

NOTICE: NOT FOR PUBLICATION.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

COLONIAL SAVINGS, F.A., *Plaintiff/Appellee*,

v.

WILLIAM DENSLOW and JORDANA DENSLOW, *Defendants/Appellants*.

No. 1 CA-CV 12-0795
FILED 12-3-2013

Appeal from the Superior Court in Maricopa County
No. CV2012-010705
The Honorable Benjamin E. Vatz, Judge

AFFIRMED

COUNSEL

Tiffany & Bosco, PA, Phoenix
By Leonard J. McDonald, Jr., David W. Cowles

Counsel for Plaintiff/Appellee

William Denslow, Jordana Denslow, Anthem

Defendants/Appellants In Propria Persona

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MEMORANDUM DECISION

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

H O W E, Presiding Judge:

FACTS AND PROCEDURAL HISTORY¹

¶1 William and Jordana Denslow appeal the trial court’s ruling in favor of Colonial Savings’ Motion for Judgment on the Pleadings in this forcible entry and detainer (FED) action. For the following reasons, we affirm.

¶2 Colonial Savings filed an FED complaint alleging that the Denslows were occupying and refusing to surrender real property that Colonial Savings had purchased at a trustee’s sale. The Denslows filed an answer and counterclaim on their own behalf, arguing in pertinent part that:

We are filing for dismissal because no proof of an order from the STATE DEPARTMENT or the FEDERAL DISTRICT COURT was given, as COLONAIL (sic) SAVINGS, F.A.[] is a UNITED STATES CORPORATION and foreign to the United of America (sic) per the Constitution of 1787 and we are Americans not CORPORATIONS, not fictions, not spelled in Uppercase letters but real flesh and blood Americans with our names spelled in Upper and Lower case letters therefore the [Foreign Sovereign Immunities Act]

¹ The record provided by the Denslows did not include relevant trial transcripts. Accordingly, based on the record before us, we recite the facts in the light most favorable to sustaining the trial court’s decision. *See* Arizona Rule of Civil Appellate Procedure (ARCAP) 11(b)(1); *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995) (“A party is responsible for making certain the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised on appeal. When a party fails to include necessary items, we assume they would support the court’s findings and conclusions.”).

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applies. We were not properly notified [and] jurisdiction is not established and this case needs to be dismissed with prejudice in favor of Defendants in Error with Counterclaim granted in its entirety.

¶3 At a preliminary hearing held on August 15, 2012, Colonial Savings moved to strike the Denslows' counterclaim. When the trial court asked the Denslows to respond, the Denslows declined to do so, stating: "Defendants do not accept the court's offer to respond." The trial court granted Colonial Savings' motion, stating that the Denslows' "counterclaim is at best, vague and unintelligible. It refers to exhibits attached thereto that fail to more clearly articulate the basis for the counterclaim."

¶4 On August 20, 2012, Colonial Savings moved for judgment on the pleadings, and the Denslows did not respond. At a hearing on the FED action, the Denslows requested a jury trial. The trial court denied the request as untimely because the Denslows had filed their request after they had made an initial appearance. After denying the Denslows' request for a continuance, the court granted Colonial Bank's Motion for Judgment on the Pleadings and found the Denslows guilty of forcible detainer.

¶5 Two days later, on August 29, 2012, the Denslows moved for reconsideration, stating simply "I believe that the facts do not support the present [j]udgment." The trial court denied the Denslows' motion for reconsideration.

DISCUSSION

¶6 The Denslows appear to contend that the trial court erred in granting Colonial Savings' Motion for Judgment on the Pleadings, arguing that: (1) the trial court lacked jurisdiction; (2) Colonial Savings lacked standing to bring an FED action; (3) UCC § 3-303 "has not been followed on our loan or note"; and (4) Colonial Savings has failed to produce "a wet ink signature contract."²

² The Denslows' brief does not comply with ARCAP 13(a) because they do not cite any legal authorities to support their arguments or cite to the record on appeal to support their factual assertions. Despite the Denslows' pro se status, they are held to the same standards as a qualified attorney, see *In re Marriage of Williams*, 219 Ariz. 546, 549 ¶ 13, 200 P.3d

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¶7 The Denslows' argument that the trial court lacked jurisdiction over the FED action is meritless. We review a trial court's exercise of its jurisdiction *de novo*. *State ex rel. Dept. of Econ. Sec. v. Tazioli*, 226 Ariz. 293, 294 ¶ 7, 246 P.3d 944, 945 (App. 2011). The Arizona Constitution provides that "[t]he superior court shall have original jurisdiction of . . . [c]ases of equity and at law which involve title to or possession of real property," Ariz. Const. art., 6 § 14(2), and FED actions are brought pursuant to Arizona statutes, *see* A.R.S. §§ 12-1171 to -1182. Accordingly, the trial court clearly had jurisdiction to grant Colonial Savings' Motion for Judgment on the Pleadings.

¶8 We also find unavailing the Denslows' second argument that Colonial Savings lacked standing. "Whether a party has standing to sue is a question [that] is reviewed *de novo*." *Robert Schalkenbach Found. v. Lincoln Found., Inc.*, 208 Ariz. 176, 180 ¶ 15, 91 P.3d 1019, 1023 (App. 2004). In Arizona, standing generally requires an injury in fact, economic or otherwise, caused by the complained-of conduct, and resulting in a distinct and palpable injury giving the plaintiff a personal stake in the controversy's outcome. *Aegis of Ariz., L.L.C. v. Town of Marana*, 206 Ariz. 557, 562-63 ¶ 18, 81 P.3d 1016, 1021-22 (App. 2003) (quotation marks and citations omitted). Because Colonial Savings purchased property that the Denslows occupied and refused to vacate, Colonial Savings had a personal stake—and therefore standing to sue—in this FED action.

1043, 1046 (App. 2008), and their failure to comply with Rule 13(a) could constitute a waiver of the issues on appeal, *see Sholes v. Fernando*, 228 Ariz. 455, 461 ¶ 16, 268 P.3d 1112, 1118 (App. 2011). Even though we generally do not address arguments raised for the first time on appeal, *Cook v. Orkin Exterminating Co., Inc.*, 227 Ariz. 331, 335-36 ¶ 21, 258 P.3d 149, 153-54 (App. 2011), we will nevertheless address the Denslows' issues presented in their opening brief based on the record before us, given our preference to resolve cases on their merits, *Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 342, 678 P.2d 525, 527 (App. 1984).

The Denlows also raise a variety of unsubstantiated claims in their reply brief concerning the authority of Colonial Savings' counsel to advance an FED action on its behalf. To the extent those claims are independent of the Denslows' standing argument, these issues are not properly raised and will not be considered by this court. ARCAP 13(c); *see also Untied Bank v. Mesa N.O. Nelson Co., Inc.*, 121 Ariz. 438, 443, 590 P.2d 1384, 1389 (1979).

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¶9 Finally, the Denslows' third argument (that UCC § 3-303 "has not been followed on our loan or note") and fourth argument (that Colonial Savings has failed to produce "a wet ink signature contract") are not properly raised in this FED action. An FED action is limited to providing a "summary, speedy, and adequate remedy" for obtaining possession of premises being withheld by another. *Phoenix-Sunflower Indus., Inc. v. Hughes*, 105 Ariz. 334, 336, 464 P.2d 617, 619 (1970); *Olds Bros. Lumber Co. v. Rushing*, 64 Ariz. 199, 204, 167 P.2d 394, 397 (1946) (right to actual possession is the only issue to be determined in such an action). In fact, the focus of an FED action is so restricted that, with exceptions not relevant to this appeal, no counterclaims, offsets or cross claims may be plead, either as a defense or for affirmative relief. *United Effort Plan Trust v. Holm*, 209 Ariz. 347, 351 ¶ 21, 101 P.3d 641, 645 (App. 2004).

CONCLUSION

¶10 For the foregoing reasons, the judgment of the trial court is affirmed.



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