

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



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FILED: 06-08-2010
PHILIP G. URRY, CLERK
BY: GH

MELINDA GABRIELLA VALENZUELA,) 1 CA-CV 09-0099
)
Plaintiff/Appellant,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
STATE OF ARIZONA,) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
Defendant/Appellee.)
)
)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2008-023601

The Honorable Joseph B. Heilman, Judge

AFFIRMED

Terry Goddard, Attorney General Phoenix
By Daniel P. Schaack, Assistant Attorney General
Attorneys for Appellee

Melinda Gabriella Valenzuela Florence
Appellant

O R O Z C O, Judge

¶1 Melinda Gabriella Valenzuela (Valenzuela) appeals the
trial court's dismissal of claims Valenzuela brought against the

State of Arizona (the State). For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 On May 18, 2007, Valenzuela filed a complaint against the State. Valenzuela alleged an assistant attorney general had used inappropriate language to describe Valenzuela in a pleading in a prior lawsuit to which Valenzuela was a party. Valenzuela's complaint further alleged an assistant attorney general defamed and slandered Valenzuela and, as a result, Valenzuela experienced "pain & suffering," embarrassment and humiliation. On October 20, 2008, Valenzuela filed a motion for entry of default against the State because the State had neither responded to the complaint nor asked for an extension of time.

¶3 On November 6, 2008, the State filed a motion to dismiss Valenzuela's complaint arguing Valenzuela would not be entitled to relief under any interpretation of the facts in the complaint. The State argued that pursuant to Arizona Revised Statutes (A.R.S.) section 31-201.01 (2002), causes of action a

¹ Pursuant to Arizona Rule of Civil Appellate Procedure 13(a)4, an appellant's opening brief must contain a statement of facts with "appropriate references to the record." This Court may disregard statements of facts that do not comply with Rule 13. *Lansford v. Harris*, 174 Ariz. 413, 417 n.1, 850 P.2d 126, 130 n.1 (App. 1992). Accordingly, we do not consider Valenzuela's statement of facts because Valenzuela fails to cite to the record as required. In this case, the facts set out in the decision are based on our own examination of the record and the State's answering brief.

prison inmate may assert against the government and its employees are limited to actions involving "serious personal injury." The State argued that even under the most liberal of constructions, Valenzuela's complaint did not allege a physical injury sufficient to meet Arizona's statutory requirement. Valenzuela responded alleging that as a result of the language in the motion from the prior action, Valenzuela was "assaulted by state officials" and now has "long term and permanent" injuries.

¶4 In a December 23, 2008 minute entry, the trial court addressed both Valenzuela's motion for entry of default judgment and the State's motion to dismiss. The court set aside the entry of default. See Ariz. R. Civ. P. 55(a)(2). The court based its decision, in part, on Rule 55(e) of the Arizona Rules of Civil Procedure, which states that "[n]o judgment by default shall be entered against the state . . . unless the claimant establishes a claim or right to relief by evidence satisfactory to the court." The court also noted that when deciding whether to enter a default against the State, "the Court is required to initially find that the defaulting party has shown that it has a right to the relief prayed for in its complaint." The court concluded that Valenzuela's complaint was "devoid of any fact, much less any specific fact, from which the Court could conclude that [Valenzuela] suffered any 'serious physical injury'" as required by A.R.S. § 31-201.01. The trial court then granted the State's

motion to dismiss Valenzuela's claims and dismissed Valenzuela's complaint without prejudice.

¶15 Valenzuela timely appealed. We have jurisdiction pursuant to A.R.S. § 12-2101.B (2003).

DISCUSSION

¶16 Valenzuela's statement of the issues presented for review states:

Valenzuelas opening Brief Does challenge the ground in which the trial Court granted the Summary Judgment In Error and seeks review of That Ruling. The court did not correctly look at The case as It Should not have Been Dismissed But the court Did and when [Valenzuela] tried to address it the Court Just Ignored [Valenzuela] and [the] other Cases were Dismissed Based on this counsel comments which were totally Improper as admitted By the Court.

¶17 Valenzuela fails to develop the issues presented for review and cites no legal authority to support the issues. Merely mentioning an argument is insufficient. *State v. Moody*, 208 Ariz. 424, 452 n.9, ¶ 101, 94 P.3d 1119, 1147 n.9 (2004) ("[O]pening briefs must present significant arguments, supported by authority, setting forth an appellant's position on the issues raised. Failure to argue a claim usually constitutes abandonment and waiver of that claim.") (quoting *State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989)); *Polanco v. Indus. Comm'n of Ariz.*, 214 Ariz. 489, 491 n.2, 154 P.3d 391, 393 n.2 (App. 2007) (failure to develop and support argument waives issue on

appeal); see also ARCAP 13(a)6 (an argument in an opening brief "shall contain . . . citations to the authorities, statutes and parts of the record relied on"). Although Valenzuela is appearing in propria persona, pro se litigants 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).²

¶8 Even if we were to reach Valenzuela's arguments, they would fail. In the complaint, Valenzuela alleged that the State's use of certain language in a pleading in a prior lawsuit to which Valenzuela was a party caused Valenzuela "emotional distress severely, mental anguish," and ridicule from State officials. Valenzuela does not argue that such emotional distress and mental anguish resulted in any form of physical injury; nor has Valenzuela alleged that the State's act created a substantial risk of death, disfigurement, or prolonged impairment of any bodily organ as required by A.R.S. § 31-201.01.L and N.2. Therefore, under A.R.S. § 31-201.01.L and N.2, the trial court properly dismissed Valenzuela's complaint. See *Tripati v. State*, 199 Ariz. 222, 225, ¶ 9, 16 P.3d 783, 786 (App. 2000) (holding

² Although Valenzuela does cite some legal authority in the reply brief, we do not consider arguments raised for the first time in a reply brief. *Phelps v. Firebird Raceway, Inc.*, 210 Ariz. 403, 404 n.1, ¶ 5, 111 P.3d 1003, 1004 n.1 (2005) (appellate court may decline to address an issue first raised in a reply brief).

that "section 31-201.01(L) limits inmates' tort claims against the State to those involving serious physical injury").

CONCLUSION

¶9 For the foregoing reasons, we affirm the trial court's dismissal of Valenzuela's claims against the State.

/S/

PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

DANIEL A. BARKER, Judge

/S/

LAWRENCE F. WINTHROP, Judge