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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



DIVISION ONE
FILED: 06-15-2010
PHILIP G. URRY, CLERK
BY: GH

WILDEARTH GUARDIANS, INC.,) 1 CA-CV 09-0193
)
Plaintiff/Appellant,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 28, Arizona Rules of
MARIA BAIER, Arizona State Land) Civil Appellate Procedure)
Commissioner; GAYLN and ROXANNE)
KNIGHT,)
)
Defendants/Appellees.)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2008-022955

The Honorable Richard J. Trujillo, Judge

REVERSED AND REMANDED

Arizona Center for Law in the Public Interest Phoenix
by Timothy M. Hogan
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Attorneys for Defendants/Appellees Gayln and Roxanne Knight

P O R T L E Y, Judge

¶1 Appellant WildEarth Guardians, formerly Forest Guardians ("Guardians"), challenges the dismissal of its complaint. For the reasons that follow, we reverse the dismissal and remand the matter to the trial court for further proceedings.

FACTS AND PROCEDURAL BACKGROUND

¶2 Galyn and Roxanne Knight (collectively "the Knights") hold a state trust land grazing lease. Before the expiration of their lease, Guardians filed a conflicting application to lease the same land. The State Land Department ("SLD") issued a Notice of Conflicting Applications and requested that each applicant submit a Statement of Equity. After reviewing the information, the SLD Commissioner ("the Commissioner") decided to resolve the conflict by having the parties submit sealed bids for additional rent.

¶3 The Knights appealed the Commissioner's decision. The Office of Administrative Hearings conducted a hearing, and the Administrative Law Judge ("ALJ") recommended the Commissioner's order for sealed bids be rescinded and the Knights' lease renewed. The Commissioner accepted the ALJ's recommendations on May 13, 2008.

¶4 Through its lawyers, Guardians requested a rehearing. The Commissioner denied the request on July 11, 2008, and mailed

the denial directly to Guardians, but not to its counsel. The Commissioner, however, mailed a copy of the denial to Guardians' counsel on August 18, 2008. Through counsel, Guardians filed its appeal to the Maricopa County Superior Court on September 19, 2008.

¶15 The Knights moved to dismiss the appeal. They argued the appeal was untimely because more than thirty-five days had elapsed since the order denying rehearing was sent to Guardians. Ariz. Rev. Stat. ("A.R.S.") § 12-904 (2003).¹ Guardians, however, maintained that the order should have been mailed to its lawyer and the time to appeal did not begin to run until its lawyer received the order. The trial court dismissed the

¹ Section 12-904(A) states:

An action to review a final administrative decision shall be commenced by filing a complaint within thirty-five days from the date when a copy of the decision sought to be reviewed is served upon the party affected. The method of service of the decision shall be as provided by law governing procedure before the administrative agency, or by a rule of the agency made pursuant to law, but if no method is provided a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party affected at the party's last known residence or place of business. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.

appeal. Guardians appealed, and we have jurisdiction pursuant to A.R.S. § 12-120.21(A)(1) (2003).²

DISCUSSION

¶6 Distilled to its essence, this case is about whether the Commissioner should have provided notice of the denial of the request for rehearing to Guardians' lawyer at the same time the denial was mailed to Guardians. If so, the complaint for judicial review was timely. If not, the trial judge properly dismissed the matter.

¶7 Guardians argue that Arizona Rule of Civil Procedure 5(c)(1) is applicable to administrative proceedings and service is effective only when a represented party's attorney has been served. The Knights, however, contend that the statutes and rules that apply to the SLD do not require service of the Commissioner's decision on the lawyer. The Commissioner agrees, and argues that neither A.R.S. § 41-1092.09 (2004), nor other statutes, require service of the Commissioner's order on a party's lawyer. We review the dismissal of an untimely complaint for judicial review de novo. See *Guminski v. Ariz. State Veterinary Med. Examining Bd.*, 201 Ariz. 180, 182, ¶ 10, 33 P.3d 514, 516 (App. 2001).

² The Knights, in their brief and in a separate motion, requested that we dismiss the appeal because Guardians had failed to timely file a cost bond. In the exercise of our discretion, we deny the motion to dismiss.

¶18 The applicable administrative statute is A.R.S. § 41-1092.09,³ which provides that “[s]ervice is complete on personal service or five days after the date that the final administrative decision is mailed to the party’s last known address.” The parties disagree, however, about whether the Commissioner’s practices impacted the meaning of the phrase “last known address.” Specifically, Guardians contend that the Commissioner knew that it was represented, had sent other rulings to its lawyer and should have sent the denial of the rehearing request to counsel. The Knights, however, maintain that the Commissioner complied with the statute.

¶19 Although the Commissioner may have complied with one statute, the Arizona Legislature, in A.R.S. § 12-914 (2003), stated that “[w]here applicable, the rules of civil procedure in superior courts . . . shall apply to all proceedings except as otherwise provided in this article.” Arizona Rule of Civil Procedure 5(c)(1) provides, in pertinent part, that “[i]f a party is represented by an attorney, service under this rule must be made on the attorney.” Consequently, although the Commissioner had to serve his order on Guardians, he was required to serve it on counsel for the represented party before

³ The court based its decision on A.R.S. § 41-1092.09. Guardians contend that the applicable governing statute is § 41-1092.04. Because the language in contention in § 41-1092.04 “address of record” and the language in § 41-1092.09 “last known address” is virtually identical, we do not address the nuanced differences.

the administrative review process was complete and subject to appeal.

¶10 Here, the Commissioner did not initially mail a copy of his order to counsel for Guardians. He corrected the oversight in August 2008. Counsel then prepared and filed this action for review by the superior court. Because the superior court action was timely filed after notice pursuant to Rule 5(c)(1), the order dismissing the action was in error.

CONCLUSION

¶11 Based on the foregoing, we reverse the court's dismissal and remand the matter back to the trial court.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Judge

/s/

MARGARET H. DOWNIE, Judge