

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

ANTHONY CAMBONI, *Plaintiff/Appellant*,

v.

MARK BRNOVICH, *Defendant/Appellee*.

No. 1 CA-CV 15-0014
FILED 2-2-2016

Appeal from the Superior Court in Maricopa County
No. CV2014-010579
The Honorable Robert H. Oberbillig, Judge

AFFIRMED

COUNSEL

Anthony Camboni, Sun City West
Plaintiff/Appellant

Bergin, Frakes, Smalley & Oberholtzer, Phoenix
By Brian M. Bergin
Counsel for Defendant/Appellee

MEMORANDUM DECISION

Presiding Judge Diane M. Johnsen delivered the decision of the Court, in
which Judge Patricia A. Orozco and Judge Kenton D. Jones joined.

CAMBONI v. BRNOVICH
Decision of the Court

J O H N S E N, Judge:

¶1 Anthony Camboni appeals the dismissal of his Contest of Election ("Contest"), which challenged the election of Mark Brnovich to the office of attorney general of the State of Arizona, for failure to state a claim under Arizona Rule of Civil Procedure 12(b)(6). For the reasons that follow, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Camboni's Contest alleged Brnovich "is not qualified to occupy the Office of Arizona's Attorney General." In support of his allegation, Camboni cited Arizona Revised Statutes ("A.R.S.") section 16-672(A)(2) (2016).¹ Brnovich moved to dismiss, and after hearing oral argument, the superior court granted the motion. Camboni timely appealed. We have jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and A.R.S. §§ 12-2101(A)(1) (2016) and -120.21(A)(1) (2016).

DISCUSSION

A. Rule 12(b)(6) Motion to Dismiss.

¶3 We review *de novo* a superior court's dismissal of a complaint. *Coleman v. City of Mesa*, 230 Ariz. 352, 355, ¶ 7 (2012). When considering a motion brought under Rule 12(b)(6), we will "assume the truth of the well-pled factual allegations and indulge all reasonable inferences therefrom." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7 (2008); *see also Griffin v. Buzard*, 86 Ariz. 166, 170 (1959) (applying same considerations to a dismissal of an election contest). We will affirm the dismissal only if the plaintiff "would not be entitled to relief under any facts susceptible of proof in the statement of the claim." *Mohave Disposal, Inc. v. City of Kingman*, 186 Ariz. 343, 346 (1996). Because we review a complaint's well-pled facts, "mere conclusory statements are insufficient to state a claim upon which relief can be granted." *Cullen*, 218 Ariz. at 419, ¶ 7.

¶4 Under A.R.S. § 16-672(A)(2), an elector may contest an election on the ground "[t]hat the person whose right to the office is contested was not at the time of the election eligible to the office." As for eligibility requirements applicable to the office of attorney general, pursuant to Article 5, Section 2 of the Arizona Constitution, the attorney

¹ Absent material revision after the relevant date, we cite a statute's current version.

CAMBONI v. BRNOVICH
Decision of the Court

general must be (1) not less than 25 years old, (2) a citizen of the United States for 10 years preceding election and (3) a citizen of Arizona for five years preceding election. Ariz. Const. art. 5, § 2. In addition, by statute, the attorney general also must be a practicing attorney "for not less than five years immediately preceding the date of taking office[.]" A.R.S. § 41-191(A) (2016).

¶5 Camboni's Contest did not allege Brnovich failed to meet any of the eligibility requirements set out above; instead, it seemed to assert that because the Supreme Court oversees the State Bar, the election of a member of the State Bar as attorney general violates constitutional constraints against separation of powers. The Contest also referred to unspecified racketeering violations, violations of Article 25 of the Arizona Constitution (right to work) and unspecified anti-competitive practices.

¶6 The superior court correctly dismissed the Contest. The Contest was based on § 16-672(A)(2), which allows an elector to challenge an election on the ground that the person elected "was not at the time of the election eligible to the office." But the Contest did not allege Brnovich was ineligible under any of the criteria set out in our constitution or statutes for election to the office of attorney general.

¶7 On appeal, Camboni argues Brnovich admitted other allegations in the Contest by failing to "answer, and/or deny" the Contest. But to the extent Camboni challenged Brnovich's qualifications for office by way of conclusory allegations referring to racketeering, monopoly or labor unions, those allegations are insufficient to support his contention that Brnovich is unqualified for office. See *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 389, ¶ 4 (App. 2005) ("[W]e do not accept as true allegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts.").

¶8 The Contest also contains numerous other allegations unrelated to Brnovich's qualifications for attorney general. As summarized above, those allegations in general seem to be based on the proposition that the legal requirements for election to the office of attorney general themselves are illegal or unconstitutional. An election contest is not the proper means by which to challenge the existence or legality of those requirements.

CAMBONI v. BRNOVICH
Decision of the Court

B. Failure to Hold a Hearing Under A.R.S. § 16-676(A).

¶9 Camboni also argues the superior court erred by failing to conduct a hearing pursuant to A.R.S. § 16-676(A) (2016), which provides: "In any contest brought under the provisions of § 16-672 or 16-674, upon the filing of the answer, or if no answer is filed, upon the expiration of the time specified in the summons, the court shall set a time for the hearing of the contest[.]" Camboni cites no authority for the proposition that an election contest is immune from dismissal under Rule 12(b)(6) before a hearing on the merits. *See Griffin*, 86 Ariz. at 169-70 (applying Rule 12(b)(6) procedure to an election contest). Nothing requires the court to hold an evidentiary hearing on an election contest that, like this one, is subject to dismissal for failure to state a claim.

C. Alleged Judicial Bias.

¶10 Camboni argues the superior court judge demonstrated bias in favor of Brnovich by dismissing the Contest. By itself, however, a judicial ruling is not sufficient to support a motion to disqualify for bias. *See Smith v. Smith*, 115 Ariz. 299, 303 (App. 1977) (judicial bias "must arise from an extra-judicial source and not from what the judge has done in his participation in the case"). Furthermore, Camboni did not move for a change of judge in the superior court, and nothing in the record reveals judicial bias or prejudice. *See Cook v. Losnegard*, 228 Ariz. 202, 206, ¶ 22 (App. 2011) (superior court judges are presumed to be free of bias and party alleging bias must establish allegation by preponderance of evidence).

D. Rule 25 Sanctions.

¶11 Citing Arizona Rule of Civil Appellate Procedure 25, Brnovich requests his reasonable attorney fees on appeal. Under this rule, we may impose sanctions against a party who brings an appeal that is frivolous or brought solely for purpose of delay. *See* ARCAP 25. An appeal is frivolous "when it is prosecuted for an improper motive - to harass the respondent or delay the effect of an adverse judgment - or when it indisputably has no merit - when any reasonable attorney would agree that the appeal is totally and completely without merit." *Ariz. Tax Research Ass'n v. Dep't of Revenue*, 163 Ariz. 255, 258 (1989) (quoting *In re Marriage of Flaherty*, 646 P.2d 179, 187 (Cal. 1982)).

¶12 We exercise great caution in awarding sanctions under Rule 25 so as not to discourage appeals involving novel arguments or theories. *Price v. Price*, 134 Ariz. 112, 114 (App. 1982). "On the other hand, the rights of all litigants before this court are prejudiced when the court's limited

CAMBONI v. BRNOVICH
Decision of the Court

resources are taken up by consideration of wholly frivolous and meritless claims. . . . [W]e will not hesitate to impose sanctions on parties . . . for burdening the court with completely specious appeals." *Id.* Camboni's appeal is frivolous and unsupported by any reasonable legal theory. Accordingly, pursuant to Rule 25, we grant Brnovich his costs and reasonable attorney's fees upon compliance with Arizona Rule of Civil Appellate Procedure 21.

CONCLUSION

¶13 We affirm the judgment of the superior court.



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