DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

CHANDLER IMPROVEMENT CO., INC., a defunct Arizona corporation, Plaintiff/Counterdefendant/Appellant, V. DESERT VIKING DV TOWN HOMES, L.L.C., an Arizona limited liability company; SAN MARCOS TOWN HOMES, INC., an Arizona corporation; WELLS FARGO BANK, N.A.; CITY OF CHANDLER, an Arizona municipality, Defendants/Counterclaimants/Appellees.	No. 1 CA-CV 08-0452 DEPARTMENT C **MEMORANDUM DECISION** (Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2007-008135

The Honorable John A. Buttrick, Judge

AFFIRMED

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D O W N I E, Judge

¶1 Chandler Improvement Company ("CIC") appeals the superior court's grant of summary judgment to Desert Viking DV Town Homes, L.L.C. ("Desert Viking"), San Marcos Town Homes, Inc. ("San Marcos"), Wells Fargo Bank, and the City of Chandler ("the City") ("defendants"). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In 1901, the Mesa Improvement Company ("MIC") was formed. In 1912, MIC platted acreage in an unincorporated area of Maricopa County. On June 22, 1912, MIC recorded the "Map of the Townsite of Chandler" ("Plat") with the Maricopa County Recorder. The Plat reflected, *inter alia,* the creation of residential lots, streets, and alleys.[1] The Plat made certain express dedications, stating:

> MESA IMPROVEMENT COMPANY . . . being the owner in fee . . . has caused the said property to be surveyed, subdivided and platted, as shown on the accompanying plat, which said premises shall hereafter be known as Chandler, and hereby declares that said plat sets forth the location and gives the dimensions of all lots, blocks, streets, avenues, Roads and Alleys constituting the said Chandler, and that each lot, tract and block, and each street avenue and road shall

[1] In using the term "roadways," we refer to both streets and alleys. *See, e.g.,* Arizona Revised Statutes ("A.R.S.") section 28-7201(4) (2004) (defining "roadway" to include both streets and alleys).

> be known by the number or letter or name thereon given to each respectively in said plat, and that *the aforesaid Corporation hereby dedicates to the public use all streets, avenues, roads and alleys* thereon shown, *but expressly saving and reserving to the said Corporation its successors and assigns the right to lay, construct and maintain, service utility pipes, ducts, conduits, electric light and telephone lines, and Street Railways* upon and within all said streets, avenues, alleys and roads.

(Emphasis added.)

¶3 In 1913, MIC changed its name to Chandler Improvement Company. Between 1913 and 1938, CIC sold several of the platted lots to individual owners. Deeds for some of these lots stated that "title to all streets and alleys bordering on said parcel of land is reserved to and remains vested in the said Company, its successors and assigns." CIC maintained the dedicated roadways until the Town of Chandler was incorporated in 1920.[2] CIC dissolved as a corporate entity in 1944.

¶4 In 2004 and 2005, defendants worked together on a redevelopment plan for an area of Chandler falling within the boundaries of the 1912 Plat ("the Redevelopment Area"). Desert Viking purchased numerous lots within the Redevelopment Area from private owners. The City owned the remaining lots. To facilitate redevelopment, the City passed Ordinance No. 3734, which provided, in pertinent part:

[2] The City of Chandler is now an Arizona municipal corporation.

> Section 1. The portions of Oregon Street described in attached Exhibit "A" and the alleys described attached [sic] Exhibit "B" (collectively, the "Roadway") are determined to be no longer necessary for public use as roadway.
>
> Section 2. The Roadway is hereby declared abandoned and vacated, so that title shall vest, subject to the same encumbrances, liens, limitations, restrictions and estates as exist on the land to which it accrues, in accordance with law.
>
> . . . .
>
> Section 7. The City Clerk is directed to cause this Ordinance and the vacation plat to be recorded in the office of the Maricopa County Recorder no earlier than thirty (30) days after the date that the Ordinance is passed and adopted. The City Clerk is further directed that the recording of the Ordinance and the vacation plat be made following the conveyance of City-owned lots abutting the Roadway to Desert Viking in accordance with the Agreement and prior to the recording of the Final Plat of the Villas at San Marcos Commons. The vacation of the Roadway shall take effect upon recordation of this Ordinance and the vacation plat.

Chandler, Ariz., Ordinance 3734 (May 25, 2006).

¶5 In August 2006, the City approved defendants' proposed redevelopment and also approved vacating the roadways at issue in this litigation. On September 7, 2006, several events transpired: (1) the City conveyed all lots it owned within the Redevelopment Area to Desert Viking; (2) Desert Viking conveyed all lots it had acquired from private owners and the City to San

Marcos; (3) a "Plat to Vacate Right-of-Way & Alleys" was recorded; and (4) a "Final Plat" for the Redevelopment Area was recorded.

¶6 By letter dated April 5, 2007, CIC, describing itself as "a defunct Arizona corporation," demanded that Desert Viking cede title to the vacated roadways, asserting that title reverted to CIC when the roadways were vacated. CIC tendered a quit claim deed and five dollars pursuant to Arizona Revised Statutes ("A.R.S.") section 12-1103 (2003). Defendants refused CIC's demand and forwarded their own quit claim demand letter.

¶7 On May 9, 2007, CIC filed suit against defendants, alleging it was the owner of the vacated roadways and asserting claims for quiet title, ejectment, and trespass. Defendants answered and filed a counterclaim for quiet title.

¶8 The parties filed cross-motions for summary judgment. Defendants argued section 611 of the 1901 Arizona Territorial Code ("Code") did not provide for the reversionary interest in the roadways claimed by CIC and that, even if it did, a subsequently enacted statute, A.R.S. § 28-7205 (2004), granted title to the vacated roadways to the abutting property owners.

¶9 Consistent with its April 2007 demand, CIC initially agreed that MIC made a statutory dedication of the roadways pursuant to Section 611 of the Code. CIC contended, however, that MIC had transferred only a conditional or qualified fee,

not fee simple absolute. CIC further argued it had expressly reserved title to the roadways in the deeds for thirty-six lots it sold and that, as a subsequently enacted statute, A.R.S. § 28-7205 could not extinguish its reversionary interest.

¶10 Later, stating it had "discovered an error in legal analysis by both parties," CIC moved to amend its "pleadings." CIC contended that, contrary to its earlier position, Code §§ 607 to 612 were inapplicable, and Code §§ 4098 to 4099 applied instead. CIC further asserted MIC had not in fact made a statutory dedication, as earlier claimed, but a common law dedication, whereby fee did not pass to the county, but remained with MIC/CIC as the dedicator.

¶11 The superior court granted CIC's motion to amend, though it more aptly characterized the request as one to supplement the briefing. On March 7, 2008, the superior court granted defendants' motion for summary judgment and denied CIC's cross-motion. In its ruling, the court discussed application of the Code, stating:

> It appears that §§ 607-12 is the more specific statutory scheme since it deals with the situation where the entities filing the plat are contemplating the creation of a town or city whereas § 4098 is the more general statute dealing with platting or subdividing. The more specific statute will apply if, under the facts of this case, MIC was engaged in the specific process of laying out a town or city. The plat itself suggests that this was indeed the case. The

> map is expressly entitled "Map of the Townsite of Chandler, Maricopa Co., Arizona."

After determining that Code § 611 applied, the superior court discussed the nature of the fee that MIC conveyed:

> As noted, § 611 mandates that "the fee of all" roadways "shall vest" upon filing of the maps "in the city or town if incorporated." Here Chandler was not incorporated at the time of filing in 1912. The statute contemplated this possibility, however. It states that "if such town be not incorporated" the fee vests "in the county until such town shall be incorporated." That is what occurred here. Title vested in Maricopa County from 1912 until 1920 when it was transferred by operation of law to Chandler.
>
> Neither the plat expressing the dedication nor the statute references any reversionary interest held by MIC. At most the "in trust" language of § 611 might grant standing to the public to challenge a transfer of ownership to the Defendant here as beneficiaries to the trust, but no rights are granted to MIC to do so. In short, CIC has no reversionary interest in the roadways.

¶12 The superior court denied CIC's motion for new trial, and CIC timely appealed. We have jurisdiction pursuant to A.R.S. § 12-2101(B) (2003).

DISCUSSION

¶13 Summary judgment may be granted when "there is no genuine issue as to any material fact and [] the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P.

56(c). In reviewing a motion for summary judgment, we determine *de novo* whether any genuine issues of material fact exist and whether the trial court properly applied the law. *Eller Media Co. v. City of Tucson*, 198 Ariz. 127, 130, ¶ 4, 7 P.3d 136, 139 (App. 2000). We view the facts and the inferences to be drawn from those facts in the light most favorable to the party against whom judgment was entered. *Prince v. City of Apache Junction*, 185 Ariz. 43, 45, 912 P.2d 47, 49 (App. 1996).

¶14 CIC's arguments on appeal can be summarized as follows:

- The 1912 dedication was a common law dedication, whereby MIC/CIC retained fee ownership of the roadways.
- Even if MIC made a statutory dedication, it conveyed only a fee simple determinable; once the City abandoned the roadways, title reverted to CIC.
- CIC has a reversionary interest in the roadways based on language in the deeds for lots it conveyed.

We address each of these contentions in turn.

1. Common Law or Statutory Dedication?

¶15 "Dedication is the intentional appropriation of land by the owner to some proper public use." *Allied Am. Inv. Co. v. Pettit,* 65 Ariz. 283, 287, 179 P.2d 437, 439 (1947). Property may be dedicated pursuant to a statute (a so-called "statutory dedication") or by action of the common law (a "common law

dedication"). *Pleak v. Entrada Prop. Owners' Ass'n*, 207 Ariz. 418, 421, ¶¶ 6, 8, 87 P.3d 831, 834 (2004). Whether by common law or by statute, a dedication, once perfected, is irrevocable. *Thorpe v. Clanton*, 10 Ariz. 94, 99-100, 85 P. 1061, 1062 (Ariz. Terr. 1906).

¶16 When a common law dedication occurs, the public acquires an easement to use the property for the specified purpose, but fee ownership remains with the dedicator. *Pleak*, 207 Ariz. at 421, ¶ 8, 87 P.3d at 834. A common law dedication is effected when a landowner surveys land into lots, streets and squares, records the plat, and sells lots with reference to the plat. *Yuma County v. Leidendeker*, 81 Ariz. 208, 213, 303 P.2d 531, 535 (1956) (citation omitted). To effect a common law dedication, "[n]either a written grant nor any particular words, ceremonies, or a form of conveyance, are necessary to render the act of dedicating land to public uses . . . . Anything which fully demonstrates the intention of the donor and the acceptance by the public works the effect." *Allied,* 65 Ariz. at 287, 179 P.2d at 439.

¶17 A statutory dedication, on the other hand, results in fee to the dedicated property passing to the county, city, or town. *See Pleak,* 207 Ariz. at 424, ¶ 25 n.3, 87 P.3d at 837 n.3. Where the grantor plats land and dedicates portions of it in accordance with the requirements of a statute, it is a

"statutory dedication." *See, e.g., Allied,* 65 Ariz. at 289, 179 P.2d at 440-41; *Moeur v. City of Tempe*, 3 Ariz. App. 196, 199, 412 P.2d 878, 881 (1966). *Cf. Thorpe,* 10 Ariz. at 99, 85 P. at 1061-62 (noting that, when the townsite of "Sidney" was filed, there was "no statute in force in the territory relating to the dedication of streets and alleys"; hence, a common law dedication occurred).

¶18 We hold that MIC made a statutory dedication of the roadways at issue. Title 11, Chapter 9 of the Code is entitled "Towns" and includes Article XI, entitled "Of the Survey and Recording of Town Plats." This article provides, in pertinent part:

> 607. (Section 1.) Whenever any city, town or village, or an addition to any city, town or village, shall be laid out, the proprietors of the city, town or village, or addition laid out, shall cause to be made an accurate plat or map thereof, setting forth:
>
> *First*. All streets, alleys, avenues and highways and the width thereof.
>
> *Second.* All parks, squares and all other grounds reserved for other uses, with the boundaries and dimensions thereof.
>
> *Third*. All lots and blocks, with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of such lots.
>
> 608. (Sec. 2.) Such maps shall be acknowledged by the proprietor or some person for him, duly authorized thereunto by deed, before some officer authorized to take

> acknowledgement of deeds, and a copy thereof, so acknowledged, shall be filed in the office of the county recorder, and also in the office of the clerk of such town or city.
>
> . . . .
>
> 611. (Sec. 5.) Upon the filing of any such map or plat, the fee of all streets, alleys, avenues, highway, parks and other parcels of ground reserved therein to the use of the public, shall vest in such city or town, if incorporated, in trust, for the uses therein named and expressed, or if such town be not incorporated, then in the county until such town shall become incorporated, for the like uses.
>
> 612. (Sec. 6.) All additions to any city or town shall be surveyed and platted, and a map thereof be submitted to the common council and such map shall not be filed and recorded, as provided in this article until the same shall have been approved by said common council.

1901 Ariz. Terr. Code §§ 607-12.

¶19 In dedicating the roadways, MIC complied with these Code provisions. CIC initially admitted as much in the court below, stating:

> Mesa Improvement Company platted an area of real estate in Maricopa County and recorded the Map of the Townsite of Chandler *as required under Article XI of the 1901 Territorial Code, Section 611*. The Townsite Map set forth all streets, alleys, avenues and highways, the fee of which was reserved therein to the use of the public and was vested in the Town of Chandler *in trust,* for the uses therein named and expressed. *This is similar to the modern statute, A.R.S. §9-254,* upon filing a map or plat for a newly

> incorporated town, the fee of the streets, alleys, avenues, highways, parks and other parcels of the ground reserved therein to the use of the public vests in the town, *in trust,* for the uses therein expressed.

(Emphasis added.)

¶20 As contemplated by Code §§ 607 and 611, the 1912 Plat "laid out" the Town of Chandler. Because the Town was not yet incorporated, fee to the dedicated roadways vested in Maricopa County until the Town incorporated in 1920, when it passed by operation of law to the Town. *See Moeur,* 3 Ariz. App. at 198, 412 P.2d at 880.[3]

¶21 CIC's reliance on *Leidendeker* is unpersuasive. In *Leidendeker,* the court held that land not contiguous to or within the limits of a city or town when a plat was recorded did not fall within the definition of "addition" under Code §§ 607 to 611. 81 Ariz. at 212-13, 303 P.2d at 535. It found Code §§ 4098 and 4099 were more general statutes, applicable where landowners platted land into townsites, additions, and subdivisions, and thus encompassed noncontiguous land like the property at issue. *Id.* at 213, 303 P.2d at 535. *Leidendeker*

[3] We disagree with CIC's contention that applying Code § 611 is inconsistent with Code § 3990. We see no conflict between having dedicated streets to unincorporated towns with less than 500 persons vest in the county pursuant to § 611 and having existing streets in unincorporated towns with more than 500 persons under the control of the county pursuant to § 3990. Section 3990 does not limit the county's authority to *only* roadways in towns of more than 500 persons.

did not involve a plat laying out a contemplated town, and the decision did not equate a dedication under §§ 4098 and 4099 with a common law dedication. *See id*. Indeed, the court expressly concluded that a statutory dedication had been perfected.[4] *See id*. at 215, 303 P.2d at 536.

¶22 *Allied American* also supports our conclusion. In that case, the court considered whether a block labeled "Park" on a recorded plat had been dedicated to public use. 65 Ariz. at 285, 179 P.2d at 437. The property was "not within any city or town," and "[n]o affirmative steps were taken by the county to accept the dedication." *Id.,* 179 P.2d at 438. There was no express dedication language for the park, as opposed to roadways, which were expressly dedicated in the same plat. *Id.* at 288, 290, 179 P.2d at 439, 441. The court applied the successor statute to Code § 611 and found a statutory dedication, stating, "By the statutes in effect at the time the dedication was made, the fee in the dedicated property passed to the county in trust for the public and for the uses described." *Id*. at 290, 179 P.2d at 441. *See also Edwards v. Sheets,* 66

[4] In considering whether the dedication had been completed, *Leidendeker* looked to the common law, noting that Code §§ 4098 and 4099 "contemplate the common law modes of dedication." 81 Ariz. at 213, 303 P.2d at 535. Similarly, in *Pleak,* the court took note of cases involving statutory dedications in analyzing whether a common law dedication occurred. 207 Ariz. at 424 n.3, 87 P.3d at 837 n.3. Neither decision, however, supports the notion that a dedication under §§ 4098 and 4099 is a common law dedication.

Ariz. 213, 218, 185 P.2d 1001, 1004 (1947) (finding that, "[b]y the statutes in effect at the time the dedication was made, the fee in the dedicated property passed to the county in trust for the public and for the uses described"). The statutes at issue in *Allied American* are identical in relevant respects to Code §§ 4098 and 611.

¶23 CIC argues extensively that the 1912 dedication was made pursuant to Code §§ 4098 and 4099, not §§ 607 to 612. Under either scheme, though, a statutory dedication would exist. When a statutory dedication occurs under Code § 4098, "the fee passe[s] from the dedicator, differing in this respect from a common-law dedication where the fee remains with the dedicator subject to the public's use for the dedicated purpose." *Moeur*, 3 Ariz. App. at 199, 412 P.2d at 881. Like Code § 611, sections 4098 and 4099 lack any language suggesting that a dedicator retains some type of reversionary interest.

¶24 We conclude the 1912 dedication was a statutory dedication whereby fee passed from MIC to the county initially and, by operation of law in 1920, to the Town of Chandler.

2. Fee Simple Determinable or Fee Simple Absolute?

¶25 CIC argues that, even if it made a statutory dedication and assuming Code § 611 applies, MIC conveyed only a fee simple determinable and not fee simple absolute. We conclude otherwise.

¶26 In interpreting a statute, our goal is to determine and give effect to legislative intent. *Mail Boxes, Etc. U.S.A. v. Indus. Comm'n*, 181 Ariz. 119, 121, 888 P.2d 777, 779 (1995) (citations omitted). To that end, we look first to the language of the statute. *Canon Sch. Dist. No. 50 v. W.E.S. Constr. Co.,* 177 Ariz. 526, 529, 869 P.2d 500, 503 (1994). If the statutory language is unambiguous, we must give it effect and not resort to other rules of statutory construction in its interpretation. *Janson v. Christensen*, 167 Ariz. 470, 471, 808 P.2d 1222, 1223 (1991). If the legislative intent is not clear from the statutory language, we consider other factors, such as the context of the statute, the subject matter, its historical background, its effects and consequences, and its spirit and purpose. *Wyatt v. Wehmueller*, 167 Ariz. 281, 284, 806 P.2d 870, 873 (1991). Statutory interpretation is a legal issue that we review *de novo*. *State Comp. Fund v. Superior Court (Hauser)*, 190 Ariz. 371, 375, 948 P.2d 499, 502 (App. 1997).

¶27 Code § 611 provided that, upon the filing of a plat, "the fee" to roadways "shall vest in such city or town, if incorporated, in trust, for the uses therein named and expressed, or if such town be not incorporated, then in the county until such town shall become incorporated, for the like uses." We disagree with CIC's contention that the "in trust" language means that only a fee simple determinable was conveyed.

¶28 A "fee simple determinable" is an estate in real property that is subject to automatic expiration upon the occurrence of a stated event. *Lacer v. Navajo County*, 141 Ariz. 396, 400, 687 P.2d 404, 408 (App. 1983). The limitation on the estate is generally shown by words such as "unless," "until," "so long as," "during," or "while" in the conveying instrument. The intent that the estate expire must be express; a statement that the conveyance be for a certain purpose is generally not sufficient to create a fee simple determinable. *Id.* Where a fee simple determinable is created, the grantor enjoys the possibility of reverter upon the occurrence of the event stated in the conveyance. *City of Tempe v. Baseball Facilities, Inc.*, 23 Ariz. App. 557, 560, 534 P.2d 1056, 1059 (1975).

¶29 Although the foregoing principles have typically been applied to conveyances by deed, we find them relevant in interpreting the Code. The Code lacks any language suggesting that, upon occurrence of a stated event, fee to the dedicated property reverts to the grantor. Section 611 reflects that the fee is vested for the purposes dedicated, but it does not declare that the fee vests only "so long as" or "while" the dedicated property is used for a particular purpose. The 1912 dedication similarly lacks any language indicating that the fee will revert to the dedicator upon the occurrence of a particular

event.[5] As the superior court correctly found, "Neither the plat expressing the dedication nor the statute references any reversionary interest held by MIC." *Cf. Pleak,* 207 Ariz. at 425, 87 P.3d at 838 ("If developers wish to avoid the consequences about which Entrada today complains, they need only exercise greater care in drafting dedicatory language regarding the scope or location of roadway easements in plats . . . .").

¶30 The Code's use of the words "in trust" does not establish that MIC conveyed something less than fee simple absolute. A "trust" has been defined as "[a]ny arrangement whereby property is transferred with intention that it be administered by trustee for another's benefit." Black's Law Dictionary 1508 (6th ed. 1990). A trustee holds title to the property subject to an obligation to use the property for the benefit of another. *Id*.

¶31 The words "in trust" in the Code ensure that, while the City holds title, it does so as trustee for the benefit of the public. As the superior court noted, "At most, the 'in trust' language of § 611 might grant standing to the public to challenge a transfer of ownership to the defendant here as beneficiaries to the trust, but no rights are granted to MIC to do so." *Cf. Thorpe,* 10 Ariz. at 102, 85 P. at 1063 ("It may be

[5] The only property interest MIC reserved was an easement for the maintenance and construction of utilities-–activities CIC neither performs nor seeks to perform in this action.

that all the streets and alleys which appear upon a map or plat and according to which the owner has sold and conveyed lots are thereby irrevocably dedicated to the public; yet only such persons as may be injured in an especial manner by the obstruction or closing of such streets have a right in equity to enforce the dedication.").

¶32 Both sides cite cases from other jurisdictions that interpret various dedication statutes--some similar to Arizona's Territorial Code, and some dissimilar. In the final analysis, these out-of-state authorities are largely unhelpful given the wording of our Code, the fact pattern presented, and the availability of in-state guidance. *See, e.g., Moeur,* 3 Ariz. App. at 199, 412 P.2d at 881 (holding that the effect of filing a plat map under Code § 611 was to "convey the fee in the streets . . . in trust for the public . . . . Consequently, the fee passed from the dedicator, differing in this respect from a common-law dedication where the fee remains with the dedicator subject to the public's use for the dedicated purpose."); *Allied,* 65 Ariz. at 290, 179 P.2d at 441 (holding fee passed by statute "to the county in trust for the public and for the uses described. In this respect the dedication was different from a dedication at common law where . . . the public simply acquired the use for the purposes for which it was dedicated, and the fee remained with the dedicator.").

¶33 We conclude that, pursuant to Code § 611, MIC's 1912 dedication conveyed fee simple absolute. We thus do not reach defendants' alternative argument that A.R.S. § 28-7205(3) defeats CIC's claim to a reversionary interest in the roadways.

3. Effect of CIC's Deed Reservations.

¶34 As noted *supra,* deeds for certain lots CIC sold stated that "title to all streets and alleys bordering on said parcel of land is reserved to and remains vested in [CIC], its successors and assigns." However, based on our determination that CIC had no ownership interest in the roadways after the 1912 dedication, we conclude these subsequent deed reservations were of no effect. Once a public dedication of land is complete, the dedicator has "no further control over it." *Evans v. Blankenship,* 4 Ariz. 307, 315, 39 P. 812, 813 (Ariz. Terr. 1895) (noting that once a dedication of land is complete, the dedicator has "no further control over it."). An individual can convey no better title to property than that which he himself possessed. *See Simpson v. Shaw,* 71 Ariz. 293, 297, 226 P.2d 557, 560 (1951); *Torrey v. Pearce*, 92 Ariz. 12, 16, 373 P.2d 9, 12 (1962) (recognizing that a grantor may convey title to a public roadway if and to the extent the grantor owns the underlying fee).

CONCLUSION[6]

¶35 For the foregoing reasons, we affirm the judgment of the superior court. Both sides request an award of attorneys' fees pursuant to A.R.S. § 12-1103(B) (2003). Under that statute, in a quiet title action, if a party requests that the person asserting an adverse interest in the property execute a quit claim deed and tenders five dollars, and the person refuses or neglects to comply, the court may, in its discretion award attorneys' fees. A.R.S. § 12-1103(B). The statute applies to proceedings in the appellate courts as well as the trial courts. *Lewis v. Pleasant Country, Ltd.*, 173 Ariz. 186, 195, 840 P.2d 1051, 1060 (App. 1992). Defendants complied with these statutory requirements and are entitled to an award of costs and fees upon compliance with Arizona Rule of Civil Appellate Procedure 21.

/s/
MARGARET H. DOWNIE,
Presiding Judge

CONCURRING:

/s/
PATRICK IRVINE, Judge

/s/
MAURICE PORTLEY, Judge

[6] CIC's standing in this litigation arises from its claimed ownership interest in the roadways. Based on our determination that CIC has no such interest, we find it lacks standing to question whether title properly vested in Desert Viking.