IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

RANDAL L. DAWSON and LORI DAWSON, husband and wife, Plaintiffs/Appellants, v. YUMA IRRIGATION DISTRICT, a legal entity, Defendant/Appellee.	No. 1 CA-CV 12-0017 DEPARTMENT C **MEMORANDUM DECISION** (Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Yuma County

Cause No. S1400CV201100915

The Honorable Andrew W. Gould, Judge

AFFIRMED

Bowman & Smith PC — Yuma
by Carol A. Bowman
Attorneys for Plaintiffs/Appellants

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by Walter Grochowski
Attorneys for Defendant/Appellee

T H U M M A, Judge

¶1 Plaintiffs/Appellants Randal and Lori Dawson appeal the superior court's judgment dismissing their negligence claim against Defendant/Appellee Yuma Irrigation District (the

District) as being barred by the applicable statute of limitations. Because the superior court properly found no material issue of disputed fact and that the District was entitled to judgment as a matter of law, the judgment is affirmed.

FACTS AND PROCEDURAL HISTORY[1]

¶2 The District provides irrigation water for the Dawsons' property. On October 17, 2009, the District released excess irrigation water and flooded the Dawsons' property. The Dawsons filed this action on July 8, 2011, alleging the District negligently caused the release of excess water and resulting damage.[2]

¶3 Claiming to be an "irrigation district" and, therefore, treated as a municipal corporation under Arizona law, the District moved to dismiss the action as barred by a one-year limitations period. *See* Ariz. Rev. Stat. (A.R.S.) §§ 48-2901, 12-821.[3] The Dawsons argued the District was an "irrigation water

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[1] On appeal, this court views the evidence and resulting inferences in the light most favorable to the non-moving party. *Andrews v. Blake*, 205 Ariz. 236, 240, ¶ 12, 69 P.3d 7, 11 (2003).

[2] The Dawsons also alleged their neighbors negligently failed to monitor the release of water onto their property, causing the flooding of the Dawson property. Those claims are not at issue in this appeal.

[3] Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

delivery district" under A.R.S. § 48-3402 and, therefore, their claims were governed by a two-year limitations period and were timely. *See* A.R.S. § 12-542. The Dawsons offered Randal's affidavit, which avowed the Dawsons' only relationship with the District was for the delivery of irrigation water. In reply, the District submitted additional documents and claimed those documents established the District was an irrigation district.

¶4 Following a hearing, the superior court granted the District's motion and entered judgment against the Dawsons and in favor of the District. *See* Ariz. R. Civ. P. 54(b).[4] The Dawsons timely appealed. This court has jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. § 12-2101(A)(1).

DISCUSSION

¶5 The Dawsons contend the superior court erred by ruling the District is an irrigation district and dismissing the claims as time-barred pursuant to the one-year statute of limitations found in A.R.S. § 12-821. It is first necessary to determine whether the superior court granted a motion to dismiss pursuant

[4] The superior court apparently stated the reasons for the ruling at oral argument and, in a subsequent minute entry, granted the motion "for the reasons stated on the record." The parties, however, have not included a transcript of that hearing in the record on appeal.

to Arizona Rule of Civil Procedure 12 or a motion for summary judgment pursuant to Rule 56.

¶6 The District's motion sought dismissal under Rule 12. The Dawsons' response attached an affidavit by Randal describing their relationship with the District. Randal's affidavit clearly was not attached to the complaint. The District's reply then attached documents showing the District was created as, and continued to be, an irrigation district. The superior court did not specify whether it relied on this proffered evidence, but "having reviewed the entire record of the proceedings in this matter," ruled there was no genuine issue of material fact. Such reliance on evidence extrinsic to the pleadings converts a Rule 12 motion to dismiss into a Rule 56 motion for summary judgment. *See* Ariz. R. Civ. P. 12(b); *Young v. Rose*, __ Ariz. __, __, ¶¶ 25, 28, 286 P.3d 518, 522-23 (App. 2012). Accordingly, this court treats the order as granting a motion for summary judgment and determines whether there are genuine issues of material fact that precluded summary judgment for the District. *Frey v. Stoneman*, 150 Ariz. 106, 108-09, 722 P.2d 274, 276-77 (1986).[5]

[5] Because both parties had a "reasonable opportunity to present all material made pertinent" to the District's motion (and in fact both parties offered evidence not included in the complaint), no remand is necessary for further proceedings. *See Young*, __ Ariz. at __, ¶¶ 28, 30, 286 P.3d at 523.

¶7 The Dawsons argue the superior court erred by ruling the District is an "irrigation district," rather than an "irrigation water delivery district." Irrigation districts are deemed municipal corporations, A.R.S. § 48-2901, and all claims against them must be filed not more than one year after accrual, A.R.S. § 12-821. By contrast, irrigation water delivery districts are corporate bodies and "shall not be considered municipal corporations," A.R.S. § 48-3402(A), meaning (as applicable here) claims against them are subject to a two-year limitations period, A.R.S. § 12-542.

¶8 The District offered evidence it was formed in 1919 under an Arizona law "to provide for the organization of irrigation districts." 1915 Ariz. Sess. Laws, ch. 8, § 3 1/2. Two years later, the legislature enacted the Irrigation District Act of 1921 (currently codified at A.R.S. § 48-2901) which applies "with full force and effect to irrigation districts heretofore organized under the laws of the state of Arizona." 1921 Ariz. Sess. Laws, ch. 149, § 45.[6] In briefing the motion,

[6] The District demonstrated that the legislature did not authorize irrigation water delivery districts until fourteen years after the District had been created. *See* 1933 Ariz. Sess. Laws, ch. 101, § 8 (currently codified at A.R.S. § 48-3402). In doing so, the legislature expressly left in place prior statutory provisions regarding irrigation districts. *See* A.R.S. § 48-3404 ("This chapter [A.R.S. §§ 48-3401 to -3477 (titled "Irrigation Water Delivery Districts")] shall not be construed to repeal any other act, statute or part of statute providing

the District provided evidence showing the District was an irrigation district at the time of inception and has remained an irrigation district since that time.

¶9 The Dawsons did not controvert the District's evidence. Nor did the Dawsons present any evidence that the District was created as, or converted to, an irrigation water delivery district at any time.[7] Instead, the Dawsons contended the District is an "irrigation water delivery district" because, as set forth in Randal's affidavit, the only relationship they had with the District was "that it has delivered and continues to deliver irrigation water to our property."

¶10 The Dawsons' evidence regarding the type of services the District provides did not create a genuine issue of material fact. It may be that irrigation districts and irrigation water delivery districts can provide functionally equivalent services. *Compare* A.R.S. § 48-2978 (setting forth general powers of irrigation district board), *with* A.R.S. § 48-3402 (setting forth rights and powers of irrigation water delivery district). It is the structure of the entity, not the services provided, that

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for the organization of irrigation or other similar districts.").

[7] *See, e.g.*, A.R.S. §§ 48-3422 (specifying requirement of petition to organize irrigation water delivery district), -3423 (specifying notice required for petition), -3424 (specifying hearing requirements for petition).

determines whether an entity is an irrigation district or an irrigation water delivery district (a determination that dictates which limitations period applies).

¶11 By focusing on the services provided by the District, Randal's affidavit did not create a genuine issue of material fact regarding the legal nature of the District. Ariz. R. Civ. P. 56(c)(2) (party opposing properly supported motion for summary judgment must "set[] forth those facts which establish a genuine issue of material fact"). Because the District properly supported its motion and legal position, and because the Dawsons did not create any genuine issue of material fact regarding the timeliness of their complaint, the superior court properly found the one-year limitations period barred the Dawsons' claim against the District. *See* A.R.S. § 12-821; *Orme Sch. v. Reeves*, 166 Ariz. 301, 305, 802 P.2d 1000, 1004 (1990).

CONCLUSION

¶12 The judgment of the superior court is affirmed.

/S/
SAMUEL A. THUMMA, Judge

CONCURRING:

/S/
PHILIP HALL, Presiding Judge

/S/
PETER B. SWANN, Judge