DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ROBERT WILCOX and GLENNA WILCOX, husband and wife; RODNEY NESS and AGNES NESS, husband and wife; EVERETT SICKLES and PATRICIA SICKLES, husband and wife; and JOSEPH BOWER and CARMEN BOWER, husband and wife, Petitioners/Appellants, v. TOWN OF WICKENBURG, a political subdivision of the State of Arizona, Defendant/Appellee.	1 CA-CV 12-0011 DEPARTMENT D **MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure

Appeal from the Superior Court in Maricopa County

Cause No. CV2011-070410

The Honorable Michael R. McVey, Judge

AFFIRMED

Law Offices of Robert D. McCoy — Wickenburg
By Robert D. McCoy
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Attorneys for Appellee

G O U L D, Judge

¶1 Appellants (collectively "Wilcox") appeal the court's grant of summary judgment in favor of appellee Town of Wickenburg ("the Town") on the ground the Town's enactment of an annexation ordinance was valid. For the reasons discussed below, we affirm.

Factual and Procedural Background

¶2 On February 22, 2011, the Town Council enacted Ordinance No. 1083 annexing approximately thirty-five parcels of land into the Town of Wickenburg. On March 23, 2011, Wilcox filed a petition challenging the annexation ordinance, asserting the ordinance was ineffective because it failed to comply with the requirements of Arizona Revised Statutes ("A.R.S.") Section 9-471. Wilcox argued the Town failed to obtain the requisite number of signatures under A.R.S. § 9-471(A)(4)[1] because seven of the nineteen signatures on the petition were invalid. Wilcox also asserted the Town failed to comply with § 9-471(O) because

[1] A.R.S. § 9-471(A)(4) provides in relevant part, "[O]wners of one-half or more in value of the real and personal property and more than one-half of the persons owning real and personal property that would be subject to taxation by the city or town in the event of annexation" must sign an annexation petition. Thus, the Town was required to obtain at least nineteen signatures for the thirty-five parcels located in the annexed territory.

it did not adopt a separate plan addressing infrastructure and services in the annexed territory.

¶3 The Town and Wilcox both filed motions for summary judgment regarding the validity of the annexation ordinance. The court granted the Town's motion for summary judgment, and denied Wilcox's motion for summary judgment. In granting the Town's motion, the court found: (1) all of the signatures challenged by Wilcox were valid, and (2) the Town complied with A.R.S. § 9-471(O) by adopting a General Plan and Ordinance No. 1011, and by providing a Frequently Asked Questions ("FAQs") website concerning available services prior to the enactment of the annexation ordinance. Wilcox timely appealed the court's ruling.

Discussion

I. Standard of Review

¶4 Summary judgment is proper when "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(c)(1). A court should grant summary judgment "if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme Sch. v. Reeves*,

166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). In reviewing the court's summary judgment, we examine the entire record in a light most favorable to the losing party, giving that party the benefit of all favorable inferences that may be reasonably drawn from the evidence. *Wisener v. State of Ariz.*, 123 Ariz. 148, 149, 598 P.2d 511, 512 (1979). We review de novo whether there are any genuine issues of material fact and whether the court properly applied the law. *Brookover v. Roberts Enters., Inc.*, 215 Ariz. 52, 55, ¶ 8, 156 P.3d 1157, 1160 (App. 2007).

¶5 Annexation ordinances are presumed valid. *McCune v. City of Phoenix,* 83 Ariz. 98, 102, 317 P.2d 537, 540 (1957). Parties challenging the validity of an annexation have the burden of proving the annexation is invalid. *See* A.R.S. § 9-471(C).

II. Validity of Signatures

¶6 Wilcox challenges the signatures of William R. Gould, Billy Young, Larry N. Thompson and Patricia A. Thompson ("the Thompsons"), and John Miller on the ground each of these signatories lacked the authority to sign the petition on behalf of the listed property owner.[2] Wilcox argues that based on

[2] Gould signed on behalf of "W.W. Gould, LLC," which was listed by the Yavapai County Assessor as the property owner of Yavapai County Parcel 201-11-004Z; Young signed on behalf of "Remuda Ranch Company," which was listed by the Maricopa County

Ferree v. City of Yuma, 124 Ariz. 225, 603 P.2d 117 (App. 1979), the signatures of these five individuals were invalid because there was no evidence they possessed the authority to act as agents for the listed property owners.

¶7 Wilcox's reliance on *Ferree* is misplaced. *Ferree* does not address the authority of a manager or officer to sign a petition as an agent of a company, nor does it address the authority of a trustee to sign a petition on behalf of a trust. Rather, *Ferree* held that when spouses hold property in joint tenancy "the relationship as husband and wife" does not presumptively "make one spouse the agent of the other," and therefore evidence of agency is required for one spouse to sign an annexation petition on behalf of the other spouse. *Ferree*, 124 Ariz. at 227, 603 P.2d at 119. The decision in *Ferree* was based upon the distinction between spouses who hold property as community property, where "the signing spouse may be presumed to be an agent of the other spouse as to their community property interest," and spouses "who hold their joint tenancy interest as separate property," where no agency may be presumed. *Id*.

Assessor as the property owner of Maricopa County Parcel 505-03-019L; the Thompsons signed on behalf of "Thompson Larry N./Patricia A TR," which was listed by the Maricopa County Assessor as the property owners of Maricopa County Parcel 505-03-004H; and Miller signed on behalf of the "Miller Family Trust," which was listed by the Yavapai County Assessor as the property owner of Yavapai County Parcel 201-11-009A.

¶8 Here, Wilcox failed to rebut evidence presented by the Town that Gould was a manager of W.W. Gould, LLC and was authorized by the LLC to sign the petition. In addition, the Town presented evidence that Young served as Chief Executive Officer for Remuda Ranch Company and was authorized to sign the annexation petition on behalf of the company. The Town also produced evidence that the Thompsons were listed as property owners on the Assessor's Record and had the authority to sign the petition as trustees of the Larry N. Thompson and Patricia A. Thompson Revocable Trust. Finally, the Town presented evidence Miller had the authority to sign the petition as a trustee of the Miller Family Trust. In light of the Town's evidence and the presumption the annexation ordinance is valid, Wilcox's conclusory allegations regarding Gould, Young, the Thompsons and Miller were insufficient to create a material fact dispute as to the validity of their signatures. As a result, we conclude all five signatures are valid.

¶9 Alternatively, Wilcox argues that the signatures of Gould and Miller are invalid because Miller failed to allege he was signing on behalf of his cotrustee and Gould failed to allege he was signing on behalf of his co-manager. Arizona law provides that "[e]ach member is an agent of the limited liability company for the purpose of carrying on its business in

the usual way" unless the articles of organization state otherwise. A.R.S. § 29-654(A)(1). Therefore, unless shown otherwise, we presume Gould had the authority to act on behalf of the company without the cooperation of his fellow manager. Wilcox failed to produce any language from the company's articles of organization to rebut this statutory presumption. Arizona law also creates a presumption that a cotrustee may act on behalf of the trust "unless the terms of the trust provide that the trustees perform jointly." A.R.S. § 14-10703(E). Again, Wilcox failed to offer any language from the terms of the trust to rebut this statutory presumption that Miller had authority to sign on behalf of the Miller Family Trust. Thus, we conclude both signatures are valid.

¶10 Wilcox also fails to overcome the presumption of validity regarding the signature of Richard Thomas. Wilcox asserts Thomas' signature was invalid because the Yavapai County Assessor listed the owners of the subject parcel[3] as "James Thomas and E. Joan Thomas" holding the property as "joint tenants." However, the Town presented evidence that James and E. Joan Thomas granted a Limited Power of Attorney to Richard Thomas, their son, which gave him the authority to sign the annexation petition on their behalf.

[3] Yavapai County Parcel 201-10-024G.

¶11 Wilcox next contends the signature of Trey Miller was invalid as to Yavapai County Parcel 201-11-005E because he owns the subject parcel as a joint tenant with his wife, Wendy Miller.[4] Based on the holding in *Ferree*, Wilcox argues that absent some proof Trey Miller acted as the agent of his wife, his signature alone was invalid.

¶12 We conclude Trey Miller's signature was valid. When spouses hold property as community property, one spouse signing an annexation petition "may be presumed to be an agent of the other spouse as to their Community property interest" in the absence of evidence indicating a lack of authority. *Ferree*, 124 Ariz. at 227, 603 P.2d at 119; *see also City of Phoenix v. State ex rel. Harless*, 60 Ariz. 369, 137 P.2d 783 (1943)(holding that husband, as managing agent of community, may sign petition to annex property to city without joint signature of wife). In such instances, the party challenging the petition has the burden of showing invalidity and "must submit some evidence of conditions that would render it invalid." *See McCune*, 83 Ariz.

[4] In fact, the Yavapai County Assessor lists "Miller Family Investments LLC" as the owner of the Parcel. Miller Family Investments is an Arizona limited liability company. The Town presented evidence that Miller Family Investments, LLC, executed a Community Property Deed transferring the parcel to Trey Miller and Wendy Miller on April 6, 2009, which was recorded with the Yavapai County Recorder's Office on April 7, 2009.

at 103, 317 P.2d at 540. Wilcox submitted no evidence that Trey Miller's signature on behalf of his wife was invalid.

¶13 Finally, Wilcox asserts that James Corbet's signature was invalid as to Maricopa County Parcels 505-03-091M, 505-03-019P, and 505-03-019Q ("Parcels M, P, and Q"), because these parcel numbers are not listed on the Maricopa County Assessor's Record as part of the annexed territory. Rather, the Assessor's Record sent to the Town on January 7, 2010 only lists one parcel owned by Corbet in the annexation territory, Parcel 505-03-109C ("Parcel C").

¶14 However, the Town presented evidence showing that after the Assessor's Record was prepared on January 7, 2010, Corbet split Parcel C into four separate parcels: Parcels M, P, Q, and a fourth parcel.[5] The Town presented further evidence that Corbet owned all Parcels M, P, and Q when he signed the annexation petition on April 2, 2010. In light of this evidence, Wilcox's bare assertion that Parcels M, P, and Q are outside the annexation area is insufficient to overcome the presumption of validity of Corbet's signature.

[5] The fourth parcel, which is not at issue in this case, was listed as Maricopa County Parcel 505-03-019N.

III. The Town Substantially Complied with § 9-471(O)

¶15 The court found the Town's annexation ordinance complied with A.R.S. § 9-471(O), which states in relevant part:

> On or before the date the governing body adopts the ordinance annexing the territory, the governing body shall have approved a plan, policy or procedure to provide the annexed territory with appropriate levels of infrastructure and services to serve anticipated new development within ten years after the date when the annexation becomes final.

¶16 Wilcox asserts the Town did not comply with § 9-471(O) because the law required it to adopt "separate policies" addressing infrastructure and services within the annexed area before it enacted the annexation ordinance. The Town concedes it did not adopt a separate plan for the annexation territory.

¶17 We disagree that § 9-471(O) requires a governing body to approve a separate plan specifically addressing infrastructure and services prior to annexation. When interpreting a statute, our goal is "to fulfill the intent of the legislature that wrote it." *Bilke v. State*, 206 Ariz. 462, 464, ¶ 11, 80 P.3d 269, 271 (2003). We look first to the plain language of the statute as the best indicator of legislative intent. *Mejak v. Granville*, 212 Ariz. 555, 557, ¶ 8, 136 P.3d 874, 876 (2006). The plain language of § 9-471(O) simply requires the adoption of "a plan, policy or procedure" addressing infrastructure and services in the annexed area;

there is no language in the statute mandating the adoption of a separate plan specifically tailored to the annexed area. *See City of Phoenix v. Donofrio*, 99 Ariz. 130, 133, 407 P.2d 91, 93 (1965)(citations omitted)("[C]ourts will not read into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself.").

¶18 Furthermore, even if the statute required the adoption of a separate plan, the Town substantially complied by virtue of its General Plan, Ordinance No. 1011, and FAQs. It is well-established that an annexation need only "substantially comply" with the requirements of A.R.S. § 9-471 to be valid. *See Town of Scottsdale v. State ex rel. Pickrell*, 98 Ariz. 382, 385, 405 P.2d 871, 873 (1965); *State ex rel. Helm v. Town of Benson, Cochise County,* 95 Ariz. 107, 108, 387 P.2d 807, 808 (1963); *McCune*, 83 Ariz. at 102, 317 P.2d at 540.

¶19 Although Wilcox concedes that the substantial compliance standard applies to A.R.S. § 9-471(O), Wilcox argues that in the context of annexation provisions, substantial compliance requires closer adherence to the statute than it would in the context of other statutes. As a result, Wilcox contends the Town could not rely on its General Plan, Ordinance No. 1011, and FAQs website to satisfy the requirement set forth

in § 9-471(O) for a "separate" infrastructure/services plan. We disagree.

¶20 In addressing the annexation requirements of § 9-471, our Supreme Court held, "[T]his statute does not require absolute and literal compliance for annexation, but substantial compliance is necessary to effectuate the purpose of the statute." *Pickrell*, 98 Ariz. at 385, 405 P.2d at 873; *See also State ex rel. Helm*, 95 Ariz. at 108, 387 P.2d at 808 (holding that annexation requirements of § 9-471 require substantial compliance); *Glick v. Town of Gilbert*, 123 Ariz. 395, 398, 599 P.2d 848, 851 (App. 1979)(same). Although subsequent case law has applied strict compliance with respect to the contiguity requirements of § 9-471, strict compliance has not been applied to any other provision of the statute, including § 9-471(O). *Town of Miami v. City of Globe*, 195 Ariz. 176, 180-81, ¶¶ 13-14, 985 P.2d 1035, 1039-40 (App. 1998)(strict compliance required for contiguity requirement of § 9-471); *Cornman Tweedy 560, LLC v. City of Casa Grande*, 213 Ariz. 1, 3 & n.3, ¶ 9, 137 P.3d 309, 311 & n. 3 (App. 2006)(same).[6]

[6] These cases recognized that strict compliance with the contiguity requirements of § 9-471 was necessary because the determination of whether annexed land is contiguous or not is a straightforward determination that is not subject to a substantial compliance analysis; annexed land is either contiguous to the municipality as defined in the statute, or it

¶21 Although no Arizona case provides a comprehensive explanation of what constitutes substantial compliance regarding annexation ordinances, other cases are instructive. "Substantial compliance" generally means that the information provided has satisfied the purpose of the relevant statute. *State v. Galvez*, 214 Ariz. 154, 157, ¶19, 150 P.3d 241, 244 (App. 2006)(citations omitted). In deciding whether there is substantial compliance, a court should consider several factors, including the nature of the constitutional or statutory requirement, the extent to which the proposed ordinance/statute differs from the requirement, and the purpose of the requirement. *See Feldmeier v. Watson*, 211 Ariz. 444, 447, ¶ 14, 123 P.3d 180, 183 (2005)(referring to initiative petitions). In the context of annexation ordinances, the Arizona Supreme Court stated in *Pickrell*:

> [T]he reason for the requirement of substantial compliance with the statute is that annexation could affect title to property, taxes, bond issues, sewer, road and paving assessments, power and sewer lines to name a few. Since these are some of the major factors that affect property owners, the annexation procedure should be as conclusive and definitive as the law will permit.

Id., 98 Ariz. at 387, 405 P.2d at 874. A proper substantial compliance test should give meaning to all parts of a statute

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is not. *City of Globe*, 195 Ariz. at 180-81, ¶¶ 13-14, 985 P.2d at 1039-40.

without producing unduly harsh results. *Aesthetic Prop. Maint., Inc. v. Capitol Indem. Corp.*, 183 Ariz. 74, 78, 900 P.2d 1210, 1214 (1995)(citations omitted).

¶22 Here, two factors lead us to conclude that the Town substantially complied with A.R.S. § 9-471(O). First, despite the absence of a separate plan, the General Plan, Ordinance No. 1011, and FAQs fulfilled the purpose of the statute, which is to ensure that the governing body has adopted a plan to provide infrastructure and services to the territory under consideration. The General Plan[7] contains a Circulation Plan addressing important infrastructure issues, such as existing roadways and future corridors. *See* A.R.S. § 9-461.08(A) and (B)(explaining that planning agencies may use the general plan

[7] Wilcox contends that accepting the Town's General Plan in lieu of a separate plan renders the requirements of § 9-471(O) superfluous, since all municipalities are already required to adopt a general plan pursuant to A.R.S. § 9-461.05. We disagree. Section 9-471(O) is not redundant with § 9-461.05, because § 9-471(O) mandates that regardless of a city's population, it must have a plan addressing "infrastructure and services to serve anticipated development" in the annexed territory. However, under the general plan requirements of § 9-461.05, the development plans regarding services and infrastructure depend upon the size of the municipality. *See* A.R.S. § 9-461.05(D)(5)(requiring a general plan addressing water resources only for cities of more than two thousand five hundred people); A.R.S. § 9-461.05(E)(3) and (4)(requiring a general plan addressing transportation, transit, public services, and transportation facilities for cities with more than fifty thousand people). Although smaller cities have the option to include such elements in their general plans, it is not mandatory.

to prepare specific plans for particular locations in the municipality). Ordinance No. 1011 also addresses infrastructure in the annexation territory, providing for water and utility hookups once the territory is annexed, as well as sewer and septic systems. The FAQs address the available police service, wells and septic systems, garbage hauling service, installation of fire hydrants, and school districts. Viewed as a whole, these documents satisfy the purpose of § 9-471(O) by creating a "plan" that addresses infrastructure and services within the annexed area.

Conclusion

¶23 For the reasons discussed above, we affirm the grant of summary judgment in favor of the Town of Wickenburg.

/S/_____
ANDREW W. GOULD, Judge

CONCURRING:

/S/_____
MICHAEL J. BROWN, Presiding Judge

/S/_____
DONN KESSLER, Judge