

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

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COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

MICHAEL E. DENT, STEPHEN L. DENT,	)	2 CA-CV 2012-0078
	)	DEPARTMENT B
Plaintiffs/Appellants,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
LORI S. DENT,	)	Appellate Procedure
	)	
Defendant/Appellee.	)	
_____		)

APPEAL FROM THE SUPERIOR COURT OF SANTA CRUZ COUNTY

Cause No. CV09151

Honorable Anna M. Montoya-Paez, Judge

AFFIRMED

Law Firm of Marc Mauseth  
By Marc Mauseth

Tubac  
Attorney for Plaintiffs/Appellants

James P. Lagattuta

Tubac  
Attorney for Defendant/Appellee

K E L L Y, Judge.

¶1 Stephen and Michael Dent (Dents) appeal from the trial court's order quashing a garnishment issued against Lori Dent and awarding her attorney fees. The Dents also appeal from the court's order declaring they could not enforce, execute, or

collect a judgment against Lori and releasing any associated recordation or liens. They argue Lori has not satisfied the terms of a settlement agreement that provides they will not execute on the judgment, and so the judgment remains valid. They also contend the trial court lacked authority to enter the order declaring the judgment unenforceable. We affirm.

### **Factual and Procedural Background**

¶2 The Dents filed an action for conversion against Lori in 2009. The trial court entered judgment in Lori's favor, but the judgment was reversed on appeal. On remand, the parties entered a settlement agreement, which was read into the record and approved by the court. The terms of the agreement provided, in relevant part: the parties would stipulate to a judgment against Lori in the amount of \$30,000; Lori would return all items listed in an attached exhibit; and the Dents would execute a covenant not to execute or collect upon the \$30,000 judgment "forever and always." The agreement was conditioned upon the Dents' approval of the returned items.

¶3 In October 2011, Lori filed a motion to enforce the settlement or, in the alternative, for the Dents to "return all the property, including financial documents and stipulations" she contended she had delivered according to the agreement's terms. Later that month, the trial court heard argument on the motion and found a stipulated judgment had been prepared, "inspection was supposed to be done prior to the stipulation," and the "items were delivered to the [Dents] by [Lori]." It concluded the settlement would be enforced.

¶4 Nonetheless, in January 2012, the Dents filed applications for a writ of garnishment and a continuing lien against Lori based on the stipulated judgment. Lori requested a hearing on the garnishment. After hearing argument, the trial court again found Lori in compliance with the terms of the agreement, quashed the garnishment, and awarded Lori attorney fees. Lori argued in an “ex parte motion for relief” that the court’s determination the judgment was unenforceable also invalidated any liens related to the judgment. In response, the court entered a separate order “Re: Satisfaction of Judgment” declaring the Dents could not “enforce, execute or collect upon the \$30,000 Judgment” and releasing any recordation of the judgment or associated liens. This appeal followed.

### **Discussion**

#### **Order Quashing Garnishment**

¶5 The Dents argue the trial court erred by quashing their writ of garnishment because they have a valid stipulated judgment against Lori, as the trial court recognized when it approved the terms of the settlement agreement. The Dents concede Lori’s return of the listed items “would trigger an obligation for the [Dents] to provide a covenant not to execute on their judgment.” However, they contend there was a “total absence of evidence” supporting the trial court’s finding that Lori had returned all of the items.

¶6 “A garnishor has the burden of proving the existence of a debt owed by the garnishee to the debtor.” *Falcon v. Beverly Hills Mortg. Corp.*, 168 Ariz. 527, 529, 815 P.2d 896, 898 (1991). Despite the Dents’ “belie[f] that the record is very clear” Lori has not returned all the listed items, they have failed to identify anything in the record

supporting their assertion. *See* Ariz. R. Civ. App. P. 13(a)(6) (brief shall contain citations to parts of record relied on). Instead, they argue the trial court was required to hold an evidentiary hearing before it could conclude otherwise. But a trial court may determine whether settlement terms have been satisfied based on the arguments of counsel and the evidence in the record. *Cf. Canyon Contracting Co. v. Tohono O’Odham Hous. Auth.*, 172 Ariz. 389, 390-91, 837 P.2d 750, 751-52 (App. 1992) (determining settlement existence and terms). Under those circumstances, the court effectively has granted summary judgment on the issue, and we will uphold it if the record shows there is no genuine issue as to any material fact. *See id.* at 390, 837 P.2d at 751; *see also* Ariz. R. Civ. P. 56(c).

¶7 The Dents have not provided this court with transcripts of the motion to enforce or garnishment hearings. *See* Ariz. R. Civ. App. P. 11(b) (appellant must order any necessary transcripts; transcript necessary if appellant intends to argue finding unsupported by evidence). In the absence of a transcript, “we presume that the record supports the trial court’s ruling and that its reasoning was proper.” *Brillard v. Maricopa Cnty.*, 224 Ariz. 481, ¶ 58, 232 P.3d 1263, 1280 (App. 2010). Therefore, we must conclude the trial court applied the proper standard and determined correctly the Dents had failed to prove Lori owed them an enforceable debt because they were obligated to execute a covenant not to enforce the stipulated judgment. *See* Ariz. R. Civ. P. 80(d) (agreement binding if written or made in open court and entered in minutes). Accordingly, the court did not err in quashing the writ of garnishment.

¶8 Moreover, even had Lori failed to return the items, the Dents’ remedy under the agreement was to “rescind the settlement agreement, or . . . renegotiate and try to correct any problems.” We reject the Dents’ suggestion they should be able to accept the benefit of the stipulated judgment while refusing to recognize their obligations under the agreement’s remaining terms. *See Best Choice Fund, LLC v. Low & Childers, P.C.*, 228 Ariz. 502, ¶¶ 24, 41, 269 P.3d 678, 686, 689 (App. 2011) (contract requires as consideration benefit to promisor or detriment to promisee). And their insistence that we analyze the stipulated judgment’s validity outside the context of the agreement that incentivized the stipulation is disingenuous, especially considering evidence in the record showing the Dents’ counsel had promised in an electronic mail message to “sign the covenant not to execute immediately after the judge signs the judgment . . . so there is no risk to Lori.”

¶9 The Dents’ contention that the trial court also abused its discretion by awarding Lori attorney fees relies upon the same arguments we have already rejected. We presume the record supports the court’s finding that “there was absolutely no basis for the garnishment,” *Brailard*, 224 Ariz. 481, ¶ 58, 232 P.3d at 1280, and we affirm its award of attorney fees.

#### **Order Re: Satisfaction of Judgment**

¶10 The Dents assert the court’s order “Re: Satisfaction of Judgment” was improper because “ex parte relief” was not appropriate under the circumstances. They fail to cite any authority supporting their position or dispute any issue that had not been

argued previously following notice to both parties.<sup>1</sup> Therefore, they have waived this argument. *See* Ariz. R. Civ. App. P. 13(a)(6) (brief “shall contain” reasons supporting argument and “citations to the authorities . . . relied on”); *Polanco v. Indus. Comm’n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393-94 n.2 (App. 2007) (argument not developed on appeal waived).

¶11 The Dents also argue the trial court lacked jurisdiction to enter the order because they contend it was divested of jurisdiction when it entered the appealable order awarding Dent her attorney fees on the garnishment issue. *See Sw. Gas Corp. v. Irwin ex rel. Cnty. of Cochise*, 229 Ariz. 198, ¶ 8, 273 P.3d 650, 653 (App. 2012) (filing appeal generally divests trial court of jurisdiction). However, the appellate court does not acquire jurisdiction until an appeal is perfected, which occurs when a notice of appeal is timely filed. *James v. State*, 215 Ariz. 182, ¶ 11, 158 P.3d 905, 908 (App. 2007). The Dents did not file their notice of appeal until July 6, nearly one month after the trial court entered its order. Therefore, the court had jurisdiction over the matter when it filed the order.

### **Disposition**

¶12 For the foregoing reasons, the trial court’s orders are affirmed. Both parties request costs and attorney fees on appeal pursuant to A.R.S. § 12-341.01. In our

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<sup>1</sup>The order was based on the trial court’s determination Lori had satisfied the settlement’s conditions, rendering the judgment unenforceable—an issue that had been argued at both the hearing on the motion to enforce and the garnishment hearing. The Dents do not dispute the court’s further conclusion that liens based on the unenforceable judgment should be released.

discretion we award Lori her costs and attorney fees upon her compliance with Rule 21,  
Ariz. R. Civ. App. P.

/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