DIVISION ONE
FILED: 04/29/10
PHILIP G. URRY, CLERK
BY: JT

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ROBERT EARL KRONCKE, Plaintiff/Appellant, v. CITY OF PHOENIX; MARVIN A. SONDAG; PETER VAN HAREN, Defendants/Appellees.	)	1 CA-CV 09-0526 DEPARTMENT E **MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2004-000775

The Honorable Robert A. Budoff, Judge

AFFIRMED

Robert Earl Kroncke — Florence
In Propria Persona

Iafrate & Associates — Phoenix
By Michele M. Iafrate
Courtney R. Cloman
Attorneys for Appellees

H A L L, Judge

¶1 Robert Earl Kroncke (Appellant) appeals the trial court's order denying his motion for relief from the judgment dismissing his lawsuit. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY[1]

¶2 In February 1994, Appellant was arrested and charged after a multi-jurisdictional police investigation into a series of sexual assaults in Phoenix, Mesa, and Tempe. He was convicted of multiple counts of sexual assault, sexual abuse, kidnapping, aggravated assault, and child molestation, and is currently serving consecutive terms of imprisonment totaling 326.5 years.

¶3 In January 2004, Appellant filed suit against various defendants, including Appellees. His complaint alleged violations of his constitutional rights, abuse of process, conversion of property, liability under 42 U.S.C. § 1983, and tort liability relating to his 1994 arrest and subsequent criminal trial. Specifically, Appellant claimed that the police wrongfully impounded and disposed of property that they had removed from the vehicle Appellant was using at the time of his arrest. The trial court dismissed Appellant's claims against all defendants. Appellant filed his first appeal, and in

[1] We state portions of the facts and procedural history from our previous memorandum decision in *Kroncke v. City of Phoenix*, 1 CA-CV 07-0827 (Ariz. App. May 20, 2008) (mem. decision).

Kroncke v. City of Phoenix, 1 CA-CV 05-0132 (Ariz. App. Nov. 10, 2005), we affirmed the trial court's dismissal with respect to defendants that had not been served, but vacated the dismissal vis-à-vis defendants who were properly served. *Id.* at ¶ 1.

¶4 Appellant filed a Rule 60(c) motion for relief from the dismissal of the unserved defendants with the trial court on December 20, 2005. *See* Ariz. R. Civ. P. 60(c). In the motion, Appellant argued that the judgment was void and attributable to excusable neglect. On January 27, 2006, we denied Appellant's motion for reconsideration of our decision in his first appeal. On February 13, 2006, Appellant filed a petition for review with the Arizona Supreme Court.

¶5 The parties continued to submit filings and motions to the trial court during the pendency of the petition for review. On February 16, 2006, the trial court granted a motion to strike Appellant's Rule 60 motion for relief. On March 27, 2006, Appellant moved to amend his Rule 60 motion, stay the ruling on the amended motion, and reassign the case to a previously assigned judge. On July 12, the trial court granted a motion to strike Appellant's amended motion, and denied the motion to stay and motion to reassign. Appellant filed his second appeal. The supreme court denied Appellant's February petition for review on August 8, 2006.

¶6 On April 26, 2007, we affirmed the trial court's order striking the amended motion for Rule 60 relief. *See Kroncke*, 1 CA-CV 06-0563, at ¶ 4. We reasoned that striking the motion was justified for two reasons: (1) the appeals court did not have jurisdiction to consider the motion while a relevant appeal was pending, and (2) the motion was an impermissible collateral attack on our prior appellate decision. *Id.* Appellant filed a second amended Rule 60 motion on May 30, 2007, and a third amended Rule 60 motion on June 18, 2007. In both motions, Appellant argued, inter alia, that the judgment was void and that Appellant should be granted relief because of excusable neglect.

¶7 The trial court granted Appellees' motion to strike the two amended Rule 60 motions in July 2007, but did not enter a signed order until October 5, 2007. On October 4, 2007, Appellees filed a motion for judgment on the pleadings with respect to the served defendants. Appellant filed his third notice of appeal on October 16, 2007. The court granted the Appellees' motion on November 7, 2007, and Appellant amended his notice of appeal to include an appeal from the motion for judgment on the pleadings on November 21, 2007.

¶8 On May 20, 2008, we again affirmed the trial court's orders striking the amended Rule 60 motions and granting

judgment on the pleadings. *Kroncke*, 1 CA-CV 07-0827 at ¶ 15. We reasoned that Appellant's amended Rule 60 motions were "impermissible collateral attacks on this court's previous Memorandum Decision." *Id.* at ¶ 11. We noted that Appellant failed to present any of the arguments he asserted on appeal before the trial court, and "therefore, we [did] not consider them on appeal." *Id.* at ¶ 12. Appellant filed a petition for review with the supreme court on June 20, 2008, and it was denied on October 9. Our mandate issued on November 14.

¶9 Meanwhile, on October 23, 2008, the Maricopa County Superior Court issued an administrative order limiting Appellant's ability to file court documents because of his history of vexatious litigation. The court found that Appellant had, inter alia, "consistently and repeatedly filed frivolous lawsuits and motions," "repeatedly attempted to re-urge arguments already decided against him with finality," and "ma[de] disparaging and disrespectful comments about the Court as an institution and about individual judges." Therefore, pursuant to its inherent power, the court classified Appellant as a "vexatious litigator," and required him to obtain leave from the presiding judge before filing any new causes of action, pleadings, motions, or other documents.

¶10 On January 8, 2009, almost two months after the mandate issued in 1 CA-CV 07-0827, Appellant submitted a motion in that case entitled "Motion for Permission to File a Motion for Relief from Judgement [sic] as to the Void Trial Court Judgement [sic]."[2] We issued an order on February 20, 2009 (February Order) taking no action on the motion, and "offering no opinion as to the merits of any motion for relief that might subsequently be filed." We further stated that our decision did not "preclude appellant from seeking relief from the judgment [on the pleadings] in the superior court."

¶11 Appellant moved for leave to file a supplemental motion for relief from the judgment on the pleadings, and the presiding judge granted him leave to file on April 15. On the same day, Appellant filed his supplemental motion for relief, which the trial court denied on July 9, 2009. Appellant filed a

[2] Appellant's purpose for this motion is unclear. The motion requested permission to file a motion in the superior court, but the court's administrative order specifically requires Appellant to seek permission for such motions from the presiding judge of the Maricopa County Superior Court, rather than the Court of Appeals. If Appellant was seeking review of the administrative order itself, the procedural context was improper, and in any event we had no jurisdiction to provide such review. *See* Ariz. Rev. Stat. (A.R.S.) § 12-2101 (2003) (including no jurisdictional basis for appeal of an administrative order); *see also Devenir Assocs. v. City of Phoenix*, 169 Ariz. 500, 502, 821 P.2d 161, 163 (1991) (holding that jurisdiction statutes create and control the right of appeal).

notice of appeal from the trial court's denial of Appellant's supplemental motion on July 23, 2009.

DISCUSSION

¶12 Appellant raises multiple issues on appeal. We address each of them in turn.

I. Rule 60 Relief from Judgment

¶13 Appellant seeks relief from the trial court's order entered March 1, 2005 dismissing claims against both served and unserved defendants. Appellant contends the judgment is either void for lack of jurisdiction or excusable neglect. We have already twice affirmed the trial court's rejection of Appellant's motion for relief from the judgment. *See Kroncke*, 1 CA-CV 06-0563 (affirming an order striking the Rule 60 motion as an impermissible collateral attack on a prior appellate decision); *Kroncke*, 1 CA-CV 07-0827 (affirming another order striking new, amended Rule 60 Motions as impermissible collateral attacks on our memorandum decisions).

¶14 Appellant nonetheless attempts to evade our mandates by arguing that our February 20 Order "implicitly overturn[ed]" the prior appellate decisions. Appellant cites the language in the Order asserting that 1 CA-CV 07-0827 "declined to address" the court's grant of judgment on the pleadings, and thus did not preclude a subsequent motion in the trial court for relief from

that judgment. As we understand Appellant's argument, he contends that this statement enables him to move for relief from any prior trial court decision on a Rule 60 motion in which the resolution did not reach the merits of his argument for relief, even if we have already affirmed the judgment on appeal.

¶15 Appellant's contention that we should revisit an issue we have already finally decided seeks to reverse the standing law of the case. Law of the case doctrine provides that "if an appellate court has ruled upon a legal question and remanded for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case." *Flores v. Cooper Tire & Rubber Co.*, 218 Ariz. 52, 57, ¶ 23, 178 P.3d 1176, 1181 (App. 2008) (citations omitted). It is well-settled that an appellate decision "is, and must be, binding and controlling upon all inferior tribunals else there would never be an end to litigation." *O'Neil v. Martin*, 66 Ariz. 78, 84, 182 P.2d 939, 943 (1947).

¶16 Our February Order took no position on Appellant's request for leave to file in the superior court, and did not change the law of the case. Appellant filed the motion leading to the Order well after our mandate had issued. The motion requested relief we had no power to provide: leave to file a

motion in the superior court under the administrative order. Additionally, in our prior memorandum decision, we clearly concluded that Appellant waived his contention that the court erred by granting judgment on the pleadings for the first time on appeal. *Kroncke*, 1 CA-CV 07-0827 at ¶ 12 (refusing to allow Appellant to raise the issue because he "failed to present any of these arguments to the trial court"). Thus, the February Order permitting Appellant to relitigate this forfeited issue in the trial court was improvidently issued. In any event, it did not change the binding nature of our prior decisions affirming the March 1, 2005 judgment.

¶17 This appeal marks the third time Appellant has presented us with the argument that the trial court erred in failing to relieve him from the March 1, 2005 judgment as void or a product of excusable neglect. On both prior occasions, we held that Appellant's Rule 60 motions were impermissible collateral attacks on our decision in 1 CA-CV 05-0132. Our prior holdings are the law of the case, and we will not deviate from them.

II. Leave to File and Review of the Administrative Order

¶18 Appellant argues that when the trial court refused to rule on his January 8, 2009 motion for leave to file a supplemental motion for relief from the November 7, 2007

judgment, filed pursuant to the superior court's administrative order requiring him to seek leave before filing court documents, it erroneously and implicitly denied his motion. He also contends that the administrative order deprives him of his due process right to submit filings on his behalf.

¶19 Preliminarily, we note that we only have jurisdiction to review issues in which the trial court makes a "final judgment," and the statute controlling appellate jurisdiction does not provide for appeal of an administrative order. *See* Ariz. Rev. Stat. (A.R.S.) § 12-2101(B) (2003); *Grand v. Nacchio*, 214 Ariz. 9, 15, ¶ 12, 147 P.3d 763, 769 (App. 2006). Although Arizona's Constitution does not contain a provision requiring us to decline jurisdiction for lack of standing, *Brewer v. Burns*, 222 Ariz. 234, 237, ¶ 11, 213 P.3d 671, 674 (2009), for policy reasons we impose a "rigorous standing requirement," compelling plaintiffs to allege "a distinct and palpable injury," *Fernandez v. Takata Seat Belts, Inc.*, 210 Ariz. 138, 140, ¶ 6, 108 P.3d 917, 919 (2005). We review cases without such an injury only when they "involv[e] issues of great public importance that are likely to recur." *Id.*

¶20 In this case, the trial court made no decision at all on whether to grant Appellant leave to file. Instead, the presiding judge made the decision to grant leave in accordance

with the administrative order. Because Appellant was not aggrieved by the administrative order, he lacks standing to challenge its constitutionality on appeal. The presiding judge granted leave to file, so we perceive no injury justifying review of the administrative order in this case. We further conclude that Appellant's case is not of the exceptional, recurring variety that does not require standing. Administrative orders like the one issued against Appellant are exceptional by nature, and are used relatively sparingly against the most vexatious litigants. Accordingly, this case is not a proper procedural venue for review of the superior court's administrative order.

III. Appellate Rulings Based on Defenses Not Argued

¶21 Appellant broadly argues that in past decisions this court has ruled against him based on legal principles that were not considered by the trial court nor argued by either party, and contends that we rule on such alternative bases "only in cases involving pro se plaintiffs suing government entities which might cause taxes to be raised if plaintiffs were to win large judgments."

¶22 This is a spurious claim. It is well-settled law that we must affirm a trial court decision if it is correct for any reason, even if the parties did not raise the correct reason.

State v. King, 222 Ariz. 636, 637, ¶ 7, 218 P.3d 1093, 1094 (App. 2009) (citing *City of Phoenix v. Geyler*, 144 Ariz. 323, 330, 697 P.2d 1073, 1080 (1985)).

¶23 Appellant offers no evidence of disparate treatment of appeals by pro se litigants. Indeed, Appellant simply repeats an objection that we have already considered and rejected, concluding that the argument "mischaracterize[d] our analysis in *Kroncke*, 1 CA-CV 05-0132." *Kroncke*, 1 CA-CV 07-0827 at ¶ 13. Moreover, a brief review of our cases shows that we regularly affirm decisions on an alternative basis in cases involving both represented parties and non-governmental entities. *See, e.g.*, *Flores*, 218 Ariz. at 416 n.14, ¶ 26, 188 P.3d at 715 n.14 (applied to represented criminal defendant); *Warner v. Southwest Desert Images, LLC*, 218 Ariz. 121, 131, ¶¶ 26-27, 180 P.3d 986, 996 (App. 2008) (applied to represented civil litigant).

IV. Rule 11 Sanctions

¶24 Appellant argues that the court abused its discretion by not imposing sanctions under Arizona Rule of Civil Procedure 11(a) against Appellees for making various bad faith legal arguments and factual misrepresentations. We review a sanctions award under Rule 11 for an abuse of discretion, *State v. Shipman*, 208 Ariz. 474, 474, ¶ 3, 94 P.3d 1169, 1170 (App. 2004), but we apply de novo review to determine whether a

particular legal basis for awarding sanctions applies. *Id.* Arizona Rule of Civil Procedure 11(a) requires an attorney submitting a pleading to sign certifying his "belief formed after reasonable inquiry" that the pleading is "well grounded in fact," is "warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law," and "is not interposed for any improper purpose." If this rule is violated, the court "shall impose . . . an appropriate sanction." *Id.* We find nothing in the record to support Appellant's assertions that Appellees made knowing misrepresentations, and we do not perceive any bad faith in Appellees' legal arguments. Accordingly, the trial court did not abuse its discretion by denying sanctions.

CONCLUSION[3]

¶25 For the foregoing reasons, we affirm the trial court's order.

/s/
PHILIP HALL, Judge

CONCURRING:

/s/
SHELDON H. WEISBERG, Presiding Judge

/s/
JOHN C. GEMMILL, Judge

[3] We need not address the Appellant's argument that the court should award him costs because he is not the prevailing party on any issue presented in this case.