DIVISION ONE
FILED: 01-28-2010
PHILIP G. URRY, CLERK
BY: DN

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DAMIAN DUDLEY,	)	1 CA-CV 09-0096
	)	
Petitioner/Appellant,	)	DEPARTMENT D
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
MARICOPA COUNTY FOURTH AVENUE JAIL COMMANDER,	)	Rule 28, Arizona Rule of Civil Appellate Procedure)
	)	
Respondent/Appellee.	)	

Appeal from the Superior Court in Maricopa County

Cause No. LC2008-000076-001 DT

The Honorable Douglas L. Rayes, Judge

AFFIRMED

Damian Dudley — Phoenix
Appellant *in propria persona*

Iafrate & Associates — Phoenix
By Michele M. Iafrate
Attorneys for Appellee

O R O Z C O, Judge

¶1 Damian Dudley (Appellant) appeals from the trial court's December 17, 2008 Minute Entry that denied his request to

vacate the court's May 8, 2008 Minute Entry.[1] For the reasons that follow, we affirm the trial court's December 17, 2008 Minute Entry.

FACTS AND PROCEDURAL BACKGROUND

¶2 While Appellant was incarcerated on January 2, 2008, a fight of approximately twenty-five to thirty inmates broke out. Based on Appellant's alleged involvement in the fight, a disciplinary action report (DAR) was issued for Appellant. As a result of the DAR, Appellant received fifteen days of full restriction and fifteen days in disciplinary segregation. On January 7, 2008, Appellant appealed the disciplinary decision to the Jail Commander, who denied his appeal. Appellant then filed a petition for writ of habeas corpus, which the trial court treated as a petition for special action.

¶3 On May 1, 2008, the trial court held an evidentiary hearing (Evidentiary Hearing) regarding the January 2, 2008 incident and resulting DAR. Appellant testified at the Evidentiary Hearing. On May 8, 2008, the trial court issued a

[1] Appellant references the "May 6, 2008 Minute Entry" throughout his briefs. The trial court's minute entry is dated May 6, 2008, but was electronically filed May 8, 2008. For purposes of this decision, we refer to the document as the "May 8, 2008 Minute Entry." Additionally, Appellant's notice of appeal is from the trial court's December 17, 2008 Minute Entry. However, the trial court's December 17, 2008 Minute Entry was not signed, see *infra* n.2. It was subsequently signed and electronically filed on April 22, 2009. For purposes of this decision, we refer to the document as the December 17, 2008 Minute Entry.

signed minute entry ruling that dismissed Appellant's special action and denied the requested relief. Appellant filed a notice of appeal to this Court on July 25, 2008. On October 1, 2008, this Court dismissed the appeal as untimely pursuant to Arizona Rule of Civil Appellate Procedure 9(a) and (b). Appellant contended that he never received a copy of the trial court's May 8, 2008 Minute Entry. Our order dismissing Appellant's appeal suggested that he may "file a request in the superior court to vacate the May 8 order and re-enter it on the ground he did not receive it."

¶4 On October 6, 2008, Appellant filed a request with the trial court to vacate and re-enter the May 8, 2008 Minute Entry on the ground that he did not receive a copy. In an unsigned minute entry dated December 17, 2008, the trial court denied Appellant's request. On January 6, 2009, Appellant filed a timely notice of appeal to this Court from the December 17, 2008 Minute Entry. As the December 17, 2008 Minute Entry did not comply with Arizona Rule of Civil Procedure 58(a),[2] on March 23, 2009, this Court issued an order pursuant to *Eaton Fruit Co. v. California Spray-Chemical Corp.*, 102 Ariz. 129, 426 P.2d 397

[2] The trial court's December 17, 2008 Minute Entry was not signed. In part, Rule 58(a) states: "all judgments shall be in writing and signed by a judge or a court commissioner duly authorized to do so." Additionally, unless otherwise specified, hereafter, an Arizona Rule of Civil Procedure is referred to as "Rule ___."

(1967), suspending the appeal. On April 22, 2009, the trial court filed a signed order that complied with Rule 58(a).

¶5 We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-2101.B (2003) and -120.21.A.1 (2003).

DISCUSSION

¶6 Appellant argues the December 17, 2008 Minute Entry should be vacated to "allow the normal appeal time frame to run" so that Appellant may "appeal on the merits" of his case. Specifically, Appellant contends the trial court abused its discretion by refusing to vacate the May 8, 2008 Minute Entry pursuant to Rule 60(c)(6).[3] Appellant's argument is essentially that he is entitled to a delayed appeal.

¶7 We review a trial court's ruling on a motion for relief from an order pursuant to Rule 60(c) for an abuse of discretion. *State ex rel. Indus. Com'n v. Word*, 221 Ariz. 283, 286, ¶ 11, 211 P.3d 1267, 1270 (App. 2009). An appellate court will affirm the decision of the trial court "where any reasonable view of the facts and law might support the judgment of the trial court."

[3] Preliminarily, we note that Appellant did not cite Rule 60(c)(6) in either his "Request to Vacate Order and Re-Enter It" or in his "Reply to Respondent's Response to Petitioner's Request to Vacate Order and Re-Enter It." However, we understand both documents to request Rule 60(c) relief and address the issue accordingly. Additionally, Appellee neither pointed this out below or on appeal, nor does Appellee allege any prejudice because of Appellant's failure to cite Rule 60(c).

City of Phoenix v. Geyler, 144 Ariz. 323, 330, 697 P.2d 1073, 1080 (1985). "[O]n appeal from denial of Rule 60(c) relief, the trial court will be sustained unless 'undisputed facts and circumstances require a contrary ruling[.]'" *Id.* (quoting *Coconino Pulp and Paper Co. v. Marvin*, 83 Ariz. 117, 121, 317 P.2d 550, 552 (1957)).

¶8 When a party moves for Rule 60(c) relief to extend the time for an appeal, the party must demonstrate it has met the factors our supreme court adopted in *Geyler*. *Haroutunian v. Valueoptions, Inc.*, 218 Ariz. 541, 549, ¶ 20, 189 P.3d 1114, 1122 (App. 2008); *see Geyler*, 144 Ariz. at 328, 697 P.2d at 1078. The "party must demonstrate: (1) that it did not timely receive notice that the judgment had been entered; (2) that it promptly filed a motion after actually receiving such notice; (3) that it exercised due diligence, or had a reason for the lack thereof, in attempting to learn the date of the decision; and (4) that no party would be prejudiced." *Haroutunian*, 218 Ariz. at 549, ¶ 20, 189 P.3d at 1122.

¶9 In denying Appellant's request to vacate the May 8, 2008 Minute Entry and re-enter it, the trial court did not explicitly address each of the four *Geyler* elements. In its December 17, 2008 Minute Entry, the court simply stated "[t]he Court has considered [Appellant's] Request to Vacate Order and Re-Enter It, Respondent's Response and [Appellant's] Reply. IT

IS ORDERED denying [Appellant's] Request to Vacate Order and Re-Enter It."[4] The record in this case demonstrates that there was no abuse of discretion when the trial court denied Appellant's request for Rule 60(c) relief.

¶10 The first *Geyler* factor is absence of notice of the entry of judgment. 144 Ariz. at 332, 697 P.2d at 1082. In this case, the May 8, 2008 Minute Entry, which was the final judgment, was electronically filed on May 8, 2008. Appellant contends he did not receive a copy of the May 8, 2008 Minute Entry. However, Appellee counters that the electronically generated copy must have been delivered to Appellant because all other minute entries in the case were distributed in similar fashion, and he presumably received those minute entries. Appellee further asserts the May 8, 2008 Minute Entry contained Appellant's name, booking number and was routed to him through "inter-office mail" to the jail. We defer to the trial court's resolution of "disputed questions of fact or credibility" where, as is the case here, there is support in the record for the trial court's decision. *Geyler*, 144 Ariz. at 329, 697 P.2d at 1079. We find the trial court did not abuse its discretion as it could have properly found Appellant received notice of the May 8, 2008

[4] Trial judges are generally not required to give reasons for discretionary rulings. *Geyler*, 144 Ariz. at 329 n.3, 697 P.2d at 1079 n.3. However, some explanation assists in the review of a case on appeal. *Id.*

Minute Entry. In finding that Appellant received notice of the minute entry, he cannot meet the remaining *Geyler* factors.

¶11 In addition to satisfying the *Geyler* factors, an appellant seeking relief must meet "more stringent standards" than those of Rule 60(c) by showing some "unique," "extraordinary," or "compelling" circumstances in order for relief to be granted. *Geyler*, 144 Ariz. at 328, 697 P.2d at 1078 ("*The party seeking delayed appeal* must, therefore, not only make the showing generally required for relief under Rule 60(c), *but must also meet the more stringent standards* of *Rodgers v. Watt*.") (Emphasis added.) Appellant has failed to allege or present evidence regarding any compelling, unique, or extraordinary circumstances that should be considered when determining whether Rule 60(c) relief is appropriate. Appellant simply states that the trial court's May 8, 2008 Minute Entry should be vacated to permit him to "appeal on the merits."

¶12 We conclude that Appellant could not meet the *Geyler* factors required for Rule 60(c) relief. Additionally, Appellant did not present any "extraordinary," "unique," or "compelling" reasons justifying relief. Appellant has not met his burden and, therefore, the trial court did not abuse its discretion in denying Appellant's request for a delayed appeal.

CONCLUSION

¶13 For the foregoing reasons, we affirm the trial court's order denying Appellant's request to vacate the May 8, 2008 Minute Entry and re-enter it.

/s/
_____
PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/s/
_____
DIANE M. JOHNSEN, Judge

/s/
_____
JON W. THOMPSON, Judge