

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

FILED BY CLERK

DEC -5 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re the ESTATE OF PETRA C. NUNEZ.)
)
) 2 CA-CV 2011-0099
) DEPARTMENT B
)
) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure
)
_____)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. PB20100065

Honorable Charles V. Harrington, Judge

AFFIRMED

Peter G. Schmerl, P.C.
By Peter G. Schmerl

Tucson
Attorney for Appellants

DeConcini McDonald Yetwin & Lacy, P.C.
By Nathan B. Hannah

Tucson
Attorneys for Appellee

K E L L Y, Judge.

¶1 Appellants Jose and Ralph Nunez, personal representatives of the estate of Petra Nunez, appeal the trial court's denial of their claim against the estate. They argue the court erred in concluding they were not entitled to reimbursement from the estate for

expenses they incurred in providing care for Petra. For the reasons that follow, we affirm.

Background

¶2 “We view the facts in the light most favorable to supporting the trial court’s judgment.” *In re Estate of Pouser*, 193 Ariz. 574, ¶ 2, 975 P.2d 704, 706 (1999). Following Petra’s death, the court appointed the Nunezes co-personal representatives of her estate. Appellee Arizona Health Care Cost Containment System Administration (AHCCCS) brought a claim against the estate in the amount of \$261,249.64 for the costs of medical treatment and care it had provided to Petra.¹ The Nunezes then filed a claim asserting they had “provid[ed] home healthcare to decedent” and requested \$167,823.06 from the estate as reimbursement. AHCCCS filed an objection to the Nunezes’ claim. After an evidentiary hearing, the trial court issued an order granting AHCCCS’s claim in full and denying the Nunezes’ claim. This appeal followed.

Discussion

¶3 “We are bound by the trial court’s findings of fact unless they are clearly erroneous, but [we] review questions of law de novo.” *In re Estate of Fogleman*, 197 Ariz. 252, n.4, 3 P.3d 1172, 1176 n.4 (App. 2000). As a preliminary matter, we note that the Nunezes did not include the transcripts of any trial court proceedings in the record on appeal. As the appellants, they were required to “mak[e] certain the record on appeal

¹The Nunezes agreed AHCCCS was entitled to recover from the estate but contested the amount of the claim. On appeal, they do not challenge the trial court’s grant of AHCCCS’s request, and we therefore do not address it.

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); *see also* Ariz. R. Civ. App. P. 11(b)(1). In the absence of a transcript, we must presume the record supports the court’s ruling. *Kohler v. Kohler*, 211 Ariz. 106, n.1, 118 P.3d 621, 623 n.1 (App. 2005).

¶4 Citing A.R.S. § 14-3805, the Nunezes argue their claim has equal priority to AHCCCS’s claim and accordingly, “both claims should be paid.” But, because we have no transcripts, we cannot determine if this issue was presented to the trial court. *See Airfreight Express Ltd. v. Evergreen Air Ctr., Inc.*, 215 Ariz. 103, ¶ 17, 158 P.3d 232, 238 (App. 2007) (argument waived on appeal if not presented below). Nevertheless, the Nunezes assert “a transcript is not needed to correct the trial court’s error.” They argue the evidentiary hearing minute entry reflects that the court denied their claim based on a finding that they “were required to contract with AHCCCS for payment of services and reimbursement of out-of-pocket expenses.” The Nunezes contend “[t]here is no possible theory in . . . Arizona law . . . that supports such a finding” and, therefore, they maintain error is apparent even without a transcript of the proceeding. We disagree.

¶5 The trial court’s minute entry does not reflect any finding that the Nunezes were required to seek payment for their claim from AHCCCS. Rather, the minute entry states “[t]he brothers Nunez were not program contractors or in any other way entitled to payment from the program contractor or from AHCCCS.” But without a transcript, we cannot determine the basis for the court’s decision. Nor can we determine what the

parties argued and what testimony was presented.² The Nunezes have “the burden of demonstrating to this court that there was error committed below.” *Guard v. Maricopa Cnty.*, 14 Ariz. App. 187, 188-89, 481 P.2d 873, 874-75 (1971); *see also State v. Villalobos*, 114 Ariz. 392, 394, 561 P.2d 313, 315 (1977) (burden of establishing error on appellant). On the record before us, they have not met that burden.

¶6 In any event, we may affirm the trial court if its ruling was legally correct for any reason. *Hale v. Amphitheater Sch. Dist. No. 10*, 192 Ariz. 111, ¶ 5, 961 P.2d 1059, 1062 (App. 1998); *see also Ariz. R. Civ. App. P. 13(b)(3)* (appellate court may affirm judgment based on any grounds when issues properly presented to trial court). The record shows AHCCCS made several arguments in support of its opposition to the Nunezes’ claim, including that it was “barred by the sixty day limitations period of A.R.S. §§ 14-3803(A)(2) and 3801(B).” We agree the claim was barred.

¶7 Arizona’s Probate Code requires a personal representative to notify the estate’s creditors of his or her appointment and address and inform them that claims against the estate must be filed within a limited time. A.R.S. § 14-3801. The notice may be made by publication or, for known creditors, in writing. A.R.S. § 14-3801(A), (B). Creditors must present their claims “within sixty days after the mailing or other delivery of the notice . . . or be forever barred.” § 14-3801(B); *accord* A.R.S. § 14-3803(A)(2).

¶8 As personal representatives of the estate, and thereby responsible for the notification of creditors, the Nunezes had notice at least by February 16, 2010, the date of

²The only evidence in the record on appeal consists of the exhibits admitted during the evidentiary hearing.

their appointment, that they had sixty days within which to present their own claim against the estate. *See* § 14-3801.³ Because the Nunezes filed a claim against the estate on June 14, 2010, outside the sixty-day statutory limitation period, their claim is time-barred, and the trial court properly could have denied it on this basis. *See* § 14-3803(A).

Disposition

¶9 We affirm the order of the trial court.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

³The Nunezes argue there is nothing in § 14-3801 by which personal representatives may “be ‘deemed’ to have received notice” and therefore the time limits imposed by the statute do not apply to them. But we note § 14-3801(A) broadly requires personal representatives to notify “creditors of the estate to [timely] present their claims . . . or be forever barred.” The Nunezes do not explain how, as personal representatives responsible for communicating the requirements of § 14-3801 to creditors, they lacked notice of the requirements. Nor have they cited any authority that personal representatives, who are also creditors, are exempt from those requirements. We therefore reject their argument.