IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

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FILED: 02/14/2012
RUTH A. WILLINGHAM, CLERK
BY: DLL

FEDERAL HOME LOAN MORTGAGE CORPORATION, its assignees and/or successors,	)	No. 1 CA-CV 11-0126
	)	DEPARTMENT D
Plaintiff/Appellee,	)	
	)	**MEMORANDUM DECISION**
v.	)	(Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)
JAY LEVINE, an individual,	)	
Defendant/Appellant.	)	

Appeal from the Superior Court in Maricopa County

Cause No. CV2010-033602

The Honorable Benjamin E. Vatz, Judge

AFFIRMED

McCarthy Holthus & Levine — Scottsdale
By Jessica R. Kinney, Lakshmi Jagannath and Paul M. Levine
Attorneys for Plaintiff/Appellee

Jay Levine — Phoenix
Defendant/Appellant *In Propria Persona*

B R O W N, Judge

¶1 Jay Levine appeals from the trial court's judgment in favor of Federal Home Loan Mortgage Corporation ("Federal") in

its action against Levine for forcible detainer. For the following reasons, we affirm.

BACKGROUND[1]

¶2 In December 2010, Federal filed a forcible detainer complaint in the superior court pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-1173 (2003) and 12-1173.01 (2003). Federal alleged that on October 7, 2010, it purchased Levine's home in Tolleson ("the property") at a trustee's sale and that on October 22, 2010, Federal gave notice to Levine to vacate. Federal also alleged that Levine had failed to vacate the property by the date specified in the notice and requested the court issue a writ of restitution.

¶3 Levine filed a motion to dismiss, asserting, among other defenses, that Federal failed to properly serve him. He alleged that the individual who received service at Levine's home did not reside there and was not authorized to receive service on his behalf. Along with his motion, Levine filed an "Answer and Motion to Charge Plaintiffs' Counsel for the Crime of Filing False and/or Forged Document(s) into a Public Office." Levine repeated his objection to the service and affirmatively alleged that Federal had forged documents relating to the title

[1] "We view the facts in the light most favorable to sustaining the trial court's judgment." *Sw. Soil Remediation, Inc. v. City of Tucson*, 201 Ariz. 438, 440, ¶ 2, 36 P.3d 1208, 1210 (App. 2001).

of the property and "filed and/or recorded [them] into a public office in the State of Arizona." Based on the alleged forgery, Levine asked that the court dismiss the case and "criminally charge [Federal and Federal's] attorneys for their violations" of the fraud statutes. In both documents, Levine stated that he was "appearing specially and not generally."

¶4 Following a hearing, the court denied Levine's motion to dismiss, finding there was "good cause to overrule [the] objection regarding service" because Levine "filed responsive pleadings" and appeared at the hearing. Levine pleaded not guilty to forcible detainer and the court set trial for January 12.

¶5 On January 7, Levine filed a "Motion to Dismiss for Failure to Properly Notice Pursuant to A.R.S. §§ 33-361 & 33-1313"[2] and a motion to vacate the court's prior order. On January 10, Federal filed a motion for judgment on the pleadings. At the January 12 "trial," the court heard argument on the issue of jurisdiction. The court ruled that Levine had "waived that objection" and again denied Levine's motions to dismiss. The court then granted Federal's motion for judgment on the pleadings, found Levine guilty of forcible detainer, and

[2] Section 33-361 (2007) addresses a landlord's remedies for a tenant's violations of a lease. Section 33-1313 (2007) addresses notice in the context of communications between a residential landlord and tenant.

awarded Federal $400 in attorneys' fees and $419.92 in costs. Levine timely appealed.

DISCUSSION

¶6 Federal asserts that Levine's claim is moot because he no longer resides at the property. "A decision becomes moot for purposes of appeal where as a result of a change of circumstances before the appellate decision, action by the reviewing court would have no effect on the parties." *Vinson v. Marton & Assocs.*, 159 Ariz. 1, 4, 764 P.2d 736, 739 (App. 1988). Even assuming that Levine has vacated the property, we conclude the appeal is not moot because the judgment obligates Levine to pay attorneys' fees and costs. Therefore, we address the merits of Levine's appeal.

¶7 Levine first argues that the trial court was without jurisdiction to hear Federal's forcible detainer claim because Federal failed to properly serve him with the summons and complaint. Levine further asserts that the court erred in finding that he waived this jurisdictional objection.[3] We disagree.

[3] Levine asserts that as a pro per litigant he is entitled to be held to a "less stringent standard" than an attorney. However, an unrepresented party "is held to the same familiarity with required procedures and the same notice of statutes and local rules as would be attributed to a qualified member of the bar." *Copper State Bank v. Saggio*, 139 Ariz. 438, 441, 679 P.2d 84, 87 (App. 1983). Thus, as a pro per litigant, Levine "is

¶8 A "general appearance by a party who has not been properly served has exactly the same effect as a proper, timely and valid service of process." *Montano v. Scottsdale Baptist Hosp., Inc.*, 119 Ariz. 448, 452, 581 P.2d 682, 686 (1978). "A party has made a general appearance when he has taken any action, other than objecting to personal jurisdiction, that recognizes the case is pending in court." *Kline v. Kline*, 221 Ariz. 564, 569, ¶ 18, 212 P.3d 902, 907 (App. 2009). A party "cannot avoid the consequences of that appearance by resort[ing] to the jargon of 'special appearances.'" *Id.* at 571 n.10, 212 P.3d at 909 n.10. Levine filed his answer contemporaneously with his motion to dismiss and did not limit his answer to the issue of jurisdiction; instead, he challenged the merits of Federal's action at length and requested that the court "criminally charge" Federal and its attorneys. In challenging the merits of the complaint and petitioning the trial court for relief, Levine made a general appearance and thus waived his objection regarding service.[4]

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entitled to no more consideration than if he had been represented by counsel[.]" *Id.*

[4] In support of his argument regarding service, Levine cites *Ariz. Real Estate Inv., Inc. v. Schrader*, 226 Ariz. 128, 244 P.3d 565 (App. 2010). *Schrader* involved a forcible detainer action in which the defendant entered a special appearance in the trial court and initially challenged *only* the issue of personal jurisdiction. *Id.* at 129-30, ¶¶ 4, 7, 244 P.3d at 566-67. It was not until after the trial court ruled on the

¶9 Levine further argues that the "time limits for the action had lapsed" and that he did not receive sufficient notice of the proceeding against him. Levine cites A.R.S. § 33-361 for the contention that Federal "had thirty (30) days or less to initiate [its] action" against him. However, that section addresses a landlord's remedies for a tenant's violations of a lease and is not relevant to forcible entry and detainer actions following a trustee's sale. As to the sufficiency of notification, Levine's reliance on A.R.S. § 33-1313 is also misplaced, as it addresses notice in the context of communications between a residential landlord and tenant.

¶10 Levine also raises issues pertaining to Federal's right to title of the property, including allegations that Federal and its attorneys filed fraudulent documents with government offices and used a "robo signer" in the foreclosure process. We decline to address these issues because "[o]n the trial of an action of forcible entry or forcible detainer, the only issue shall be the right of actual possession and the merits of title shall not be inquired into." A.R.S. § 12-

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objection to service that Schrader entered a general appearance and contested the merits of the action. *Id.* We found this sufficient to avoid waiver of the issue of personal service for purposes of appeal. *Id.* at ¶¶ 6–7. *Schrader* is inapplicable to the issue of waiver of an objection to service as it applies in the trial court and, in any event, supports the proposition that in order to avoid waiver a party must address only the jurisdictional issue in his or her answer.

1177(A) (2003); *Curtis v. Morris*, 186 Ariz. 534, 534-35, 925 P.2d 259, 259-60 (1996). Moreover, the issue regarding Federal's alleged use of a "robo signer" is raised for the first time on appeal. *See Richter v. Dairy Queen of S. Ariz., Inc.*, 131 Ariz. 595, 596, 643 P.2d 508, 509 (App. 1982) (stating "an appellate court cannot consider issues and theories not presented to the court below").

¶11 Levine also raises issues regarding alleged impropriety and bias by the trial judge. For instance, Levine asserts that the judge conspired with Federal's counsel to "steal [Levine's] real property" and allowed counsel to "escape from custody" after Levine placed her "under arrest" for allegedly filing false documents. Levine further asserts he was denied his due process right to a fair trial because the judge "is tied in part to real estate" and it is therefore "in [his] best personal and pecuniary interest" to find Levine guilty of forcible detainer. These assertions have no merit.

¶12 "[A]djudicators are presumed to be fair and may be disqualified only upon a showing of actual bias; mere speculation regarding bias will not suffice." *Pavlik v. Chinle Unified Sch. Dist. No. 24*, 195 Ariz. 148, 152, 985 P.2d 633, 637 (App. 1999). We summarily reject Levine's vague allegations of

impropriety and bias, as he has pointed to no evidence in the record supporting such claims.[5]

CONCLUSION

¶13 For the foregoing reasons, we affirm the judgment of the trial court. In addition, subject to its compliance with Arizona Rule of Civil Appellate Procedure 21, we grant Federal's request for attorneys' fees and costs incurred on appeal pursuant to A.R.S. § 12-1178(A) (Supp. 2011).

/s/
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MICHAEL J. BROWN, Judge

CONCURRING:

/s/
_____
PETER B. SWANN, Presiding Judge

/s/
_____
JON W. THOMPSON, Judge

[5] As the appellant, Levine has the responsibility to "mak[e] certain the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised." *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995) (citing ARCAP 11). Because Levine has failed to provide this court with the transcripts of the hearings on his motions, we must presume the record supports the trial court's rulings and judgment. *Rapp v. Olivo*, 149 Ariz. 325, 330, 718 P.2d 489, 494 (App. 1986).