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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
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BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

DIANE R. WILLIAMS, a single ) 1 CA-CV 09-0546  
woman, )  
) DEPARTMENT E  
Plaintiff/Counterdefendant/ )  
Appellant, ) **MEMORANDUM DECISION**  
) (Not for Publication -  
v. ) Rule 28, Arizona Rules of  
) Civil Appellate Procedure)  
ADOLFO PABLO MORALES, )  
)  
Defendant/Counterclaimant/ )  
Appellee. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CV2008-052982

The Honorable Robert A. Budoff, Judge

**REVERSED AND REMANDED**

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Carmichael & Powell PC Phoenix  
By Perry E. Casazza  
Attorneys for Plaintiff/Counterdefendant/Appellant

Law Offices of Robert B. Stanewich Phoenix  
By Peter A. Boyle  
Attorneys for Defendant/Counterclaimant/Appellee

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O R O Z C O, Judge

¶1 Appellant Diane R. Williams (Williams) appeals the  
trial court's order granting Appellee Adolfo Pablo Morales's

(Morales) motion to strike Williams's appeal from the arbitration award filed March 6, 2009. For the following reasons, we reverse and remand the matter for proceedings consistent with this decision.

#### **FACTS AND PROCEDURAL HISTORY**

¶2 On August 12, 2008, Williams filed a complaint against Morales to recover damages incurred as a result of an automobile accident that involved both parties. Based on the amount of the award sought, the case was set for compulsory arbitration. On August 29, 2008, Morales filed an answer and counterclaim. An arbitration hearing was held on February 13, 2009. On March 6, 2009, the arbitrator filed his "Arbitration Award" (the Award) in favor of Morales. The arbitrator never filed a notice of decision with the trial court and altogether failed to award attorney fees or costs to either party in connection with the Award. Morales never filed a proposed form of award, or a form of award for attorney fees or costs.

¶3 In a letter dated March 30, 2009, Morales's counsel informed Williams that the appeal period had run and requested payment in satisfaction of the Award. On April 1, 2009, Williams filed an appeal from the Award and a motion to set for trial. Morales then filed a motion to strike Williams's appeal, arguing it was filed beyond the twenty-day period for appeals as provided

by Arizona Rule of Civil Procedure 77(a).<sup>1</sup> The trial court granted Morales's motion to strike and Williams filed a timely notice of appeal. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-120.21.A.1 and -2101.B (2003).

#### DISCUSSION

¶4 Williams argues the trial court erred when it struck her notice of appeal because the Award should have been deemed a "notice of decision" pursuant to Rule 76(a). Pursuant to Rule 76(a), "the arbitrator, after conducting the hearing, is required first to file a 'notice of decision' with the clerk of the superior court, and mail or deliver copies to all parties or their counsel on that same date." *Decola v. Freyer*, 198 Ariz. 28, 31, ¶ 9, 6 P.3d 333, 336 (App. 2000) (discussing Rule 5(a) of the Uniform Rules of Procedure for Arbitration).<sup>2</sup>

¶5 Specifically, Rule 76(a) states:

Within ten days after completion of the hearing, the arbitrator shall: (1) render a decision; (2) return the original superior court file by messenger or certified mail to the Superior Court Clerk; (3) notify the parties that their exhibits are available for retrieval; (4) notify the parties of the decision in

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<sup>1</sup> The Award was filed March 6, 2009; the appeal was filed approximately twenty-five days later, on April 1, 2009. Additionally, unless otherwise specified, hereafter, an Arizona Rule of Civil Procedure is referred to as "Rule \_\_\_\_."

<sup>2</sup> Rule 5(a) of the Uniform Rules of Procedure for Arbitration was transferred to Rule 76(a). See Ariz. R. Civ. P. 76(a), State Bar Committee Note.

writing (a letter to the parties or their counsel shall suffice); and (5) file the notice of decision with the court.

Within ten days of the notice of decision, either party may submit to the arbitrator a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs whether arising out of an offer of judgment, sanctions or otherwise, an affidavit in support of attorneys' fees if such fees are recoverable, and a verified statement of costs. Within five days of receipt of the foregoing, the opposing party may file objections. Within ten days of receipt of the objections, the arbitrator shall pass upon the objections and file one signed original award or other final disposition with the Clerk of the Superior Court and on the same day shall mail or deliver copies thereof to all parties or their counsel.

We have previously stated that the rule "clearly contemplates two separate filings by the arbitrator." *Bittner v. Superior Court*, 182 Ariz. 434, 436, 897 P.2d 736, 738 (App. 1995) (interpreting Rule 5(a) of the Uniform Rules of Procedure for Arbitration - since transferred to Rule 76(a)). It requires first that the arbitrator file a notice of decision. *Id.* The prevailing party then "submits, among other pleadings, a verified statement of costs, to which the opposing party may object. Following these procedural steps, the arbitrator then files 'the award.' This is the award from which a party may appeal; therefore, the filing of this award triggers the twenty-day appeal period." *Id.*

¶16 In *Bittner*, the arbitrator filed an "Arbitration Award" and on the same day filed a "Notice of Decision of Arbitrator." 182 Ariz. at 435, 897 P.2d at 737. After the prevailing party

filed a statement of costs requesting nearly \$400, the arbitrator filed an "Amended Arbitration Award" to include the costs. *Id.* The losing party appealed and the prevailing party subsequently filed a motion to strike the appeal as untimely. *Id.* The trial court denied the motion, finding the "Amended Arbitration Award" was the arbitrator's final decision from which an appeal could be taken. *Id.* We held the arbitrator's actions complied with the Rules and that he "merely misnamed his 'Arbitration Award' and 'Amended Arbitration Award' and thereby unnecessarily engendered confusion." *Id.* at 436, 897 P.2d at 738. In *Bittner*, "it would have been impossible to treat the 'Arbitration Award' as the final award, because at the time of its filing, the arbitrator did not know the prevailing party's amount of costs." *Id.*

¶7 In this case, the arbitrator failed to file a notice of decision and failed to allow the prevailing party, Morales, to request their fees and costs. See A.R.S. § 12-341 (2003); Rule 76(a). Like the arbitrator in *Bittner*, the arbitrator in this case misnamed the March 6, 2009 filing as an "Arbitration Award." Unlike the arbitrator in *Bittner*, however, the arbitrator in this case failed to comply with Rule 76(a). Like we did in *Bittner*, we will treat the Award as a notice of decision and apply the Rules accordingly.

¶8 Pursuant to Rule 76(b), "[u]nless a formal award or stipulation for entry of another form of relief is filed with the

court within 50 days from the date of filing the notice of decision, the notice of decision shall constitute the award of the arbitrator." Thus, if the arbitrator fails to file a formal award after following the procedural steps required by Rule 76(a), the notice of decision automatically becomes the arbitrator's award fifty days after it is filed. Rule 77(a) states that an appeal from an arbitration proceeding must be taken "within 20 days after the filing of the award or 20 days after the date upon which the notice of decision becomes an award under Rule 76(b), whichever occurs first."

¶19 Here, no formal award was filed. Therefore, the Award, which we treat as a notice of decision, became an award under Rule 76(b) fifty days after its March 6, 2009 filing. As a result, Williams was required to appeal, if she desired to, within seventy<sup>3</sup> days from March 6, 2009. Because she filed her appeal approximately twenty-five days after March 6, 2009, she timely appealed and was thus entitled to proceedings consistent with the rules governing compulsory arbitration.

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<sup>3</sup> We reach seventy days by adding Rule 76(b)'s fifty-day time period to Rule 77(a)'s twenty-day filing period.

**CONCLUSION**

¶10 For the reasons previously stated, we reverse the trial court's order granting Morales's motion to strike Williams's appeal and remand the matter for proceedings consistent with this decision.<sup>4</sup>

/S/

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PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

\_\_\_\_\_  
PATRICK IRVINE, Presiding Judge

/S/

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PHILIP HALL, Judge

<sup>4</sup> Williams raises two other issues on appeal regarding relief pursuant to Rule 60(c) and application of A.R.S. § 12-1512.A.3 (2003). Because we remand the matter based on Rule 76, we need not address these issues.