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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MICHAEL A. LEON, Plaintiff/Appellant, v. DANAHER CORPORATION; PACIFIC SCIENTIFIC; and SECURAPLANE TECHNOLOGIES, INC., Defendants/Appellees.	2 CA-CV 2012-0002 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20108434

Honorable Kenneth Lee, Judge

AFFIRMED

Michael A. Leon — Tucson
In Propria Persona

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
By F. David Harlow and Tibor Nagy, Jr. — Tucson
Attorneys for Defendants/Appellees

B R A M M E R, Judge.

¶1 Appellant Michael Leon appeals from the trial court's judgment dismissing his complaint with prejudice. He argues the court abused its discretion by granting a

motion to dismiss filed by appellees Securaplane Technologies, Pacific Scientific, and Danaher Corporation (collectively "Securaplane"); "by not issuing a written decision outlining the findings of fact and the reasons for the decision"; and by "not allowing [him] to continue oral argument." We affirm and sanction Leon for filing a frivolous appeal.

Procedural Background

¶2 In October 2010, Leon filed a complaint against Securaplane, his former employer, alleging racial and disability discrimination, retaliation, and harassment in violation of the Arizona Civil Rights Act (ACRA), A.R.S. §§ 41-1401 to 41-1493.03. Securaplane filed a motion to dismiss pursuant to Rule 12(b)(1) and (6), Ariz. R. Civ. P., asserting lack of jurisdiction and failure to state a claim. It contended Leon had failed to file his discrimination charge within the time limits required by ACRA. Leon filed an opposition to the motion to dismiss, and Securaplane filed a reply. After a hearing, the trial court granted Securaplane's motion to dismiss and dismissed Leon's complaint with prejudice. This appeal followed.

Discussion

Motion to Dismiss

¶3 Leon contends the trial court erred in granting Securaplane's motion to dismiss. He asserts his complaint must be construed broadly, because he "has only scratched the surface providing evidence to be produced before a jury" and is entitled to offer evidence to support his claims. "We review a trial court's grant of a motion to dismiss for an abuse of discretion, but review issues of law de novo." *Airfreight Express*

Ltd. v. Evergreen Air Ctr., Inc., 215 Ariz. 103, ¶ 11, 158 P.3d 232, 236 (App. 2007). "'When a motion to dismiss for failure to state a claim is granted, review on appeal necessarily assumes the truth of facts alleged in the complaint.'" *Id.* ¶ 2, *quoting Logan v. Forever Living Prods. Int'l, Inc.*, 203 Ariz. 191, ¶ 2, 52 P.3d 760, 761 (2002). We will uphold a dismissal only if the plaintiff "'would not be entitled to relief under any facts susceptible of proof in the statement of the claim.'" *Id.* ¶ 11, *quoting Dressler v. Morrison*, 212 Ariz. 279, ¶ 11, 130 P.3d 978, 980 (2006).

¶4 Leon's complaint raises claims against his former employer for discrimination under ACRA. Sections 41-1481 through 41-1484, A.R.S., provide enforcement procedures for discrimination in employment. ACRA defines an employer's "unlawful employment practices" as discrimination based on race, color, religion, sex, age, national origin or disability in failing or refusing to hire an individual; discharging an individual; classifying employees; or advertising for employment; as well as discrimination against an employee or applicant based on his or her participation in an enforcement proceeding against the employer. §§ 41-1463(B), 41-1464. Section 41-1481(A) requires that "[a] charge under this section shall be filed within one hundred eighty days after the alleged unlawful employment practice occurred." Timely filing of such a charge is a mandatory prerequisite to maintaining an action under ACRA. *Ornelas v. Scoa Indus., Inc.*, 120 Ariz. 547, 547, 587 P.2d 266, 266 (App. 1978); *see also Madden-Tyler v. Maricopa County*, 189 Ariz. 462, 468, 943 P.2d 822, 828 (App. 1997) ("[T]he filing of a charge of discrimination with an administrative agency is a prerequisite to filing a lawsuit on the alleged discrimination.").

¶5 Leon's employment with Securaplane terminated on May 11, 2007. He filed his discrimination charge against Securaplane Technologies on August 19, 2010. Most of the allegations in Leon's complaint relate to harassment and discrimination while he was employed by Securaplane. Leon filed his discrimination charge more than 180 days after his employment ended, thus failing to comply with § 41-1481(A) and precluding an action under ACRA for those claims. *See Madden-Tyler*, 189 Ariz. at 468, 943 P.2d at 828. His complaint also alleged negative references were provided to his prospective employers "immediately after" his employment was terminated and slanderous comments about him were made in August 2009. Even if these claims were true and covered by ACRA, they would fail because his charge of discrimination was filed more than 180 days after these acts were alleged to have occurred. *See id.*; § 41-1481(A).

¶6 Leon also alleges "a disparaging poster was posted at Securaplane concerning [him]" and Securaplane continues to harass him and portray him in a false light. Leon's complaint does not allege when these acts occurred. Assuming they occurred within 180 days of when he filed the discrimination charge, and accepting the allegations as true, *see Airfreight Express Ltd.*, 215 Ariz. 103, ¶ 2, 158 P.3d at 235, his claim nonetheless fails. Such allegations do not constitute an "unlawful employment practice" as defined in ACRA. *See* §§ 41-1463, 41-1464. And although "a pro se complaint, 'however inartfully pleaded,' must be held to 'less stringent standards than formal pleadings drafted by lawyers,'" Leon does not allege any set of facts occurring within 180 days of filing the discrimination charge that could be construed as a

cognizable claim under ACRA. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976), *quoting Haines v. Kerner*, 404 U.S. 519, 520 (1972). Therefore, because Leon would not be entitled to relief under ACRA under any facts susceptible of proof in his complaint, the trial court did not err in granting Securaplane's motion to dismiss Leon's complaint with prejudice. *See Airfreight Express Ltd.*, 215 Ariz. 103, ¶ 11, 158 P.3d at 236.

Failure to Issue a Written Decision

¶7 Leon also argues the trial court should have issued a written legal decision, contending it "provided no explanation . . . as to why the motion to dismiss was granted." He asserts due process requires the court to explain its "findings and reasoning" and labels the absence of an explanation "clearly erroneous" and "prejudicial."

¶8 Leon has waived this argument by failing to cite to any authority requiring the trial court to either issue findings or explain its decision. *See* Ariz. R. Civ. App. P. 13(a)(6) (appellate brief argument shall contain "citations to the authorities, statutes and parts of the record relied on"); *Polanco v. Indus. Comm'n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393-94 n.2 (App. 2007). Moreover, "[f]indings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12." Ariz. R. Civ. P. 52(a). And Leon did not request the court to enter findings of fact and conclusions of law. *Cf. In re $26,980.00 U.S. Currency*, 199 Ariz. 291, ¶ 7, 18 P.3d 85, 88 (App. 2000) (court required to enter findings and conclusions only when requested by party).

¶9 Additionally, to the extent we understand his argument, Leon further contends the absence of a detailed decision constitutes evidence of the trial court's bias and prejudice against him. To establish bias, a party generally must show by a

preponderance of the evidence that a specific cause of bias or prejudice exists outside of the judge's participation in the present case. *Simon v. Maricopa Med. Ctr.*, 225 Ariz. 55, ¶ 29, 234 P.3d 623, 631 (App. 2010). Ruling against a particular party does not demonstrate judicial bias. *Id.* ¶ 30. Leon has cited no external evidence of any cause for bias, and the court's failure to provide findings and conclusions it was neither required nor requested to issue does not demonstrate it was biased against him.

Hearing

¶10 Leon also argues the trial court abused its direction "by not allowing [him] to continue oral argument." Leon's Social Security advocate read to the court a portion of a memorandum prepared by Leon. The court offered to allow Leon to submit the memorandum, but Leon insisted it be read into the record. After more reading and additional argument by Leon, the court asked the advocate, "How much do you have there that you're going to read?," noting "A lot of this should have been covered and put in [Leon's] memoranda instead of . . . reading an additional memoranda into the record." The advocate responded "Fifteen [pages]," and the court stated "No." Nevertheless, the court allowed the advocate to continue reading and allowed Leon to interject further argument.

¶11 Leon made no motion to continue oral argument nor did he request additional time for argument. By failing to take these steps in the trial court he has failed to preserve, and therefore has waived, the argument on appeal. *City of Tempe v. Fleming*, 168 Ariz. 454, 456, 815 P.2d 1, 3 (App. 1991) ("arguments not made at the trial court cannot be asserted on appeal"). Moreover, to the extent the trial court's response of "no"

to the advocate reading fifteen additional pages denied Leon the time he requested, we review the court's denial for an abuse of discretion. *Cristall v. Cristall*, 225 Ariz. 591, ¶ 29, 242 P.3d 1060, 1066 (App. 2010) (decision to grant additional oral argument within court's discretion). "Inherent in the concept of abuse of discretion is a showing of prejudice resulting from the exercise of that discretion." *E. Camelback Homeowners Ass'n v. Ariz. Found. for Neurology & Psychiatry*, 18 Ariz. App. 121, 128, 500 P.2d 906, 913 (1972). Leon has demonstrated no such prejudice. He has not explained how additional time to read his memorandum into the record would have altered the outcome below. And Leon continued to present his case after he was told the advocate could not read fifteen more pages of his memorandum and, at the end of argument, told the court "And I think I've really about covered it." He was provided ample time for argument, and imposing time limitations on parties falls within the court's duty and authority to control the courtroom. *See Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, ¶ 33, 977 P.2d 807, 813 (App. 1998).

Sanctions

¶12 Securaplane has suggested this court impose sanctions against Leon for pursuing this appeal. It requests attorney fees as a sanction. Rule 25, Ariz. R. Civ. App. P., allows us to impose sanctions "[w]here the appeal is frivolous or taken solely for the purpose of delay" to discourage "like conduct in the future." An appeal is frivolous when either (1) it is prosecuted for an improper purpose, or (2) any reasonable attorney would agree that the appeal is without merit. *Price v. Price*, 134 Ariz. 112, 114, 654 P.2d 46, 48 (App. 1982). As we have noted already, Leon's arguments on appeal are either

waived or without merit. We therefore conclude any reasonable attorney would agree that Leon's appeal is without merit. *See id.* Accordingly, we will award some portion of Securaplane's attorney fees as a sanction under Rule 25, upon its compliance with Rule 21, Ariz. R. Civ. App. P.

Disposition

¶13 For the foregoing reasons, we affirm.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge