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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

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 03/08/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

FREANEL & SON GILBERT, LLC, ) No. 1 CA-CV 11-0179  
doing business as GILBERT TOWNE )  
CENTER, ) DEPARTMENT C  
)  
Plaintiff/Appellee, ) **MEMORANDUM DECISION**  
) (Not for Publication -  
v. ) Rule 28, Arizona Rules  
) of Civil Appellate  
ANGELA WILSON-GOODMAN, ) Procedure)  
)  
Defendant/Appellant. )  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CV 2006-007382

The Honorable Benjamin E. Vatz, Judge *Pro Tem*

**AFFIRMED**

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Gilbert, LLC

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By Angela Wilson-Goodman  
Defendant/Appellant In *Propria Persona*

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**D O W N I E**, Judge

¶1 Angela Wilson-Goodman appeals from certain post-judgment orders issued by the superior court. Finding no error, we affirm.

#### FACTS AND PROCEDURAL HISTORY

¶2 In 2008, Freanel & Son Gilbert, LLC ("Freanel"), obtained a judgment against three defendants jointly and severally, including Wilson-Goodman.<sup>1</sup> Wilson-Goodman filed a notice of appeal. Freanel subsequently sought a judgment debtor examination ("exam") of Wilson-Goodman. Wilson-Goodman filed various motions (and a special action petition) to preclude the exam and/or limit the information she must disclose to Freanel.

¶3 Several dates were set and continued for the judgment debtor exam. At a judgment debtor exam/oral argument held on March 2, 2009, which Wilson-Goodman attended, the court continued the matter to March 9, 2009. Wilson-Goodman did not appear on March 9. The court (Commissioner Nothwehr) reset the judgment debtor exam for March 16, ordered Wilson-Goodman to appear, and cautioned that a civil arrest warrant may issue if she failed to appear. Wilson-Goodman did not appear on

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<sup>1</sup> Only Wilson-Goodman is a party to this appeal, so we confine our discussion to her. The underlying judgment awarded Freanel \$36,689.71 in unpaid rent; \$13,394.93 for interest on unpaid rent through April 9, 2008, plus accruing interest; \$12,451.33 for "renovation and leasing commissions," plus accruing interest; attorneys' fees of \$34,730, plus accruing interest; and \$535.80 in costs.

March 16. The court denied Wilson-Goodman's previously filed motions to preclude the exam or limit its scope. It also held her in contempt, stating:

In prior proceedings, Defendant Angela Wilson-Goodman was present in Court. The Court ordered that she post a supersedeas bond or appear for a judgment debtor examination. She failed to comply with that order. The Court renewed the order, and specifically set the bond amount. Again, Angela Wilson-Goodman failed to comply with a direct order from the Court. She failed to appear for a court-ordered judgment debtor examination.

Based upon the direct orders from the Court, Defendant Angela Wilson-Goodman is in direct contempt from the Court.

The court set a sanctions hearing for April 7, 2009.

¶14 At the April 7 hearing, the court continued the judgment debtor exam to April 13, 2009. It affirmed the earlier contempt finding and ordered Wilson-Goodman to pay Freanel's counsel \$2,000 as a sanction.

¶15 Wilson-Goodman appeared for the judgment debtor exam on April 13, 2009. However, counsel for Freanel advised the court that Wilson-Goodman had provided insufficient documentation to complete the exam. Additionally, Wilson-Goodman "objected to several questions." After considering the parties' arguments, the court issued a detailed, signed minute entry ruling, overruling Wilson-Goodman's objections and ordering her to answer the questions posed and

produce specified documentation.<sup>2</sup> The court continued the judgment debtor exam and stated:

Judgment Debtor was initially directed to provide documentation months ago, and further delay will not be tolerated. Absent good cause for providing the documents, this Court will consider the failure to provide documentation as contempt.

¶6 In a memorandum decision filed May 20, 2010, this Court affirmed the underlying judgment against Wilson-Goodman in part and modified it in part. *Freanel & Son Gilbert, LLC v. Fashionable Expectations, LLC*, 1 CA-CV 08-0853, 2010 WL 2025325, at \*10, ¶ 44 (Ariz. App. May 20, 2010) (mem. decision). We found no error in the calculation of Freanel's damages, but modified the accrual date for interest and held that appellants should have received credit for their security deposit in the sum of \$2750. *Id.* The remainder of the judgment was affirmed. The superior court thereafter entered a Judgment on Mandate reflecting the modifications ordered by this Court.

¶7 In September 2010, Freanel sought a court order for Wilson-Goodman to appear for another judgment debtor exam. Freanel requested the same categories of documents it had previously sought. After unsuccessfully seeking to vacate the exam, Wilson-Goodman appeared for a November 30, 2010 exam, but

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<sup>2</sup> Commissioner Nothwehr itemized Wilson-Goodman's objections and addressed them in turn. As we discuss *infra*, this appeal relates to Wilson-Goodman's attempt to re-litigate these same objections two years later before Commissioner Vatz.

produced only her 2009 federal income tax return and again objected to several questions. The court (Commissioner Vatz) continued the exam and ordered the parties to submit supplemental information.

¶18 After reviewing the parties' filings and the case history, Commissioner Vatz issued the signed minute entry ruling that is at issue in this appeal ("the February 2, 2011 order"). Commissioner Vatz noted that Commissioner Nothwehr had been apprised of Wilson-Goodman's objections "to requests identical to those that are the subject of the current examination proceeding." Commissioner Vatz further noted that Commissioner Nothwehr had denied Wilson-Goodman's objections in a detailed ruling and concluded:

[Freanel] has been attempting to complete judgment-debtor examinations since November 2008. The record reflects ongoing efforts by Defendant Angela-Wilson Goodman [sic] to do all she can to block those efforts. Even after three rulings from Judge Nothwehr regarding her objections to [Freanel's] original areas of inquiry, she now disregards the law of the case by again objecting to those same areas. She does so notwithstanding her prior failure to seek appellate relief concerning the efficacy of those rulings. As a result, Plaintiff has suffered by having to incur additional attorney fees as well as delay in attempting to execute upon its judgment. The Court's resources and calendar have also been taxed by [Wilson-Goodman's] most recent objections and delaying tactics. As a pro se litigant, much more should be demanded. As a member of the Bar of Arizona, there is no excuse.

Commissioner Vatz ordered Wilson-Goodman to produce the documents Freanel requested and answer the questions posed. He further ruled Wilson-Goodman had engaged in "unjustified conduct," unreasonably delayed the proceedings, and engaged in an abuse of discovery, awarding Freanel \$2500 in attorneys' fees.

¶9 Wilson-Goodman timely appealed from the February 2, 2011 order. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(4).

#### **DISCUSSION**

##### **I. The February 2, 2011 Order**

¶10 Commissioner Vatz's February 2, 2011 order declined to substantively resolve Wilson-Goodman's objections because Commissioner Nothwehr had previously ruled on those same objections. Whether we analyze the February 2, 2011 order under the law of the case doctrine or the policy against horizontal appeals, we find no error.

¶11 A "horizontal appeal" is a request that a second trial judge reconsider a decision of the first trial judge in the same matter, even though no new circumstances have arisen in the interim, and no other reason justifies reconsideration. *Donlann v. Macgurn*, 203 Ariz. 380, 385, ¶ 29, 55 P.3d 74, 79 (App. 2002) (citation omitted). Horizontal appeals "waste judicial

resources by asking two judges to consider identical motions and because they encourage 'judge shopping.'" *Powell-Cerkoney v. TCR-Mont. Ranch Joint Venture, II*, 176 Ariz. 275, 279, 860 P.2d 1328, 1332 (App. 1993) (citations omitted).

¶12 Under the law of the case doctrine, a court acts within its discretion in "refusing to reopen questions previously decided in the same case by the same court" unless "an error in the first decision renders it manifestly erroneous or unjust or when a substantial change occurs in essential facts or issues, in evidence, or in the applicable law." *Powell-Cerkoney*, 176 Ariz. at 278-79, 860 P.2d at 1331-32 (citations omitted); see also *Hall v. Smith*, 214 Ariz. 309, 317, ¶ 29, 152 P.3d 1192, 1200 (App. 2007) (citation omitted) ("[A] trial court's power to reconsider an earlier ruling should not be employed lightly."). The doctrine will not generally apply if the prior decision did not decide the issue in question, is ambiguous, or does not address the merits. *Powell-Cerkoney*, 176 Ariz. at 279, 860 P.2d at 1332 (citation omitted).

¶13 Wilson-Goodman advanced the same objections to Commissioner Nothwehr in 2009 that she later voiced to Commissioner Vatz in 2011. Because no "substantial change occur[red] in essential facts or issues, in evidence, or in the applicable law," and applying the doctrine would not result in a "manifestly unjust decision," Commissioner Vatz did not abuse

his discretion by refusing to revisit the merits of Wilson-Goodman's objections. *Powell-Cerkoney*, 176 Ariz. at 279, 860 P.2d at 1332 (citations omitted).

¶14 Much of Wilson-Goodman's briefing is devoted to arguing why the superior court erred by requiring her to provide information about various business entities in which she holds an interest. However, the time to appeal Commissioner Nothwehr's final order resolving these issues expired long ago. See ARCAP 9 (a party generally must file notice of appeal within 30 days of the entry of an appealable order); A.R.S. § 12-2101(A)(2). Our jurisdiction in the instant appeal extends only to Commissioner Vatz's February 2, 2011 order -- a ruling that expressly declined to revisit the substantive merits of Wilson-Goodman's objections.

## **II. Sanctions**

¶15 Wilson-Goodman asserts the superior court erred in awarding Freanel \$2500 in attorneys' fees because it stated no statutory basis for the award. Wilson-Goodman, though, failed to raise this argument below and, to the extent she now claims a due process violation, never afforded the superior court an opportunity to reconsider its sanctions order. See *Precision Components, Inc. v. Harrison, Harper, Christian & Dichter, P.C.*, 179 Ariz. 552, 555, 880 P.2d 1098, 1101 (App. 1993) ("[F]ailure of the attorney[] to request a hearing . . . for reconsideration



of the sanctions imposed prevents us from granting relief for an alleged deprivation of due process."); *Cullum v. Cullum*, 215 Ariz. 352, 355 n.5, ¶ 14, 160 P.3d 231, 234 n.5 (App. 2007) (citation omitted) ("As a general rule, a party cannot argue on appeal legal issues not raised below.").

¶16 Even assuming *arguendo* that Wilson-Goodman may assert her new arguments on appeal, we find no error. We review the imposition of sanctions for an abuse of discretion. *Seidman v. Seidman*, 222 Ariz. 408, 411, ¶ 18, 215 P.3d 382, 385 (App. 2009) (citations omitted); *Taliaferro v. Taliaferro*, 188 Ariz. 333, 339, 935 P.2d 911, 917 (App. 1996).

¶17 Superior courts have the inherent power to sanction attorneys for bad faith conduct during litigation. *Hmielewski v. Maricopa County*, 192 Ariz. 1, 4, ¶ 13, 960 P.2d 47, 50 (App. 1997) (citation omitted). Before imposing sanctions, the court should give the party "some form of notice and opportunity to be heard on the propriety of imposing the sanctions." *Precision Components*, 179 Ariz. at 555, 880 P.2d at 1101 (citation omitted).

¶18 Wilson-Goodman is a licensed attorney. The court found she "engaged in unjustified conduct" by refusing to answer questions, appearing at the 2010 judgment debtor exam with "only one of the requested documents," objecting to discovery that had been previously ruled on, and causing "undue and unnecessary

delay." The court made its findings after hearing argument, considering memoranda from both parties, and reviewing the protracted history of the case. Wilson-Goodman does not deny refusing to answer questions or bringing only one of the requested documents to the 2010 exam. There was an ample factual basis for the superior court to conclude Wilson-Goodman acted in "bad faith," "unreasonably delayed the . . . [p]roceedings, and . . . engaged in abuse of discovery."

¶19 The record also reveals no due process violation. Freanel requested a fee award based on Wilson-Goodman's lack of cooperation and explained why such an award was proper. Wilson-Goodman filed a response in opposition. She had both notice and an opportunity to be heard regarding Freanel's sanctions request.

### **III. Attorneys' Fees on Appeal**

¶20 Freanel requests its attorneys' fees incurred on appeal pursuant to ARCAP 21 and 25. ARCAP 21 is not a substantive basis for a fee award. *Bed Mart, Inc. v. Kelley*, 202 Ariz. 370, 375, ¶ 24, 45 P.3d 1219, 1224 (App. 2002) (citations omitted).

¶21 ARCAP 25 authorizes a fee award as a sanction if an appeal "is frivolous or taken solely for the purpose of delay." We impose ARCAP 25 sanctions "with 'great reservation.'" *Ariz. Tax Research Ass'n v. Dep't of Revenue*, 163 Ariz. 255, 258, 787

