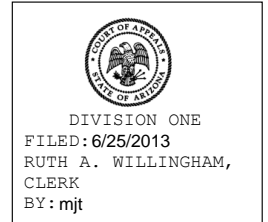


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

EDWARD GOLDWATER, ) No. 1 CA-CV 12-0496  
)  
Plaintiff/Appellant, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
JAN BREWER, ) Rule 28, Arizona Rules of  
) Civil Appellate Procedure)  
Defendant/Appellee. )  
)  
)  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CV2011-070095

The Honorable Jose S. Padilla, Judge

**AFFIRMED**

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Edward George Goldwater Buckeye  
*In Propria Persona*

Thomas C. Horne, Arizona Attorney General Phoenix  
by James B. Bowen, Assistant Attorney General  
Attorneys for Defendant/Appellee

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**S W A N N**, Judge

¶1 Edward Goldwater appeals from the superior court's  
dismissal of his complaint against Governor Jan Brewer. We

affirm because the complaint fails to state a claim against the Governor as a matter of law.

*FACTS AND PROCEDURAL HISTORY*

¶2 On October 17, 2011, Goldwater, a prison inmate, filed a complaint against the Governor and various fictitious defendants. The complaint and summons were served on the Governor on November 1, 2011.

¶3 The complaint alleged three counts. Count I, entitled "Access to the Courts," alleged that Arizona was engaged in a conspiracy with lawyers to deny legal services to criminal defendants, that the "defendants" in Goldwater's complaint set up a program to torture and drug criminal defendants to force pleas, that the state supreme court set up a "star chamber" to deny Goldwater access to the courts, that the state court of appeals and supreme court set up a program to deny all pro se criminal defendants any relief, that the state convicts criminal defendants based on "probable cause" rather than "beyond a reasonable doubt," that the state courts do not grant habeas corpus petitions, and that the state legislature has failed to review statutes governing habeas corpus since 1977. Count II, entitled "Fraud," alleged that Arizona has not had a balanced budget for years, that "the defendants" violated the state constitution by establishing programs to give gifts to the Arizona Cardinals football team, that the state lottery was

bankrupt and a sham, that "defendants" refused to provide Medicaid coverage to unmarried individuals, and that "defendants" are unconstitutionally privatizing prisons in exchange for donations from private organizations. Count III, entitled "Trespass," alleged that the state courts have a policy of denying review or any type of relief to pro se inmates, that "defendants" refuse to read Goldwater's criminal court petitions, and that the state supreme court refuses to comply with certain constitutional requirements and court rules.

¶4 On November 18, 2011, Goldwater filed a notice of entry of default, which he dated November 22. On November 21, the Governor filed a motion to dismiss the complaint for failure to state a claim. The Governor argued, *inter alia*, that the complaint was merely a list of grievances and personal beliefs that alleged no particular conduct by the Governor and was directed primarily to conduct by government branches not controlled by the Governor.

¶5 On November 25, Goldwater filed a demand for judgment by default. A month later, he renewed the demand and also responded to and moved to strike the motion to dismiss. Goldwater contended that the Governor had defaulted by not timely responding to the complaint, and argued generally that the Governor was liable on the claims asserted in his complaint

because she was constitutionally required to ensure the faithful execution of all laws.

¶16 After holding oral argument, the superior court granted the Governor's motion to dismiss. Goldwater timely appeals. We have jurisdiction under A.R.S. § 12-2101(A)(1).

#### DISCUSSION

##### I. THE GOVERNOR DID NOT DEFAULT.

¶17 Goldwater first contends that the dismissal of the complaint was error because the Governor defaulted by failing to timely respond to the complaint.<sup>1</sup> A defendant must file an answer within twenty days of the service of a complaint and summons. Ariz. R. Civ. P. 12(a). The plaintiff may apply for entry of default if the defendant fails to "plead or otherwise defend" within the twenty-day period. Ariz. R. Civ. P. 55(a). Default is entered upon the clerk of the court's acceptance of the plaintiff's application. *Id.* The default does not become effective, however, until ten days later. *Id.* If the defendant pleads or otherwise defends before the expiration of those ten days, the entry of default does not become effective. *Id.*;

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<sup>1</sup> Goldwater also contends that the Governor filed her motion to dismiss in the wrong court. His contention is unsupported by the record. Further, he fails to explain how such an error might constitute grounds for reversal or other action by this court.

*Corbet v. Superior Court (Turco/K.A.S.I.E.)*, 165 Ariz. 245, 247, 798 P.2d 383, 385 (App. 1990).

¶18 According to Goldwater, he served the Governor on November 1, 2011. The Governor was therefore required to answer or otherwise defend by November 21. Goldwater's November 18 application for entry of default was premature. The Governor timely filed her motion to dismiss on November 21, thereby satisfying the "otherwise defends" requirement of Rule 55(a). *Prutch v. Town of Quartzsite*, 231 Ariz. 431, 436, ¶ 17, 296 P.3d 94, 99 (App. 2013). No grounds for entry of default existed.

## II. THE COMPLAINT FAILED TO STATE A CLAIM AGAINST THE GOVERNOR.

¶19 Goldwater next contends that the superior court erred by concluding that the complaint failed to state a claim.<sup>2</sup> A

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<sup>2</sup> Goldwater also contends that the superior court was biased; that the superior court refused to enforce the Code of Judicial Conduct; and that Goldwater was entitled to declaratory judgment because "the State refused to respond to [his] demand for sanctions due to criminal perjury [and] fraud," the "State's" motion to dismiss should have been treated as a motion for summary judgment, and the "State's entire set of pleadings were unreliable [and] hearsay." (Emphases omitted.) But Goldwater also asserts that his "entire arguments" are in exhibits attached to his opening brief. Those exhibits, which consist of the Governor's motion to dismiss and Goldwater's response, do not include arguments related to the judicial bias, judicial ethics, or declaratory judgment issues. We limit our review to the actual arguments presented and do not consider the issues for which Goldwater presented no argument. See *Torrez v. Knowlton*, 205 Ariz. 550, 552 n.1, 73 P.3d 1285, 1287 n.1 (App. 2003) (issues not argued on appeal are deemed abandoned); *Nationwide Res. Corp. v. Massabni*, 134 Ariz. 557, 565, 658 P.2d 210, 218 (App. 1982) (appellate court is not obliged to develop argument for a party).

complaint must set forth a short, plain statement "showing that the pleader is entitled to relief." Ariz. R. Civ. P. 8(a). It must give the defendant fair notice of the nature and basis of the claim and indicate the type of litigation involved. *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 6, 189 P.3d 344, 346 (2008). This requires the plaintiff to plead facts sufficient to support the claim. *Id.* at ¶ 7.

¶10 In reviewing the dismissal of a complaint for failure to state a claim pursuant to Rule 12(b)(6), we accept as true the facts alleged in the complaint and will affirm the dismissal only if the plaintiff would not be entitled to relief under any interpretation of the facts susceptible of proof. *Fidelity Sec. Life Ins. Co. v. State Dep't of Ins.*, 191 Ariz. 222, 224, ¶ 4, 954 P.2d 580, 582 (1998). We resolve all reasonable inferences from those facts in favor of the plaintiff. *McDonald v. City of Prescott*, 197 Ariz. 566, 567, ¶ 5, 5 P.2d 900, 901 (App. 2000). We consider only the facts alleged. *Don Kelland Materials, Inc., v. Langel*, 114 Ariz. 374, 375, 560 P.2d 1281, 1282 (App. 1977). We do not accept as true "allegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts." *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 389, ¶ 4, 121 P.3d 1256, 1259 (App. 2005).

Conclusory statements without supporting factual allegations do not establish a claim on which relief can be granted. *Cullen*, 218 Ariz. at 419, ¶ 7, 190 P.3d at 346. The possibility that the plaintiff might later produce facts in support of his claim does not save from dismissal a complaint based on conclusions. *Dube v. Likins*, 216 Ariz. 406, 424, ¶ 14, 167 P.3d 93, 111 (App. 2007). The test is whether what is stated in the complaint would entitle the plaintiff to relief upon some theory to be developed at trial. *Guerrero v. Copper Queen Hosp.*, 112 Ariz. 104, 106, 537 P.2d 1329, 1331 (1975).

¶11 Goldwater's complaint consists of many generalized accusations and conclusions asserting conspiracies, corruption, and unconstitutional conduct by lawyers, the legislature, and the judiciary. But entirely absent from the complaint are any factual allegations to support these claims. And the complaint does not articulate any facts to describe the circumstances of the injuries that Goldwater alleged he suffered. Further, the complaint is silent as to any particular conduct by the Governor that could give rise to liability to Goldwater.

CONCLUSION

¶12 For the reasons stated above, we affirm the superior court's dismissal of Goldwater's complaint.

/s/

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PETER B. SWANN, Presiding Judge

CONCURRING:

/s/

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DIANE M. JOHNSEN, Judge

/s/

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RANDALL M. HOWE, Judge