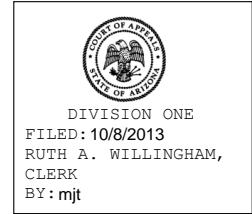


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

KENNETH SKIFF, ) 1 CA-CV 12-0805  
)  
Appellant, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
SONJA CARL, ) Rule 28, Arizona Rules of  
) Civil Appellate Procedure)  
Appellee. )  
)  
)

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Appeal from the Superior Court in Coconino County

Cause No. CV2000-0647

The Honorable Mark R. Moran, Judge

**AFFIRMED**

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Kenneth Skiff, Attorney at Law Phoenix  
Appellant *in Propria Persona*

Michael E. Hurley, Attorney at Law Phoenix  
Attorney for Appellee

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**K E S S L E R**, Judge

¶1 Appellant Kenneth Skiff ("Skiff") appeals the trial court's entry of an order awarding Appellee Sonja Skiff Carl

("Carl") \$12,269<sup>1</sup> and the denial of his motion for rehearing. Skiff contends that Carl was only entitled to \$2,745. For the following reasons, we affirm.

#### **FACTUAL AND PROCEDURAL HISTORY**

¶2 In 2002, the trial court ruled in favor of Eleanor Skiff ("Eleanor")<sup>2</sup> and Carl in an action to quiet title to property filed by Gilberta Richards ("Gilberta"). The court determined Gilberta had an undivided one-half interest in the property, Eleanor had an undivided one-third interest, and Carl had an undivided one-sixth interest. James Harries ("Harries"), the attorney who represented both Eleanor and Carl on the merits of the quiet title action, filed an application for an award of \$41,040 in attorneys' fees. In 2002, the court granted \$37,134 in fees, and the judgment became a lien upon the property. When the property was sold eight years later in 2010, approximately \$67,400 of the proceeds, representing the amount of the fee award plus interest, was withheld and placed in a trust account

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<sup>1</sup> For purposes of convenience, we round figures to the nearest full dollar amount.

<sup>2</sup> Eleanor is deceased and her son, Skiff, is her successor in interest.

with Carl's attorney to be disbursed upon mutual agreement of the parties.<sup>3</sup>

¶3 In November 2011, Carl filed a motion to clarify the judgment and establish the parties as equal co-judgment creditors, each entitled to a one-half share of the sale proceeds and accrued interest. Skiff argued an equal distribution of the proceeds would unjustly enrich Carl as she had paid only \$1,500 of the \$37,134 in attorneys' fees due to Harries, and Skiff and his family<sup>4</sup> had paid the remainder. He contended that Carl should be entitled to only \$1,500 of the lien amount plus interest, or \$2,745. The court found that no injustice would be done to Carl if it allowed the application of equitable subrogation, and the failure to do so would result in Carl receiving a windfall. In applying the doctrine, the court found that both parties should share equally in the attorneys'

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<sup>3</sup> The record is unclear whether Gilberta paid any portion of the fee award or if a portion of the award was taken from her portion of the proceeds on the sale of the property. In 2004, Carl filed a notice of partial satisfaction of judgment, stating that Gilberta had paid \$22,617 toward the fee award and the actual amount of attorneys' fees due should have been \$31,719. In addition, Skiff later claimed that when the judgment was entered, \$20,000 of the \$37,134 was still due. Neither Skiff nor Eleanor signed Carl's notice of partial satisfaction, and the parties and the superior court appear to have simply ignored both the notice and the admission. Accordingly, we do not address them in our analysis except regarding the issue of laches.

<sup>4</sup> The record shows payments made to Harries by Eleanor, Skiff, and Skiff's brother, Doug. For purposes of simplicity, we will refer to these three individuals collectively as the "Skiff family."

fees owed. As a result, the court found that Skiff had an equitable lien on the sale proceeds to the extent the Skiff family paid more than one-half of the legal fees owed, and ordered that Skiff be equitably subrogated to Carl's rights in the judgment proceeds except the \$1,500 plus interest Carl paid in attorneys' fees. Finally, the court concluded that if the parties could not reach an agreement as to the amounts to be divided, it would set the matter for further hearing.

¶4 In 2012, Carl filed a request for an evidentiary hearing because the parties could not agree on the amount of reimbursement owed to Skiff. The court scheduled an evidentiary hearing for June 25, 2013. Skiff responded in three ways. First, he filed an opposition to the motion for an evidentiary hearing. Second, he filed a motion *in limine* also opposing any evidentiary hearing, asserting the request was actually a "ruse" to discuss a new issue of whether he was entitled only to proceeds the Skiff family paid to Harries that he could actually prove. Skiff could not prove the exact amount the Skiff family paid Harries. However, Skiff argued Carl should be barred by laches from contesting the amount because he had offered to confirm the final payment amount with Carl in 2004, Carl remained silent until the proceeds became available for distribution, and Eleanor's old bank account records and statements were no longer available. Finally, Skiff filed a

hearing brief, attaching various documents including an affidavit in which he claimed that the actual attorneys' fees exceeded \$43,000, and the Skiff family paid \$23,749 plus a lump sum settlement for the rest. He believed that the rest of the payments were \$2,000 to \$4,000 less than the full amount owed.

¶5 The court granted oral argument on the motion *in limine*. However, the court later *sua sponte* cancelled the evidentiary hearing and heard only oral argument.

¶6 At oral argument, Carl argued that: (1) Skiff was entitled to \$23,749 paid toward the attorneys' fees plus an additional \$19,394 in interest, totaling \$43,143; (2) Carl was entitled to \$1,350<sup>5</sup> paid toward the attorneys' fees plus an additional \$1,102 in interest, totaling \$2,452; and (3) the remaining \$22,376 should be divided equally between both parties. Skiff argued that Carl was entitled only to the amount she paid toward attorneys' fees plus interest, and Skiff should receive the remainder of the proceeds. At the end of the argument, Skiff stated he had no other additional evidence to submit to the court beyond the affidavits and exhibits he attached to his pleading. The court took the matter under advisement, indicating that since new numbers were being

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<sup>5</sup> Carl paid no more than \$1,500. Skiff's hearing brief provides that "Skiff accepts [Carl's] position that she paid \$1,500 in attorney fees for the purpose of resolving this matter."

presented as to the attorneys' fees, it would reflect on those numbers to determine if it had to hear evidence to modify its earlier ruling.

¶7 The trial court ruled that each party was entitled to one-half of the amount in escrow before adjustments for the prior payments of fees. It then held that each party was liable for one-half of the fee award of \$37,134, amounting to \$18,567 each. Next, because the Skiff family had paid \$23,749 in fees, or \$5,182 in excess of what they owed, the court found that amount plus interest should be deducted from Carl's share of the proceeds and used to reimburse Skiff. This left Carl with \$24,155. From that the court deducted \$11,886 (representing the difference between what Carl did and should have paid—the \$18,567 due less the \$1,500 paid and the \$5,182 in principal already reimbursed to Skiff). This left Carl with a total of \$12,269. The remaining \$55,731 of the proceeds went to Skiff.

¶8 Skiff filed a motion for rehearing pursuant to Arizona Rules of Civil Procedure ("Rules") 59(a) and 60(c)(6), arguing he was deprived of a fair hearing and the decision was not justified by the record or evidence. The trial court denied the motion without comment.

¶9 Skiff timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1) (Supp. 2012).

## ISSUES AND STANDARD OF REVIEW

¶10 Skiff raises four overlapping arguments on appeal. To simplify his arguments, we rephrase his issues as follows: (1) the court should have conducted an evidentiary hearing on the amounts paid to Harries; (2) the court abused its discretion in not ruling on the motion *in limine* to bar Carl from contesting how much the Skiff family had paid to Harries; (3) the court failed to consider the evidence presented by Skiff on how much his family paid Harries, and the division of the proceeds was not supported by the evidence; and (4) the court erred in denying his motion for rehearing.

¶11 “When we review [the] facts on appeal, we do so in the light most favorable to sustaining the judgment of the court below. If there is any reasonable evidence to support that judgment, it will be sustained.” *State ex rel. Herman v. Lopez*, 8 Ariz. App. 61, 62, 442 P.2d 884, 885 (1968). “We will not disturb a trial court’s ruling on the admission or exclusion of evidence unless a clear abuse of discretion is present and prejudice resulted therefrom.” *Kimu P. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 39, 42, ¶ 11, 178 P.3d 511, 514 (App. 2008). We also apply the abuse of discretion standard to rulings on motions *in limine*, *Warner v. Sw. Desert Images, LLC*, 218 Ariz. 121, 133, ¶ 33, 180 P.3d 986, 998 (App. 2008), motions for new trial, *Delbridge v. Salt River Project Agric. Improvement &*

*Power Dist.*, 182 Ariz. 46, 53, 893 P.2d 46, 53 (App. 1994), and motions for relief from judgment, *Staffco, Inc. v. Maricopa Trading Co.*, 122 Ariz. 353, 356, 595 P.2d 31, 34 (1979). An abuse of discretion occurs when the trial court "exercises discretion in a manner that is either 'manifestly unreasonable' or based on untenable grounds or reasons." *Kimu P.*, 218 Ariz. at 42, ¶ 11, 178 P.3d at 514 (citation omitted). We will affirm the trial court's decision for any reason supported by the record. *Navajo Nation v. Ariz. Dep't of Econ. Sec.*, 230 Ariz. 339, 344, ¶ 14, 284 P.3d 29, 34 (App. 2012).

#### DISCUSSION

##### **A. The trial court did not abuse its discretion by failing to hold an evidentiary hearing.**

¶12 Skiff argues the trial court erred by refusing to conduct an evidentiary hearing. We reject Skiff's argument for two reasons. First, Skiff opposed the holding of an evidentiary hearing below, and although the court originally granted Carl's motion, it later decided that it would not take evidence at the June 25 hearing. Skiff cannot ask the court to deny an evidentiary hearing, ultimately prevail on that, and then on appeal successfully argue the court erred in not holding such a hearing. *State v. Lucero*, 223 Ariz. 129, 136, ¶ 20, 220 P.3d 249, 256 (App. 2009) (stating party invites error when it fails to request evidentiary hearing and then appeals on inability to



present evidence at an evidentiary hearing). Second, during the June 25 hearing, Skiff told the court if it later held an evidentiary hearing he did not have any further evidence to present. Skiff therefore waived any further evidentiary hearing. See *State v. Steffy*, 173 Ariz. 90, 93, 839 P.2d 1135, 1138 (App. 1992).

¶13 Skiff also argues the trial court refused to consider the exhibits attached to his hearing brief. We disagree. At the non-evidentiary hearing on Carl's motion to clarify, the court explained that it wanted "to find out what the issues are." During their arguments, Carl raised the issue of Skiff's lack of records, and Skiff raised the issue of laches. At the end of the hearing, the trial court took the matter under advisement. In its minute entry from that hearing, it recognized that new figures regarding attorneys' fees were being presented, and noted that it would reflect on those numbers to determine if it needed to take new evidence. Not only did the court appear to take into account anything raised at the hearing, but we presume the trial court considered all factors presented. See *Aguirre v. Robert Forrest, P.A.*, 186 Ariz. 393, 397, 923 P.2d 859, 863 (App. 1996); *Fuentes v. Fuentes*, 209 Ariz. 51, ¶ 18, 97 P.3d 876, 880 (App. 2004) (stating that even if the court does not explicitly provide a reason for its

judgment, we presume it considered all of the relevant evidence before issuing a decision).

**B. The trial court did not err by failing to rule on Skiff's motion *in limine*.**

¶14 Skiff argues that the trial court erred by failing to rule on his motion *in limine* prior to the June hearing. Specifically, Skiff argues that the trial court's refusal to even consider the issues raised in his motion was an abuse of discretion. We disagree.

¶15 Skiff filed a motion *in limine* arguing that Carl's motion for an evidentiary hearing was a ruse to discuss a new issue of whether Skiff was entitled only to proceeds paid to Harries that he could actually prove. Since the trial court cancelled the evidentiary hearing, the motion *in limine* was moot.

¶16 Nor can we agree that the trial court ignored Skiff's laches argument. Skiff argued at the hearing that Carl was precluded by laches from contesting how much the Skiff family had paid in attorneys' fees. The court indicated it would take everything under advisement. Although the court never expressly addressed the laches argument, we assume it "evaluated all relevant factors and made any necessary findings to support its ruling." *Aguirre*, 186 Ariz. at 397, 923 P.2d at 863. Given the holding in the trial court, the laches argument is deemed denied

as a matter of law. See *Dowling v. Stapley*, 221 Ariz. 251, 264, ¶ 39, 211 P.3d 1235, 1248 (App. 2009) (stating but declining to apply rule that motions pending when the court enters a final order or judgment are deemed denied as a matter of law).

¶17 Nor do we conclude that laches barred Carl's argument on the amount of fees paid to Harries. "Laches is the equitable counterpart of a statute of limitations. A claim is considered unenforceable in an action in equity where, under the totality of circumstances, the claim, by reason of delay in prosecution, would produce an unjust result." *Harris v. Purcell*, 193 Ariz. 409, 410 n.2, ¶ 2, 973 P.2d 1166, 1167 n.2 (1998). "To constitute laches there must be a lack of diligence on the part of the plaintiff and resulting injury to the defendant. Equity does not encourage laches, and the doctrine may not be invoked to defeat justice but only to prevent injustice." *Beltran v. Razo*, 163 Ariz. 505, 507, 788 P.2d 1256, 1258 (App. 1990) (internal citation omitted).

In order to bar a claim on the basis of laches, a court must find more than mere delay in the assertion of the claim. The delay must be unreasonable under the circumstances, including the party's knowledge of his or her right, and it must be shown that any change in the circumstances caused by the delay has resulted in prejudice to the other party sufficient to justify denial of relief.

*Cyprus Bagdad Copper Corp. v. Ariz. Dep't of Revenue*, 196 Ariz. 5, 8, ¶ 9, 992 P.2d 5, 8 (App. 1999) (internal quotation marks and citation omitted).

¶18 Skiff's argument on laches fails. The trial court awarded attorneys' fees in the underlying proceeding in 2002, and the judgment became a lien on the property. This issue remained open and pending until the property was sold in 2010 and the proceeds were placed in a trust account to be disbursed upon mutual agreement of the parties. Skiff knew the amount of fees paid might be an issue as early as 2004 when he wrote to Carl stating it was no one's business how much Eleanor paid Harries, and that if anyone wanted to find out they could pay the costs to retrieve the bank records. Skiff also knew the amount of fees was at issue because in 2004 Carl had filed a partial satisfaction of judgment, reflecting that Gilberta had paid \$22,617 of the fee award. See *supra* n.3. Because the issue was still unresolved in 2004, Carl's delay in seeking proof of the full amount paid until the proceeds became ready for disbursement was not unreasonable. Since Skiff knew there was an issue as early as 2004 as to how much Harries had been paid, it was his duty to preserve the records to protect his interests. It would be inequitable to allow Skiff to receive the benefit of collecting an unsubstantiated amount for an alleged lump sum payment after failing to protect his claim by

preserving Eleanor's bank records. See *Del E. Webb Hotel Co. v. Bentley*, 8 Ariz. App. 408, 411, 446 P.2d 687, 690 (1968) ("[T]he burden of proof in any subrogation claim is upon the would-be subrogee."); see also *A. Copeland Enters. v. Slidell Mem'l Hosp.*, 657 So. 2d 1292, 1297 (La. 1995) ("[Subrogation] is subject to the general rules that govern the proof of obligations.").

**C. The trial court's findings were supported by evidence in the record.**

¶19 Skiff next argues that the trial court's findings were not supported by the evidence or the record. Skiff does not appeal the methodology the court used to determine the allocation of the proceeds. Rather, Skiff argues that the trial court abused its discretion in finding the parties "stipulated" to any amounts paid Harries and appears to argue that more was paid to Harries than awarded by the underlying judgment. We disagree.

¶20 First, while there is no formal stipulation by the parties to the amount of fees paid to Harries, we will affirm the court because the record supports its ultimate determination of how much the Skiff family paid to Harries. *Navajo Nation*, 230 Ariz. at 344, ¶ 14, 284 P.3d at 34 (stating that we will affirm the trial court for any reason supported by the record). Contrary to Skiff's attempt to prove Harries was paid more than

provided for in the judgment, Skiff conceded as late as December 2011 in his response to Carl's motion to clarify the judgment, that the total amount of fees due to Harries was \$37,134. That is consistent with the request for fees and the underlying judgment.<sup>6</sup>

¶21 Second, the court did not err in concluding the only amount that the Skiff family paid to Harries was \$23,749. Skiff admitted that at one point the Skiff family had paid Harries \$23,749, but that was "prior to Eleanor's lump sum settlement payment" which included additional costs and fees after the judgment and fee award was signed. While Skiff tried to show that the Skiff family paid more than \$23,785 to Harries, he relied on fragments of bills Harries sent to Eleanor, Skiff, and Carl at or around the time of the judgment and costs and fees after the judgment. Those bills show the Skiff family only paying \$8,716, Carl paying \$1,100, and \$13,472 as being paid without attribution to any of the parties. Even Skiff's attempt to summarize the fees paid to Harries showed only the Skiff family paying approximately \$22,499.

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<sup>6</sup> In his hearing brief, Skiff contended that the total owed to Harries was over \$43,000, based apparently on time slips. However, that summary of time slips has no foundational basis. Moreover, Skiff ignores that the billing slips do not take into account that Harries reduced some of his fees, nor did Skiff present any evidence that Carl had agreed to pay any additional fees.

¶22 Given this evidence, the trial court did not err in using the only payments that the parties agreed could be verified—the Skiff family paying \$23,749 and Carl paying \$1,500.

**D. The trial court did not abuse its discretion by denying Skiff's motion for rehearing.**

¶23 Skiff argues the trial court erred by denying his motion for rehearing. We disagree. Each of the arguments supporting Skiff's motion for new trial and motion for relief from judgment were based on grounds discussed above.<sup>7</sup> For the reasons already set forth, no error has been shown. Accordingly, the trial court did not abuse its discretion in denying Skiff's motion for new trial and motion for relief from judgment.

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<sup>7</sup> Skiff argues that the trial should have granted him a new trial because: (1) the irregularities in the trial court's procedures, including its failure to hold an evidentiary hearing or rule on his motion *in limine* prior to the June hearing, deprived him of a fair trial; (2) the court erred in rejecting his evidence pertaining to the lump sum payment his family made; and (3) the decision was not justified by the evidence, based upon unsupported findings of fact, and contrary to applicable law.

**CONCLUSION**

¶24 For the foregoing reasons, we affirm the trial court's judgment and the denial of Skiff's motion for rehearing.

/s/  
\_\_\_\_\_  
DONN KESSLER, Judge

CONCURRING:

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

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