

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



DIVISION ONE  
FILED: 02-25-2010  
PHILIP G. URRY, CLERK  
BY: DN

DANIEL C. EDINGTON, ) 1 CA-CV 09-0055  
)  
Plaintiff/Appellant, ) DEPARTMENT E  
)  
v. ) MEMORANDUM DECISION  
)  
CHRIS CAVANAUGH and JOCHEBED ) (Not for Publication -  
CAVANAUGH; RUSSELL WALLACE and ) Rule 28, Arizona Rules of  
ELISABETH WALLACE, ) Civil Appellate Procedure)  
)  
Defendants/Appellees. )  
)

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Appeal from the Superior Court in Yavapai County

Cause No. P-1300-CV-0020040909

The Honorable Howard D. Hinson Jr., Judge

**AFFIRMED**

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Daniel C. Edington  
In Propria Persona

Prescott Valley

Christopher Cavanaugh  
In Propria Persona

Mayer

Russell Wallace  
In Propria Persona

Mayer

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**H A L L**, Judge

¶1 Daniel C. Edington appeals from the trial court's denial of his motion for relief from judgment pursuant to Arizona Rules of Civil Procedure (Rule) 60(c). For the reasons that follow, we affirm the trial court's ruling.

#### **FACTUAL AND PROCEDURAL HISTORY**

¶2 The facts relevant to the issue on appeal are as follows. On October 22, 2004, Daniel and Noreen Edington (the Edingtons) filed a complaint in superior court against Christopher and Jochebed Cavanaugh and Russell and Elisabeth Wallace (collectively, the defendants) alleging that the defendants committed fraud and misrepresentation during negotiations for the sale of a piece of real estate. Specifically, the Edingtons alleged that the defendants made false statements and produced false documents claiming that the property at issue had use of a high-functioning well that "produced 37.5+ gallons per minute." In addition, the complaint alleged that Russell Wallace performed work on the property without a license. The Edingtons demanded \$1,500,000.00 "due to the emotional and financial suffering" they "suffer[ed] directly and indirectly" from the alleged fraud.<sup>1</sup>

¶3 On August 16, 2007, after more than two years of protracted litigation, the Wallaces filed a motion to dismiss

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<sup>1</sup> The Edingtons subsequently withdrew their claim for any damages related to emotional distress.

the complaint. In their motion, the Wallaces acknowledged that Russell Wallace was not a licensed contractor at the time he was hired by Christopher Cavanaugh to install a water pipe from the well "to the edge of what is now the [Edingtons'] property." The Wallaces nonetheless argued that, to the extent the Edingtons experienced low water pressure in their home, such a problem was caused solely by Daniel Edington's work on the well water system.

¶14 As support for this claim, the Wallaces attached the investigative report of the Arizona Registrar of Contractors (ROC) concerning Mr. Edington's 2004 ROC complaint filed against Mr. Wallace. At the outset of the ROC report, the investigator noted that the basis for Mr. Edington's complaint was that the water pressure to his home is inadequate. Mr. Edington acknowledged, however, that "he installed the water line and connection to his own home" and that he did not have a license or experience in installing water lines. The investigator also reported that the Edingtons' neighbors who share use of the well "are not having water problems." After completing his investigation, the ROC inspector assessed Mr. Wallace with a civil fine for contracting without a license, but concluded that "any water volume/pressure problems that Mr. Edington is experiencing probably were caused by Mr. Edington's own installation."

¶15 On September 7, 2007, the Cavanaugh's also filed a motion to dismiss on the basis that the Edingtons "have not established any actual damages or, for that matter, any legitimate claims upon which to base damages." On December 31, 2007, the trial court entered an unsigned minute entry granting the defendants' motions to dismiss "for the reasons set forth in the [m]otions." On February 1, 2008, the trial court entered a signed order of dismissal.

¶16 On June 30, 2008, the Edingtons filed a combined motion to alter or amend the judgment pursuant to Rule 59(1) and for relief from the judgment pursuant to Rule 60(c). On December 19, 2008, the trial court entered an unsigned minute entry denying the Edingtons' motion for relief pursuant to Rule 59(1) as untimely and denying their motion for relief pursuant to Rule 60(c) because they failed to "establish[] grounds for relief under this Rule." On January 20, 2009, the trial court issued its rulings in a signed order.

¶17 Daniel Edington timely appealed from the signed order. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101(C) (2003).

#### **DISCUSSION**

¶18 On appeal, Mr. Edington contends that the trial court erred by dismissing his complaint for failure to state a claim

because the facts he alleged, if proven, entitled him to relief.<sup>2</sup> The trial court dismissed the Edingtons' complaint on February 1, 2008. The Edingtons did not file their motion for relief pursuant to Rules 59(1) and 60(c), however, until June 30, 2008. Therefore, the trial court correctly denied the Edingtons' motion for relief pursuant to Rule 59(1) as untimely. See Ariz. R. Civ. P. 59(1) ("A motion to alter or amend the judgment shall be filed not later than 15 days after entry of judgment."). Accordingly, we lack jurisdiction to review the underlying judgment dismissing the Edingtons' complaint and our review is limited to the trial court's order denying the Edingtons' motion for relief from judgment pursuant to Rule 60(c). See Ariz. R. Civ. P. 60(c) (providing that a motion for relief under the mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, or fraud provisions must be filed "not more than six months after the judgment or order").

¶19 We uphold a trial court's denial of a motion for relief under Rule 60(c) absent a clear abuse of discretion. *Rosen v. Bd. of Med. Exam'r*, 185 Ariz. 139, 143, 912 P.2d 1368, 1372 (App. 1995). A court abuses its discretion when the

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<sup>2</sup> Mr. Edington also argues that the trial court erred by failing to apply a less stringent standard to him as a pro se litigant. There is no special leniency, however, for pro se litigants and they are "held to the same standards expected of a lawyer." *Kelly v. NationsBanc Mortgage Corp.*, 199 Ariz. 284, 287, ¶ 16, 17 P.3d 790, 793 (App. 2000).

reasons given for the court's conclusions are "clearly untenable, legally incorrect, or amount to a denial of justice." *State v. Chapple*, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983).

¶10 As set forth in Rule 60(c), the court:

may relieve a party . . . from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(d); (3) fraud . . ., misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

When "relief is sought under any of the provisions of Rule 60(c), the litigant must also establish that relief was sought promptly and that a meritorious claim or defense existed." *Jepson v. New*, 164 Ariz. 265, 273, 792 P.2d 728, 736 (1990); see also *Estate of Page v. Litzenburg*, 177 Ariz. 84, 93, 865 P.2d 128, 137 (App. 1993) (explaining that a movant may obtain relief under Rule 60(c)(3) only upon a showing of a meritorious defense that he was prevented from fully presenting before judgment because of the other party's misconduct).

¶11 In their motion, the Edingtons requested Rule 60(c) relief under the provisions for mistake, inadvertence, surprise, excusable neglect (Rule 60(c)(1)); newly discovered evidence (Rule 60(c)(2)); and fraud (Rule 60(c)(3)). As set forth in their motion, the basis for the Edingtons' claim for relief is that the defendants "withheld" two documents that were subject to discovery. As reflected in the first attached exhibit, a third-party pump company measured the well on February 11, 2003, before the Edingtons' purchased their property, and documented that the well "stabilized at 70 ft. with a 37.5 [gallons per minute] discharge for 40 minutes." At the request of the owner, the test was then stopped and the "well recovered to 50 ft. in 50 seconds." In their motion, the Edingtons claimed that the well test "clearly show[s]" that the defendants' representation that the well produced 37.5 gallons per minute was "fraudulent" because the well "crash[ed]" after 40 minutes. The Edingtons also claimed that the defendants failed to disclose a "dossier" compiled by one of their neighbors who shared use of the well. The second exhibit reflects that the "dossier" is the neighbor's notes of her communications with the Edingtons, the police, and the defendants' attorneys regarding the well. In the motion, the Edingtons argue that these notes "clearly demonstrate a known conspiracy to hold meetings without the Edington[s]." Neither document on its face substantiates the Edingtons' claims

of fraud and misrepresentation. Therefore, the trial court did not abuse its discretion in denying the Edingtons' motion for Rule 60(c) relief.

#### **CONCLUSION**

¶12 For the foregoing reasons, we affirm the trial court's denial of the Edingtons' motion for relief from judgment pursuant to Rule 60(c).

/s/  
PHILIP HALL, Judge

CONCURRING:

/s/  
SHELDON H. WEISBERG, Presiding Judge

/s/  
JOHN C. GEMMILL, Judge