

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);

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

FEDERAL NATIONAL MORTGAGE ) No. 1 CA-CV 12-0384  
ASSOCIATION, )  
) DEPARTMENT B  
Plaintiff/Appellee, )  
) **MEMORANDUM DECISION**  
v. ) (Not for Publication -  
) Rule 28, Arizona Rules of  
GABRIEL SALCIDO, ) Civil Appellate Procedure)  
)  
Defendant/Appellant. )  
\_\_\_\_\_)

Appeal from the Superior Court in Maricopa County

Cause No. CV2011-008007

The Honorable Benjamin E. Vatz, Judge *Pro Tempore*

**AFFIRMED**

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Tiffany and Bosco Phoenix  
By Leonard J. McDonald, Jr. and David Cowles  
Attorneys for Plaintiff/Appellee

Rhoads & Associates Phoenix  
By Douglas C. Rhoads  
Attorneys for Defendant/Appellant

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**J O H N S E N**, Chief Judge

¶1 Gabriel Salcido appeals from the superior court's  
denial of his motion to set aside a judgment in favor of Federal

National Mortgage Association ("FNMA") on its forcible detainer claim. For the following reasons, we affirm.

#### FACTS AND PROCEDURAL HISTORY

¶2 FNMA filed a forcible detainer complaint alleging Salcido was occupying and refusing to surrender real property that FNMA had purchased at a trustee's sale.<sup>1</sup> Attached to the verified complaint was a copy of a trustee's deed issued to FNMA. FNMA attempted to personally serve Salcido on three occasions. After those attempts were unsuccessful, the superior court authorized FNMA to serve Salcido by mail and by posting the summons and complaint on the premises. See Arizona Rules of Procedure for Eviction Actions ("RPEA") 5(f); Ariz. R. Civ. P. 4.1(m). FNMA did so on May 3, 2011.

¶3 Salcido failed to respond to the complaint, and, after a proceeding on May 25, 2011, at which Salcido did not appear, the court entered judgment in favor of FNMA. According to the judgment, the court ruled after receiving unspecified evidence. The court subsequently issued a writ of restitution. Nearly 11 months later, Salcido filed an "Emergency Motion to Quash the Writ of Restitution," which effectively asked the court to set aside the judgment. The superior court denied the motion.

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<sup>1</sup> We view the facts in the light most favorable to upholding the superior court's ruling on a motion to set aside a judgment. *Ezell v. Quon*, 224 Ariz. 532, 534, ¶ 2, 233 P.3d 645, 647 (App. 2010).

¶14 Salcido timely appealed the order denying his motion to set aside the judgment. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(2) (2013).<sup>2,3</sup>

#### DISCUSSION

¶15 Pursuant to RPEA 15, a party may move to set aside a forcible detainer judgment on grounds that include lack of jurisdiction, improper notice or service, and fraud. See RPEA 15(a)(1), (3), (10). We review the superior court's denial of a motion to set aside a judgment for an abuse of discretion. *Blair v. Burgener*, 226 Ariz. 213, 216, ¶ 7, 245 P.3d 898, 901 (App. 2010).

¶16 Salcido first argues the superior court erred in denying his motion to set aside the judgment because the court

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<sup>2</sup> Absent material revision after the relevant date, we cite a statute's current version.

<sup>3</sup> FNMA acknowledges that A.R.S. § 12-2101(A)(2) confers appellate jurisdiction only if the order appealed from is entered after a final judgment. The judgment dated May 25, 2011 did not address a claim for attorney's fees that FNMA made in its complaint. While in some circumstances, the failure of a judgment to resolve a pending fees claim renders the judgment not a final order, the form of judgment the court signed in this case was submitted by FNMA itself. FNMA's submission of a form of judgment that omitted a grant of fees demonstrates a decision by FNMA to forgo an award of fees (and FNMA's failure to file a fees application in the superior court in the more than two years that have passed since then only confirms that decision). Under the circumstances, we conclude the May 25, 2011, judgment was a final order. See *Baker v. Bradley*, 231 Ariz. 475, 482, ¶¶ 24-25, 296 P.3d 1011, 1018 (App. 2013).

lacked jurisdiction to enter the judgment. As best as we can understand his argument, he contends he was not properly served with the complaint and that that failure of service deprived the court of personal and/or subject matter jurisdiction. Salcido, however, offers no facts or substantive argument to support his contention that he was not properly served, and in any event, insufficient service of process does not deprive a court of subject matter jurisdiction. See *Snow v. Steele*, 121 Ariz. 82, 83-85, 588 P.2d 824, 825-26 (1978) (party may waive argument that it was improperly served).

¶17 Salcido also contends the superior court erred in denying his motion because FNMA fraudulently misrepresented itself as the real party with standing to bring an action for possession. See RPEA 15(a)(10). A complaint in a forcible detainer action must “[b]e brought in the legal name of the party claiming entitlement to possession of the property.” RPEA 5(b)(1). The complaint in this case attached a copy of a trustee’s deed issued to FNMA, but Salcido argues the deed is invalid, purportedly because of some unspecified fraud in the assignment documentation or in FNMA’s purchase of the property at the trustee’s sale.

¶18 Pursuant to A.R.S. § 33-811(B) (2013), however, issuance of a trustee’s deed “shall raise the presumption of compliance with the requirements of the deed of trust” and the

statutes by which trustee's sales occur. Moreover, pursuant to A.R.S. § 33-811(C), Salcido waived "all defenses and objections" to the trustee's sale by failing to move to enjoin the sale.

¶9 In any event, the only issue to be determined in a forcible detainer action is the right of possession; title may not be challenged. A.R.S. § 12-1177(A) (2013); *Curtis v. Morris*, 186 Ariz. 534, 535, 925 P.2d 259, 260 (1996) (title may not be litigated in a forcible detainer action because it would defeat its purpose as a summary remedy); *United Effort Plan Trust v. Holm*, 209 Ariz. 347, 351, ¶ 21, 101 P.3d 641, 645 (App. 2004) ("The only issue to be decided [in a forcible detainer action] is the right of actual possession.").

¶10 Salcido argues, however, that A.R.S. § 12-1177(A) permits the superior court to "legitimately explore title where such issue is incidental to the issue of possession." To the contrary, that statute explicitly states that "[o]n the trial of an action of forcible entry or forcible detainer, . . . the merits of title *shall not* be inquired into." A.R.S. § 12-1177(A) (emphasis added). All of Salcido's arguments based on his assertion that FNMA lacks valid title therefore fail.

¶11 Salcido next argues his due-process rights are violated if he cannot challenge FNMA's title. But he had the opportunity to challenge FNMA's title: He could have raised the defenses and objections he raises now by seeking injunctive

relief prior to the trustee's sale. See A.R.S. § 33-811(C); *Madison v. Groseth*, 230 Ariz. 8, 13, ¶ 15, 279 P.3d 633, 638 (App. 2012).

¶12 Salcido finally contends that FNMA and its attorneys violated RPEA 4(a) and (b), which require each attorney in an eviction action to "exercise due diligence" and ensure that each pleading is "accurate," "well-grounded in fact and law" and "filed in good faith." RPEA 4(a) and (b). Salcido argues counsel for FNMA should have questioned the authenticity of the deed of trust, which he suggests was fabricated. We reject this argument because it is nothing more than an indirect attack on FNMA's title. Having failed to enjoin the trustee's sale, Salcido may not challenge that title, however indirectly. See A.R.S. § 33-811(C).

#### CONCLUSION

¶13 For the reasons set forth above, we affirm the superior court's judgment. In our discretion, we grant FNMA's request for reasonable attorney's fees pursuant to A.R.S. § 12-349 (2013). A party requesting fees under § 12-349 must "show by a preponderance of the evidence" that the action was "brought without substantial justification, or solely or primarily for delay or harassment, or that [it] unreasonably expanded or delayed the proceedings." *Donlann v. Macgurn*, 203 Ariz. 380, 387, 55 P.3d 74, 81 (App. 2002).

¶14 Salcido's title arguments are meritless, without substantial justification and are designed to create unreasonable delay. Moreover, Salcido's counsel advanced these same arguments in prior cases and in each such case, not only were they rejected summarily, counsel was sanctioned personally for advancing them. See *2525 S. McClintock, LLC v. James*, No. 1 CA-CV 11-0801, 2012 WL 5269674, at \*6, ¶¶ 25-26 (Ariz. App. Oct. 25, 2012) (mem. decision); *U.S. Bank Nat'l Assoc. v. Myers*, No. 1 CA-CV 10-0780, 2011 WL 6747428, at \*4, ¶¶ 19-20 (Ariz. App. Dec. 22, 2011) (mem. decision). Because counsel's arguments clearly are meritless and repeatedly have been rejected as so, it is appropriate that counsel bear the burden of fees and costs in this appeal. Accordingly, we direct counsel, rather than Salcido, to pay FNMA's reasonable attorney's fees and costs subject to FNMA's compliance with Arizona Rule of Civil Appellate Procedure 21.

\_\_\_\_\_/s/\_\_\_\_\_  
DIANE M. JOHNSEN, Chief Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
PETER B. SWANN, Presiding Judge

\_\_\_\_\_/s/\_\_\_\_\_  
PATRICIA K. NORRIS, Judge