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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: 03/27/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

THE BANK OF NEW YORK MELLON,) No. 1 CA-CV 11-0325
successor in interest to)
JPMorgan Chase Bank, as Trustee) DEPARTMENT E
for the Registered Holders of)
NovaStar Mortgage Funding Trust,) **MEMORANDUM DECISION**
Series 2004-2 NovaStar Home) Not for Publication
Equity Loan Asset-Backed) (Rule 28, Arizona Rules
Certificates, Series 2004-2, its) of Civil Appellate Procedure)
assignees and/or successors-in-)
interest,)
)
)
Plaintiff/Appellee,))
v.)
)
)
RAMONA ROBINSON,)
)
)
Defendant/Appellant.))
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CV2011-006014

The Honorable Benjamin E. Vatz, Commissioner

AFFIRMED

Shapiro, Van Ess & Sherman, LLP Phoenix
By Jason P. Sherman
Kristine E. Mathers
Attorneys for Plaintiff/Appellee

Ramona Robinson Phoenix
In *Propria Persona* Appellant

G E M M I L L, Judge

¶1 Ramona Robinson ("Robinson") appeals from the trial

court's finding in favor of The Bank of New York Mellon (the "Bank"), successor in interest to JP Morgan Chase Bank, in a forcible entry and detainer ("FED") action.

FACTS AND PROCEDURAL HISTORY

¶12 The Bank was the successful bidder at a Trustee's sale of real property, legally described as "Lot 28, Estates at the Ranch, a Subdivision recorded in Book 441 of Maps, Page 40, Records of Maricopa County, Arizona" (the "Property"), in January 2011. The Bank filed an FED action against Robinson on March 4, 2011, alleging that the Bank had made written demand on Robinson to vacate and surrender possession of the Property and Robinson refused. Also on March 4, a summons was issued notifying Robinson that she had to appear on March 21, 2011.

¶13 On March 18, 2011, the Bank moved for approval of alternative methods of service, providing evidence of unsuccessful attempts to serve Robinson. On March 21, the trial court ordered that service of process could be made by sending a copy of the summons and complaint to the Property, by both regular first class mail and by certified mail, if another attempt to serve Robinson was unsuccessful. The Bank again moved for approval of alternative methods of service on March 21.

¶14 At the March 21 hearing, the court granted the Bank's motion for alternative service and continued the hearing until

April 7. On April 7, Robinson appeared and pled not guilty, and the trial court set the matter for trial. The court held a one-day trial on April 14. The trial court found that Robinson was guilty of forcible detainer and awarded the Bank immediate and exclusive possession of the Property.

¶15 Robinson filed a timely notice of appeal on April 21, 2011, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1) (Supp. 2011).

¶16 Following Robinson's notice of appeal, in May 2011, the court scheduled oral argument for May 24, 2011, on Robinson's motion to set supersedeas bond. This court has jurisdiction to review only the FED ruling.

DISCUSSION

¶17 Robinson presents two arguments on appeal. First, she argues that the court lacked subject matter jurisdiction because the FED action took place outside of the statutory time limits. Second, Robinson argues that attorneys' fees cannot be included by the trial court in the supersedeas bond.

¶18 The Bank counters that Robinson provided no legal support for the proposition that any delay divested the lower court of subject matter jurisdiction, that the expansion of time only prejudiced the Bank, and the Bank requested one continuance to effectuate service of process. The Bank further asserts that this court does not have jurisdiction to decide Robinson's

argument regarding the supersedeas bond. If the court decides jurisdiction is appropriate, the Bank argues that this court must presume the trial court acted within its discretion due to the lack of a complete record.

¶9 In a forcible detainer action, the summons shall be issued no later than the next day following the complaint. A.R.S. § 12-1175 (2003).¹ "The summons shall be served at least two days before the return day, and return made thereof on the day assigned for trial." *Id.* In addition, "the trial date shall be no more than five judicial days after the aggrieved party files the complaint." A.R.S. § 12-1176(A) (Supp. 2011). "For good cause shown, supported by affidavit, the trial may be postponed for a time not to exceed three calendar days in a justice court or ten calendar days in the superior court." A.R.S. § 12-1177 (2003). Further, pursuant to Arizona Rule of Procedure for Eviction Actions ("RPEA") 3(b):

Except as specifically provided for by statute or these rules, the time for doing any of the acts provided for in these rules or by order of the court may be shortened or extended by the court upon stipulation or upon motion for good cause shown.

¶10 Robinson argues that the trial took place 41 days after the complaint was filed. While A.R.S. § 12-1176(A) states

¹ Unless otherwise specified, we cite the current versions of statutes when no material revisions have been enacted since the events in question.

that the trial date should be "no more than five judicial days after the aggrieved party files the complaint," some delay is permissible in accordance with A.R.S. § 12-1177 and RPEA 3(b) and 5(g). The complaint was filed March 4, 2011, and the summons issued that same day, in compliance with A.R.S. § 12-1175. A delay then occurred because the Bank was unsuccessful in serving Robinson, and the Bank filed two motions requesting approval of alternative methods of service. On March 21, 2011, the trial court, noting "good cause appearing," granted the Bank's motion for alternative service. Pursuant to RPEA, this delay was permitted due to good cause being shown. The trial court then continued the hearing until April 7. At the April 7 hearing, Robinson appeared and requested a trial. The court set the trial date for April 14.

¶11 Robinson has not cited any authority for the proposition that these statutory time limits are jurisdictional, and we are not aware of any. To the extent Robinson is arguing that the trial court lacked jurisdiction to conduct the hearing beyond the time period specifically mentioned in A.R.S. § 12-1176(A), we reject this argument. As explained above, the delay in the FED hearing was permitted under the applicable statutes and rules as applied to these facts. The trial court had jurisdiction to conduct the FED hearing and to enter an appropriate judgment. *Cf. State v. Valenzuela*, 23 Ariz. App.

608, 608, 535 P.2d 28, 28 (1975) (sentencing of defendant five days after time period provided in then-existing Rule 26.3 of the Arizona Rules of Criminal Procedure did not deprive court of jurisdiction; noting also that defendant failed to show any prejudice from delay); *State v. Carter*, 151 Ariz. 532, 534, 729 P.2d 336, 338 (App. 1986) (whether State has complied with speedy trial requirements of the Interstate Agreement On Detainers was not a jurisdictional issue); *State v. Camino* 118 Ariz. 89, 91, 574 P.2d 1308, 1310 (App. 1977) (time limits not jurisdictional pursuant to then-existing Rule 26.3 of the Arizona Rules of Criminal Procedure).

¶12 Furthermore, any prejudice caused by the delay affected the Bank, not Robinson. The delay in the proceedings merely caused a delay in the Bank obtaining possession of the Property. Robinson has not demonstrated any prejudice by the delay in the trial.

¶13 Turning to Robinson's second argument – that attorneys' fees cannot be included by the trial court in the supersedeas bond – we lack jurisdiction to address this issue. The trial court's decision regarding the supersedeas bond was made after the notice of appeal, which was filed on April 21, 2011. Robinson's notice of appeal mentions an appeal of the April 15, 2011 ruling and "all issues contained therein." Our record on appeal concludes with the trial court setting oral

argument on Robinson's motion to set supersedeas bond for May 24, 2011. We cannot review this ruling because we do not possess it in our record on appeal, nor can we ordinarily review any ruling on a motion made subsequent to the filing of the notice of appeal. Furthermore, Robinson has not filed an amended notice of appeal or a new notice of appeal to thereby initiate an appeal of this post-judgment ruling. On this record, we lack jurisdiction to consider any rulings made after the filing of the notice of appeal. See *Lee v. Lee*, 133 Ariz. 118, 124, 649 P.2d 997, 1003 (App. 1982) ("The court of appeals acquires no jurisdiction to review matters not contained in the notice of appeal.").

CONCLUSION

¶14 For the foregoing reasons, we affirm the trial court's ruling in favor of the Bank in this FED action.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
PATRICIA A. OROZCO, Presiding Judge

_____/s/_____
PHILIP HALL, Judge