is pending in any court as far as this record indicates. Accordingly, we do not address this issue.

