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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



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

WELLS FARGO BANK, NA, as trustee,) 1 CA-CV 08-0548
)
Plaintiff/Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
STEVEN T. SELVIN,) Rule 28, Arizona Rules
) of Civil Appellate
Defendant/Appellant.) Procedure)
)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2008-010335

The Honorable Michael Barth, Commissioner

AFFIRMED

Steven T. Selvin
Defendant/Appellant
In Propria Persona

Scottsdale

Tiffany & Bosco, P.A.
By Mark S. Bosco and Leonard J. McDonald
Attorneys for Plaintiff/Appellee

Phoenix

K E S S L E R, Judge

¶1 Appellant Steven T. Selvin ("Selvin") appeals from the superior court's judgment in favor of Appellee Wells Fargo Bank ("Wells Fargo") on forcible detainer after a trustee's sale. Selvin argues the superior court erred in finding him guilty of a forcible detainer under Arizona Revised Statutes ("A.R.S.")

section 12-1173.01(A)(2) (2003). Additionally, Selvin contends the superior court acted improperly during court proceedings. For the reasons stated below, we affirm the superior court's judgment in favor of Wells Fargo.

FACTUAL AND PROCEDURAL HISTORY

¶2 Selvin failed to include citations to the record in his opening brief as required by Arizona Rules of Civil Appellate Procedure ("ARCAP") Rule 13(a)(4). Moreover, Selvin failed to file any written documents in the superior court except for his notice of appeal and post-judgment objections.¹ He also failed to file a transcript of any hearing. Accordingly, we disregard Selvin's unsupported factual narrative and draw the facts from Wells Fargo's properly-documented brief and the record on appeal. *Ariz. Dep't of Econ. Sec. v. Redlon*, 215 Ariz. 13, 15, ¶ 2, 156 P.3d 430, 432 (App. 2007). We presume any missing portions of the record support the superior court's decision. *State v. Mendoza*, 181 Ariz. 472, 474, 891 P.2d 939, 941 (App. 1995) (citation omitted).

¶3 On February 1, 2005, Selvin executed a deed of trust on a piece of real property located in Scottsdale, Arizona. On

¹ Attached to the opening brief is Selvin's demand that current judges or commissioners recuse themselves. The document is not marked as filed and is not in the record on appeal. *GM Dev. Corp. v. Cmty. Am. Mortgage Corp.*, 165 Ariz. 1, 795 P.2d 827 (App. 1990) (finding an appellate court's review is limited to the record before the trial court).

April 18, 2008, the Trustee, acting under the deed of trust's power of sale, sold Wells Fargo the property for valuable consideration. Pursuant to the trustee's sale, a trustee's deed was executed and delivered to Wells Fargo.

¶14 On April 29, 2008, Selvin received Wells Fargo's written notice demanding possession of the property, which was both hand-delivered and sent by mail. Wells Fargo filed suit against Selvin after he did not surrender possession of the property despite Wells Fargo's written demand. On May 7, 2008, Wells Fargo filed its complaint for forcible detainer and completed service ten days later.

¶15 During the first hearing on Wells Fargo's forcible detainer action, Selvin pled not guilty. The parties stipulated and the judge ordered trial to take place on June 20, 2008. At trial, with both parties present, the court found Selvin guilty of forcible detainer and ordered him to surrender possession of the property to Wells Fargo.

¶16 Selvin timely appealed and we have jurisdiction pursuant to A.R.S. § 12-2101(B) (2003).²

² The superior court entered a signed judgment on June 20, 2008. Selvin filed his notice of appeal on June 26, 2008 at 12:16 pm and a notice objecting to the court's proceedings that same day at 12:22 pm. It is unclear exactly what Selvin intended by his objection. Selvin's notice objecting to the court's proceedings was not a motion. Even if the court considered this to be a motion, the court was divested of jurisdiction because Selvin filed a notice of appeal before the

DISCUSSION

¶17 "[F]orcible entry and detainer is a statutory proceeding" *Heywood v. Ziol*, 91 Ariz. 309, 311, 372 P.2d 200, 201 (1962). Thus, we review the superior court's interpretation and application of statutes *de novo*. *City of Tucson v. Pima County*, 190 Ariz. 385, 386, 949 P.2d 38, 39 (App. 1997) (citation omitted). When construing a statute, we attempt to determine and to give effect to legislative intent while considering the statute's language and its spirit and purpose. *Id.*

¶18 Selvin's opening brief provides a litany of alleged errors below.³ However, he has not provided this Court with a transcript of any of the proceedings below. Although Selvin alleges that the superior court acted improperly during the trial court proceedings, he fails to cite to the record and to any authority supporting his propositions as required by ARCAP

court ruled on his notice objecting to the court's proceedings. *City of Phoenix v. Leroy's Liquors, Inc.*, 177 Ariz. 375, 381, 868 P.2d 958, 964 (App. 1993) (citation omitted).

³ Selvin argues that the superior court acted improperly during trial court proceedings. Specifically, Selvin alleges the court: (1) did not give Selvin enough notice; (2) allowed the proceedings to be unlawfully delayed; (3) allowed court exhibits and documents to be tampered with; (4) denied Selvin equal protection; (5) allowed for a vindictive and malicious judicial process; and (6) the judge failed to recuse himself. Selvin also contends the superior court lacked jurisdiction, Wells Fargo was involved in some type of securities scheme, and Wells Fargo did not pay for the property.

13(a). Selvin notes in his opening brief, however, that he cannot reference documents and transcripts that were filed below because they were "tampered with and altered." Upon our review of the record, we find no evidence indicating the court tampered with or altered documents and/or transcripts. Consequently, we will not consider Selvin's arguments that the court acted improperly during trial court proceedings, as they are posited without any authority, and presume the missing transcripts support the court's decision. *Cullum v. Cullum*, 215 Ariz. 352, 355 n.5, 160 P.3d 231, 234, n.5 (App. 2007) (citation omitted) (holding appellate courts will not consider arguments posited without any authority); *Mendoza*, 181 Ariz. at 474, 891 P.2d at 941 (an appellate court will presume missing parts of the record support the trial court's decision) (citation omitted).

¶9 Despite that failure, Selvin appears to raise four issues that we can address: (1) whether Wells Fargo had standing; (2) whether the proceedings were barred by his bankruptcy petition; (3) whether evidence supported the judgment; and (4) whether he was entitled to a jury trial.

A. Standing, Bankruptcy, and Sufficiency of the Evidence

¶10 Under A.R.S. § 12-1173.01(A)(2), a person "who retains possession of any land, tenements or other real property after he received written demand of possession may be removed through an action for forcible detainer . . . [i]f the property has been

sold through a trustee's sale under a deed of trust" A forcible detainer action is a summary proceeding intended to provide a speedy and adequate statutory remedy for obtaining possession of property by one entitled to actual possession. *Olds Bros. Lumber Co. v. Rushing*, 64 Ariz. 199, 205, 167 P.2d 394, 397 (1946); *Casa Grande Trust Co. v. Super. Ct.*, 8 Ariz. App. 163, 165, 444 P.2d 521, 523 (1968) (citations omitted).

¶11 Pursuant to A.R.S. § 12-1177(A) (2003), "the only issue [in a forcible detainer action] shall be the right of actual possession and the merits of title shall not be inquired into." *Casa Grande Trust Co.*, 8 Ariz. App. at 165, 444 P.2d at 523. The fact of title, however, may be admitted if it is incidental to proving a right of possession. *Curtis v. Morris*, 186 Ariz. 534, 535, 925 P.2d 259, 260 (1996); *United Effort Plan Trust v. Holm*, 209 Ariz. 347, 351, ¶ 21, 101 P.3d 641, 645 (App. 2004). Further, under A.R.S. §33-811(B) (2007):

The trustee's deed shall raise the presumption of compliance with the requirements of the deed of trust and this chapter relating to the exercise of the power of sale and the sale of the trust property, including recording, mailing, publishing and posting of notice of sale and the conduct of sale.

¶12 Although difficult to discern, Selvin first argues that Wells Fargo did not have standing because it was a "[f]ictitious [c]omplaining [p]arty" and it did not produce evidence that it was a holder in due course of the note. Selvin

also contends that his bankruptcy proceeding should have prevented the sale of property.

¶13 Wells Fargo had standing to bring the forcible detainer action because it complied with A.R.S. § 12-1173.01 when it purchased the property for valuable consideration through a trustee's sale under a deed of trust. Under A.R.S. § 33-811(B), the trustee's deed raised the presumption that Wells Fargo complied with the requirements of the deed of trust. *Supra* ¶¶ 10-11. Moreover, Selvin admits in his opening brief that the bankruptcy proceeding was dismissed before the trustee's sale and before the superior court entered judgment against him in the forcible detainer action. Consequently, the superior court was not required to stay or prevent the sale of Selvin's property.

¶14 Selvin also asserts that the superior court erred in finding him guilty of forcible detainer under A.R.S. § 12-1173.01. As noted, *supra* ¶ 11, the issuance of the trustee's deed to a purchaser of trust property is conclusive evidence that the statutory requirements for sale were satisfied under A.R.S. § 33-811(B). *See also Triano v. First Am. Title Ins. Co. of Ariz.*, 131 Ariz. 581, 583, 643 P.2d 26, 28 (App. 1982). Because Selvin did not provide a trial transcript, we presume the evidence supports the judgment. *Mendoza*, 181 Ariz. at 474, 891 P.2d at 941.

¶15 Further, the court was not required to determine the merits of title because the right of actual possession is the only issue in a forcible detainer action. See A.R.S. § 12-1177(A); see also *Curtis*, 186 Ariz. at 535, 925 P.2d at 260; *Casa Grande Trust Co.*, 8 Ariz. App. at 165, 444 P.2d at 523. Because a forcible detainer action is intended to provide a speedy and adequate statutory remedy for obtaining possession of property, "this objective would be entirely frustrated if the defendant were permitted to . . . interpose customary and usual defenses permissible in the ordinary action at law." *Olds Bros. Lumber Co.*, 64 Ariz. at 205, 167 P.2d at 397; *Casa Grande Trust Co.*, 8 Ariz. App. at 165, 444 P.2d at 523 (citation omitted). Moreover, a judgment in a forcible detainer action does not bar subsequent proceedings between the same parties in a quiet title suit, since adjudication of title is not available in forcible detainer actions. *Olds Bros. Lumber Co.*, 64 Ariz. at 205, 167 P.2d at 398. Thus, if Selvin wanted the court to determine the merits of title, he could have brought a subsequent action against Wells Fargo to quiet title.

B. Right to Jury Trial

¶16 Selvin argues he was entitled to a jury trial after he made such a demand in the superior court. Under A.R.S. § 12-1176(B) (Supp. 2009), "[i]f the plaintiff does not request a

