

NOTICE: NOT FOR PUBLICATION.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

NANCY ANN BENSON, as Personal Representative of the ESTATE OF
JAMES L. LAKE, Deceased, *Plaintiff/Appellee*,

v.

MACK C. LAKE, III, *Intervenor/Defendant/Appellant*.

No. 1 CA-CV 12-0821
FILED 11-26-2013

Appeal from the Superior Court in Mohave County
No. S8015CV200901831
The Honorable Randolph A. Bartlett, Judge

AFFIRMED

COUNSEL

DeConcini McDonald Yetwin & Lacy, P.C., Tucson
By Nathan B. Hannah

Counsel for Plaintiff/Appellee

Mack C. Lake, III, San Tan Valley
In Propria Persona

Intervenor/Defendant/Appellant

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Diane M. Johnsen joined.

T H O M P S O N, Judge:

¶1 Mack Lake appeals the superior court’s summary judgment ruling quieting title to certain real property in favor of Nancy Benson, as Personal Representative of the Estate of James L. Lake (Benson), in the amount of 91.6%. For the reasons that follow, we dismiss the appeal for lack of jurisdiction.

¶2 In August 2009, Benson filed a complaint to quiet title to certain real property in Mohave County. The superior court entered a default judgment granting sole fee title interest in the property to Benson. Seven months after the superior court entered judgment, Lake moved to intervene arguing that he held an interest in the property and that he was an indispensable party that was not served with process in the quiet title action. The superior court granted the motion. In April 2012, Benson moved for summary judgment against Lake. Benson argued that Lake can claim, at most, 4.55% of the property, but pointed out that the Pima County Superior Court had made a ruling granting him an 8.33% interest in the property. Lake responded and argued a genuine issue of material fact as to his proportion of ownership interest still existed. On September 21, 2012, the superior court granted the motion for summary judgment, finding no genuine issue of any material fact and that Lake held an 8.33% interest in the property as a tenant in common. Lake filed a timely motion for new trial on October 9. On the morning of November 20, Lake filed a notice of appeal from the September 21 judgment. That afternoon, the superior court filed an unsigned minute entry denying Lake’s motion for new trial. A signed order was filed by the superior court on March 14, 2013. Lake did not file another notice of appeal.

¶3 As a threshold issue, we must address whether this court has jurisdiction over the appeal. The timely filing of the notice of appeal is a prerequisite to appellate jurisdiction. *Edwards v. Young*, 107 Ariz. 283, 284, 486 P.2d 181, 182 (1971). “[W]here the appeal is not timely filed, the appellate court acquires no jurisdiction other than to dismiss the

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attempted appeal.” *Id.* Here, the superior court’s judgment was entered on September 21, 2012. Lake did not file his notice of appeal until November 20, well beyond the thirty-day deadline. *See* ARCAP 9(a) (notice of appeal must be filed no later than thirty days after the entry of the judgment).

¶4 The filing period may be extended by filing a motion for new trial, as Lake did here. *See* ARCAP 9(b)(4) (motions for new trial extend time for filing appeal). However, if the notice of appeal is filed while the time-extending motion is pending before the superior court, the notice of appeal is “‘ineffective’ and a nullity.” *Craig v. Craig*, 227 Ariz. 105, 107, ¶ 13, 253 P.3d 624, 626 (2011) (citations omitted). An exception exists only where the notice of appeal was filed after the court issued its minute entry but before the formal entry of the order that is signed by the judge. *Barassi v. Matison*, 130 Ariz. 418, 419, 636 P.2d 1200, 1201 (1981). Lake’s notice of appeal and the superior court’s minute entry on his motion for new trial were both filed on November 20. However, Lake filed his notice of appeal at 8:43 a.m. and the minute entry was not filed until 3:09 p.m. Consequently, the motion for new trial was still pending when Lake filed his notice of appeal, making it a nullity. Lake’s notice of appeal does not fall under the *Barassi* exception because it was filed before both the minute entry and the signed order.

¶5 Even had Lake timely filed this appeal, we would deem his arguments waived. His brief does not comply with Arizona Rule of Civil Appellate Procedure 13(a)(6), which requires an appellant’s opening brief to contain “citations to the authorities, statutes and parts of the record relied on.” *See State v. 1810 E. Second Ave.*, 193 Ariz. 1, 2 n.2, 969 P.2d 166, 167 n.2 (App. 1997) (“We will not consider . . . unsupported assertions.”). This court has no obligation to search the record to determine if evidence supports an appellant’s position. *In re Aubuchon*, 233 Ariz. 62, __, ¶ 6, 309 P.3d 886, 888-89 (2013); *see also Ritchie v. Krasner*, 221 Ariz. 288, 305, ¶ 62, 211 P.3d 1272, 1289 (App. 2009) (failure to provide citation to authorities and record relied on “can constitute abandonment and waiver”).

¶6 Therefore, the judgment is affirmed. Lake’s request for attorneys’ fees is denied.



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