

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: 01/26/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

RUTHANNE WISNIEWSKI, an) 1 CA-CV 11-0108
individual and as Guardian of)
REGINA WISNIEWSKI, a minor child,) DEPARTMENT D
)
Plaintiff/Appellant,) **MEMORANDUM DECISION**
) (Not for Publication -
v.) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
CAROLYN LANGDON, an individual,)
)
Defendant/Appellee.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CV2008-007137

The Honorable Jeanne M. Garcia, Judge

AFFIRMED

Leavell & Rivera, P.L.C.
by Thomas H. Leavell
Attorneys for Plaintiff/Appellant

Phoenix

Best Law Firm
by Cynthia L. Best
Attorneys for Defendant/Appellee

Scottsdale

P O R T L E Y, Judge

¶1 Ruthanne Wisniewski ("Wisniewski") appeals various
rulings in favor of Carolyn Langdon ("Langdon"). She argues

that the trial court erred by considering Langdon's amended answer and counterclaims and by not ordering Langdon to pay sanctions or punitive damages. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Wisniewski and Langdon were domestic partners for approximately seven years. They purchased a house as tenants in common, and Wisniewski adopted a daughter who lived with them until the relationship ended in November 2007. Wisniewski moved out, but returned to their home and removed some furniture and other property. She subsequently filed a lawsuit alleging conversion because she believed that she was entitled to other property they had jointly acquired that remained in Langdon's possession.

¶3 The parties were unable to settle their dispute and the case proceeded to a bench trial. At the outset of the trial, Wisniewski moved to strike the amended answer. She argued that the amended answer, which included counterclaims, had never been filed or properly served pursuant to Arizona Rule of Civil Procedure 15(a)(2).¹ Langdon, however, argued that the amended answer was attached to the motion to amend, and that the

¹ "If a motion for leave to amend is granted, the moving party shall file and serve the amended pleading within ten days of the order granting the motion, unless the court otherwise orders." Ariz. R. Civ. P. 15(a)(2).

Rule 15(a)² violation had not been raised prior to trial. The court found that Wisniewski had known about the counterclaims in the amended answer since August 2009 and excused actual service pursuant Rule 1.³

¶14 Wisniewski also argued that six of Langdon's exhibits were not timely disclosed and should be precluded from being used at trial.⁴ Langdon asserted that Wisniewski had a list of all the exhibits in May 2009, had access to most of them, and was provided physical copies of documents several weeks prior to trial. The court excluded four exhibits that did not appear in Langdon's disclosure statement or were not disclosed until the week before the trial. The court did not, however, impose sanctions for the Rule 26.1 violations.

¶15 At the conclusion of the trial, the court ordered Langdon to return certain items to Wisniewski and to reimburse her for half of the value of the parties' jointly purchased household property. The court, despite Wisniewski's claim, refused to award her punitive damages because the court did not

² Unless stated otherwise, a "Rule" referenced in this decision is an Arizona Rule of Civil Procedure.

³ The court permitted Wisniewski to orally respond to each allegation in the amended answer.

⁴ Wisniewski also objected to an exhibit consisting of sixteen settlement letters from Langdon. See Ariz. R. Evid. 408. The court, however, allowed the exhibit to be only used for the limited issue of attorneys' fees. Wisniewski stipulated to admissibility of three exhibits and Langdon withdrew two challenged exhibits.

find that Langdon had engaged in any egregious behavior or had an evil mind. This appeal followed.

DISCUSSION

A. Sanctions

¶16 Wisniewski argues that the trial court erred when it refused to award her attorneys' fees and costs to compel Langdon to comply with Rule 26.1.⁵ We review a denial of sanctions for discovery violations for an abuse of discretion. *Jimenez v. Wal-Mart Stores, Inc.*, 206 Ariz. 424, 426, ¶ 5, 79 P.3d 673, 675 (App. 2003) (citation omitted).

¶17 Wisniewski filed her motion to compel discovery while the parties were discussing settlement. After briefing, the trial court found that postponing disclosure was justified because of the settlement negotiations but ordered Langdon to comply with a new disclosure deadline. The court, however, did

⁵ Wisniewski also argues that the court erred by not imposing sanctions on Langdon for untimely disclosing certain trial exhibits. We decline to address the argument because the request was not presented to the trial court. *Brown Wholesale Elec. Co. v. Safeco Ins. Co. of Am.*, 135 Ariz. 154, 158, 659 P.2d 1299, 1303 (App. 1982) (citation omitted) ("Matters not presented to the trial court cannot for the first time be raised on appeal."). We note, however, that even if the request had been made, we find no error. The court properly assessed whether the disclosure of each challenged document prejudiced Wisniewski and excluded those exhibits that were not identified in Langdon's initial disclosure statement, made available for review, or provided.

not find a disclosure violation. Consequently, the court did not err by denying the request for sanctions.

B. Amended Answer

¶8 Wisniewski next argues that the trial court abused its discretion by allowing the amended answer and counterclaims to be a part of the trial even though the pleading had not been filed or served after the motion to amend was granted. We review the issue de novo because whether Rule 1 permits a court to excuse strict compliance with Rule 15(a) involves an "interpretation of rules [which] poses questions of law." *McEvoy v. Aerotek, Inc.*, 201 Ariz. 300, 304, ¶ 17, 34 P.3d 979, 983 (App. 2001) (citation omitted). If the court properly construed Rule 1, we will affirm its ruling unless we find an abuse of discretion. *Lenze v. Synthes, Ltd.*, 160 Ariz. 302, 305, 772 P.2d 1155, 1158 (App. 1989) (citation omitted) ("[T]he trial court's discretionary exercise of power [to impose sanctions without compromising due process] is entitled to deference on appeal."); see also *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815, 826 (9th Cir. 2009) (citation omitted) (district court did not abuse its discretion by summarily denying sanctions request).

¶9 The Rules of Civil Procedure are designed "to secure the just, speedy, and inexpensive determination of every action." Ariz. R. Civ. P. 1; Fed. R. Civ. P. 1. A liberal

construction is appropriate to effectuate the purpose of the rules, *Union Interchange, Inc. v. Benton*, 100 Ariz. 33, 36, 410 P.2d 477, 479 (1966) (citations omitted), particularly in the context of amended pleadings. *Green Reservoir Flood Control Dist. v. Willmoth*, 15 Ariz. App. 406, 409, 489 P.2d 69, 72 (1971) (“[A]mendments will be liberally granted unless the adverse party is prejudiced.”).

¶10 Rule 15(a)(2) requires a party to “file and serve the amended pleading within ten days of the order granting the motion, unless the court otherwise orders.” Here, although Langdon did not separately file or serve the amended answer, the court found that Wisniewski had received it with the motion to amend, and never raised the defective service issue prior to trial. Moreover, the court allowed Wisniewski to respond to each allegation in open court, and she did not demonstrate any resulting prejudice. As a result, the court, knowing that Wisniewski had seen the answer and counterclaims, allowed them to ensure that any and all issues between the parties were resolved at trial. See *Foman v. Davis*, 371 U.S. 178, 181 (1962) (It is “contrary to the spirit of the [Rules] for decisions on the merits to be avoided on the basis of such mere technicalities.”); *Edwards v. Young*, 107 Ariz. 283, 284, 486 P.2d 181, 182 (1971) (citations omitted) (“[W]e give great weight to the federal interpretations of the rules.”).

Consequently, the court did not abuse its discretion by excusing strict compliance with Rule 15(a)(2).

C. Punitive Damages

¶11 Finally, Wisniewski challenges the court's failure to grant her request for punitive damages. We review a denial of punitive damages for an abuse of discretion. See *Maxwell v. Aetna Life Ins. Co.*, 143 Ariz. 205, 218, 693 P.2d 348, 361 (App. 1984).

¶12 "Punitive damages are awarded, not to compensate the injured party, but rather to punish the defendant for conduct shown to be outrageous, willful and malicious," *Huggins v. Deinhard*, 127 Ariz. 358, 359, 621 P.2d 45, 46 (App. 1980) (citations omitted), and to deter similar conduct by others. *Linthicum v. Nationwide Life Ins. Co.*, 150 Ariz. 326, 330, 723 P.2d 675, 679 (1986). In fact, they can be awarded only if the wrongdoer possessed an "evil mind," the requisite mental state. *Linthicum*, 150 Ariz. at 330-31, 723 P.2d at 679-80; see also Restatement (Second) of Torts § 908 (1979).

¶13 In *Linthicum*, our supreme court affirmed the reversal of a punitive damages award against a health insurance company that denied coverage to its insured without adequately investigating the claim or disclosing the medical basis for the denial. 150 Ariz. at 332, 723 P.2d at 681. Although the insurance company may have acted in bad faith, there was

insufficient evidence of an evil mind to sustain the award. *Id.* Similarly, here, the trial court determined that Wisniewski did not prove that Langdon acted outrageously or with an evil mind; it was merely the dissolution of a domestic partnership. See *Federoff v. Pioneer Title & Trust Co. of Ariz.*, 166 Ariz. 383, 388, 803 P.2d 104, 109 (1990) (citation omitted) (deferring to a trial court's factual findings "unless they are clearly erroneous or unsupported by any credible evidence"). Thus, the court did not abuse its discretion by not imposing punitive damages.

¶14 Wisniewski also requests attorneys' fees and costs on appeal. Because she did not prevail, we deny the request.

CONCLUSION

¶15 Based on the foregoing, we affirm the trial court's rulings and judgment. We also award Langdon her appellate costs upon compliance with Arizona Rule of Civil Procedure 21.

/s/

MAURICE PORTLEY, Judge

CONCURRING:

/s/

JON W. THOMPSON, Presiding Judge

/s/

JOHN C. GEMMILL, Judge