

NOTICE: NOT FOR PUBLICATION.
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

ANTHONY CAMBONI, *Plaintiff/Appellant*,

v.

DAVID MORRISON; DAVID MORRISON LAW; DIANE LERNER,
Defendants/Appellees.

No. 1 CA-CV 12-0725

FILED 12-10-2013

Appeal from the Superior Court in Maricopa County
No. CV2011-099070
The Honorable Emmet J. Ronan, Judge

AFFIRMED

COUNSEL

ANTHONY CAMBONI, Apache Junction

Plaintiff/Appellant in propria persona

BROENING OBERG WOODS & WILSON, PC, Phoenix
By Donald Wilson, Jr. and Brian w. Purcell

Co-Counsel for Defendants/Appellees

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MEMORANDUM DECISION

Judge Patricia A. Orozco delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Samuel A. Thumma, joined.

O R O Z C O, Judge:

¶1 Anthony Camboni (Camboni) appeals from the trial court's order dismissing his claim for failure to timely serve Defendants. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 On September 30, 2011, Camboni filed a complaint against Defendants seeking declaratory relief, alleging legal malpractice, and negligent misrepresentation. On December 31, 2011, the court notified Camboni that, in accordance with Arizona Rule of Civil Procedure 4(i), the deadline for completing service on Defendants was January 30, 2012, and if Defendants were not served by that date, the complaint would be dismissed.

¶3 Citing relocation and a job transfer, Camboni filed a motion for enlargement requesting additional time to serve Defendants. On January 30, 2012, the trial court granted Camboni's motion and extended the date for service on Defendants an additional ninety days (to approximately April 30, 2012). Notwithstanding the trial court's extension of time, on May 16, 2012, Camboni filed a "Motion for Judicial Determination Regarding Plaintiff's Motion for Enlargement (Motion for Judicial Determination)," requesting that the court rule on his initial Motion for Enlargement. On July 10, 2012, the trial court issued a minute entry advising Camboni that its order granting the initial motion was previously granted and had been available for review on the trial court's docket since February 7, 2012. In the same minute entry, the trial court further advised Camboni that "all persons representing themselves are held to the same standard as a licensed attorney."

¶4 On July 26, 2012, Camboni filed a second Motion for Enlargement. Camboni argued he required additional time because he was unaware that the trial court granted his initial motion, and thus his failure to serve Defendants resulted from "excusable neglect."

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Defendants' attorney filed a notice of appearance and objected to the trial court again extending the time to serve Defendants.

¶5 On August 20, 2012, at a pretrial conference, Camboni asserted he had not yet served Defendants and repeated his request for an extension of time. Finding Camboni had not demonstrated good cause to justify another extension of time to serve Defendants, the trial court denied Camboni's request for an extension of time, granted Defendants' Motion to Dismiss and dismissed the matter without prejudice. Camboni timely appealed. We have jurisdiction pursuant to Arizona Revised Statute (A.R.S.) section 12-2101.A.

DISCUSSION

I. Opening Brief

¶6 As a preliminary matter, Camboni's opening brief fails to comply with the Arizona Rules of Civil Appellate Procedure (ARCAP). "Opening briefs must present and address significant arguments, supported by authority that set forth the appellant's position on the issue in question." *Ritchie v. Krasner*, 221 Ariz. 288, 305, ¶ 62, 211 P.3d 1272, 1290 (App. 2009). Under ARCAP Rule 13.4, an opening brief must include citations to relevant parts of the record, as well as the authorities and statutes relied upon. Failure to properly raise an argument on appeal, in most cases, results in abandonment and waiver of that argument. *See Schabel v. Deer Valley Unified Sch. Dist. No. 97*, 186 Ariz. 161, 167, 920 P.2d 41, 47 (App. 1996). "[I]t is not incumbent upon the court to develop an argument for a party." *See Ace Auto. Prods., Inc. v. Van Duyne*, 156 Ariz. 140, 143, ¶ 9, 750 P.2d 898, 901 (App. 1987) (citation omitted). Additionally, a party who chooses to represent himself in propria persona is held to the same level of knowledge regarding required procedures and applicable laws as attorneys. *See In re Marriage of Williams*, 219 Ariz. 546, 549, ¶ 13, 200 P.3d 1043, 1046 (App. 2008).

¶7 Camboni's opening brief can be viewed as challenging the trial court's denial of his second motion for enlargement. However, Defendants are correct in their assertion that Camboni's opening brief fails to comply with ARCAP. First, Camboni's opening brief is not based in law. Rather, he sets forth a cluster of arguments unrelated to the trial court's rulings. Second, Camboni cites no legal precedents to support his contentions. Third, the arguments Camboni raises were never presented to the trial court. *See Stewart v. Mutual of Omaha*, 169 Ariz. 99, 108, 817

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P.2d 44, 53 (App. 1991) (this court will not consider arguments for the first time on appeal).

¶8 Although we could rightfully find all of Camboni's arguments waived, we will address the trial court's denial of his second motion for enlargement.

II. Denial of Second Motion of Enlargement

¶9 Under Rule 4(i) of Arizona Rules of Civil Procedure, if service is not properly effectuated within 120 days after the filing of the complaint, the trial court may dismiss the action without prejudice. However, if the plaintiff shows good cause for his failure to serve the defendant, the trial court will extend the time of service. *Id.* We review a trial court's refusal to grant an extension of time for an abuse of discretion. *Strategic Dev. and Const., Inc. v. 7th Roosevelt Partners, LLC*, 224 Ariz. 60, 66, ¶ 24, 226 P.3d 1046, 1052 (App 2010).

¶10 In denying his second motion for enlargement, the trial court stated that Camoboni failed to "demonstrate good cause to justify an extension." On appeal, Camobi alleges he "'monitored' the status of [the Motion for Enlargement], by checking the mail for a ruling from the [t]rial court and, contacting the [t]rial court concerning the failure to receive a [r]uling. . . ."

¶11 However, the record reflects no return mail addressed to Camboni. Moreover, as the trial court indicated, the ruling was available on the docket for Camboni's review. Furthermore, Camboni has failed to provide this court with a transcript of the hearing in accordance with ARCAP 11(b). In the absence of a transcript, we assume the evidence presented supported the trial court's ruling. *Retzke v. Larson*, 166 Ariz. 446, 449 830 P.2d 439, 442 (App. 1990). Finally, the record contains no showing that Camoboni took any efforts to attempt to serve any of the Defendants in the nearly 11 months between the filing of the Complaint and the denial of his second motion for enlargement, let alone a showing that there was good cause for his failure to effectuate service.

¶12 Thus, we do not find the trial court abused its discretion in denying Camboni's second motion for enlargement.

ATTORNEY FEES

¶13 Camboni's request for attorney fees and costs is denied as he is not the prevailing party on appeal. Defendants request their attorney

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fees pursuant to ARCAP Rules 21, 25, and A.R.S. § 12-349. However, Rule 21 merely provides the mechanism for requesting attorney fees; it does not provide a substantive basis for an award *Smyser v. City of Peoria*, 215 Ariz. 428, 442, ¶ 50, 160 P.3d 1186, 1200 (App. 2007).

¶14 Rule 25, however, provides a substantive basis to assess attorney fees as sanctions for a frivolous appeal or where a party is “guilty of an unreasonable infraction of” our ARCAP rules. As discussed above, Camboni’s opening brief is almost impossible to comprehend. Rule 25 also grants us the ability to assess the offending attorneys “reasonable penalties or damages” to discourage similar conduct in the future. This is not the first time Camboni has filed such an appeal. *See Camboni v. Allstate Insurance Co.*, 1 CA-CV 11-0592, 2012 WL 4571033 (Ariz. App. Oct. 2, 2012) (mem. dec.). Thus, we assess fees pursuant to Rule 25 based on Camboni’s unreasonable infraction of our ARCAP in an effort to discourage him from similar appellate briefs in the future.

¶15 Moreover, A.R.S. § 12-349 is a separate and independent basis for this court to award attorney fees, expenses, and damages if a party brings a claim without substantial justification or the claim’s primary purpose is to harass. Camboni goes beyond the denial of his second motion for enlargement and makes several scandalous assertions against Defendants which are not grounded in the law. It is clear that Camboni is using the courts as a manner of harassing Defendants. Furthermore, the opening brief before us is largely without substantial justification. Thus, we award Defendants their reasonable attorney fees and costs on appeal pursuant to A.R.S. § 12-349 and Defendants’ timely compliance with ARCAP 21.

CONCLUSION

¶16 For the foregoing reasons, we affirm.



Ruth A. Willingham · Clerk of the Court
FILED: mjt