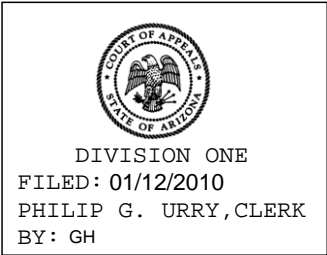


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



GREGORY K. ADAMSON,)	1 CA-CV 08-0613
)	
Plaintiff/Appellant,)	DEPARTMENT D
)	
v.)	MEMORANDUM DECISION
)	(Not for Publication-
DAVID L. CAREY, D.C.,)	Rule 28, Arizona Rules
)	of Civil Appellate
Defendant/Appellee.)	Procedure)
)	
)	
)	

Appeal from the Superior Court of Yavapai County

Cause No. P1300CV0020060977

The Honorable David L. Mackey, Judge

AFFIRMED

Gregory K. Adamson, *In propria persona* Chino Valley, AZ
Appellant/Plaintiff

Raup & Hergenroether Phoenix
By Scott Hergenroether
And Michelle L. Miernik
Attorneys for Appellee/Defendant

T H O M P S O N, Judge

¶1 Appellant Gregory K. Adamson (Adamson) appeals from the trial court's judgment denying Adamson's motions to reinstate his lawsuit. For the reasons that follow, we affirm the judgment of the trial court.

¶12 Adamson filed a complaint in superior court alleging malpractice stemming from chiropractic services performed by appellee Dr. Carey in August 2004. Subsequently, Adamson failed to submit expert certification as required by Arizona Revised Statutes (A.R.S.) section 12-2603, and appellee moved to dismiss the complaint. Adamson failed to respond, and the trial court dismissed the complaint with prejudice in November 2007. In May 2008, Adamson filed a post-judgment motion requesting reinstatement of his complaint pursuant to Arizona Rule of Civil Procedure 60(c). In July 2008, the trial court denied the motion, finding no legal or factual basis to warrant relief. Adamson appealed from this unsigned ruling, as well as the court's November 2007 ruling dismissing the complaint. This court dismissed the appeal from the November 2007 order because the notice of appeal was untimely, determined that the July 2008 order was premature, and suspended the appeal as to that order. The trial court reissued the July 2008 order with a signature, and this appeal commenced.

¶13 Although Adamson's opening brief states that the issue on appeal is whether the trial court erred "by dismissing [his] complaint by summary judgment," the trial court did not dismiss this case on summary judgment. Instead, the trial court dismissed the case in its November 2007 ruling because of Adamson's failure to comply with A.R.S. § 12-2603. Pursuant to this court's November 6, 2008 order, the only order of the trial court remaining on appeal is the court's July 2008 order denying Adamson's motion to

re-instate lawsuit complaint and his motion to re-instate. The record reflects that dismissal was warranted under A.R.S. § 12-2603 and was not attributable to judicial bias.

¶4 Adamson also complains that his battery count should not have been dismissed. To the extent that we interpret Adamson's opening brief as addressing the July 2008 ruling, none of his arguments on appeal provide a basis to overturn that ruling, which we review under an abuse of discretion standard. See *Rosen v. Board of Med. Exam'rs*, 185 Ariz. 139, 143, 912 P.2d 1368, 1372 (App. 1995), *abrogated on other grounds by S.W. Paint & Varnish Co. v. Ariz. Dep't of Env'tl. Quality*, 194 Ariz. 22, 976 P.2d 872 (1999). With regard to the battery claim, we review the denial of the Rule 60(c) motion and Adamson's claims that the trial court was wrong and biased. These claims are not cognizable and not supported under any of the sub-parts of Rule 60(c).

¶5 There was no abuse of discretion in the trial court's denial of Adamson's motions to reinstate this lawsuit. For the foregoing reasons, we affirm the trial court.

Attorneys' Fees

¶6 Appellee requests attorneys' fees and costs on appeal pursuant to A.R.S. § 12-341, A.R.S. § 12-341.01(C), and A.R.S. § 12-349. Because the appeal was brought without substantial justification, we award attorneys' fees on appeal to appellee

pursuant to A.R.S. § 12-349.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Presiding Judge

/s/

PATRICK IRVINE, Judge