IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE $26,305 IN U.S. CURRENCY

No. 2 CA-CV 2015-0171
Filed December 20, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pinal County
No. S1100CV201301482
The Honorable Karen J. Stillwell, Judge Pro Tempore

AFFIRMED IN PART; VACATED IN PART; REMANDED

COUNSEL

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By Kenneth S. Countryman
Counsel for Claimants/Appellants

M. Lando Voyles, Pinal County Attorney
By Alex Mahon, Deputy County Attorney, Florence
Counsel for Appellee

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Howard and Judge Staring concurred.

E S P I N O S A, Judge:

¶1 In this civil forfeiture proceeding, appellants Terron Taylor and Oznie Manhertz (Claimants) challenge the trial court's denial of their request for attorney fees, costs, and prejudgment interest. For the following reasons, we affirm in part, vacate in part, and remand.

Factual and Procedural Background

¶2 The facts of this case are undisputed, but it is necessary to recount much of its lengthy procedural history in some detail. In June 2012, after a Pinal County Sheriff's deputy stopped a truck for a traffic offense, the driver and passenger were arrested and the truck was seized, as well as $26,305 in currency and a handgun found inside. The truck was registered to "VIP Line Com," and Manhertz was listed on the title as the first lienholder. The driver and passenger were given copies of "seizure paper work," including a notice of property seizure and pending uncontested forfeiture as to the currency and truck.

¶3 Taylor, who was not a passenger, filed a verified claim as to the currency in July 2012 in Maricopa County Superior Court and sent copies by certified mail to the Pinal County Narcotics Task Force and the Pinal County Attorney Asset Forfeiture Team. In September 2012, Taylor telephoned the Pinal County Attorney's Office to inquire about the status of his claim. After providing the case number listed on the notice given to the occupants of the truck at the time of seizure, he was told there was no record of that case, the office could not find his claim, and attorney Craig Cameron would contact him when paperwork was received. Taylor left his

telephone number and sent a copy of his claim to the office by facsimile.

¶4 In June 2013, the state filed an "Initiation of Civil Forfeiture Proceedings," in Pinal County Superior Court, stating it had provided notice as to the truck and currency either personally or by publication. The document indicated the state had sent Manhertz a "Notice of Pending Uncontested Forfeiture" as to the truck on June 7, 2013, but it was silent as to Taylor. In an amended notice, the state further indicated that the vehicle's passenger had been issued a notice as to the handgun but, again, Taylor was not mentioned.

¶5 Manhertz filed a timely "Verified Claim" to the truck on June 28. A few months later, the state filed an "Application for Order on Forfeiture and Allocation of Property" as to the cash, truck, and gun, representing it had given notice of the forfeiture as required by law and no claims had been filed. Shortly thereafter, Manhertz filed a motion for an order directing the state to release the truck and Taylor filed motions for an order directing the state to release the currency and the gun. The state did not respond, prompting Claimants to file "Motion[s] for Summary Disposition of Motion[s] for Order Directing State to Release [Property]." In September, after the trial court set a hearing on the motions, the state assured the court it would file responses to Claimants' motions, but, again, no responses were filed.

¶6 At a status review hearing in November, the state indicated it would release the truck and the handgun but argued a hearing was required pursuant to A.R.S. § 13–4310(D) to establish Taylor's ownership of the currency. The state also indicated it had filed notices of release with the court earlier that morning, which provided "authorization and notice . . . to the seizing agency . . . [to] release . . . the seizure for forfeiture" on the truck and handgun. When Claimants requested that the court sign proposed orders to facilitate the release of those items, the state's attorney stated it was unnecessary because the Sheriff's Department "typically release[d] forfeiture cases on [his] signature."

¶7 Following another hearing in December, the trial court issued an under-advisement ruling, finding Taylor had "no standing" in this case and declining to "reach the questions whether Taylor is time-barred from filing a claim" or "whether the State is time-barred from pursuing forfeiture." The court subsequently denied Claimants' motion to vacate its ruling, noting "this matter has not yet concluded and the currency has not been forfeited or released." The court also ordered the state to file notices confirming that it had actually released the truck and the handgun.

¶8 In June 2014, Claimants initiated a special action in this court. We accepted jurisdiction and granted relief, concluding that because the state did not timely or properly initiate a forfeiture proceeding against any of the property, the trial court was required to allow Taylor to establish ownership of the currency and upon such proof order the state to release it. *Taylor v. Stillwell*, 2 CA-SA 2014-0034, ¶¶ 12, 27 (Ariz. App. Sept. 25, 2014) (mem. decision). We further concluded the respondent judge had abused her discretion in not granting the motions to return property and remanded the case for further proceedings as to the currency. *Id.* ¶¶ 24, 27.

¶9 Following a November 2014 hearing[1], the trial court found Taylor had established ownership of the currency and ordered the state to release it and all interest earned "immediately." The court also awarded post-judgment interest but denied Taylor's request for prejudgment interest and took the issues of attorney fees and costs under advisement. Two days later, Taylor filed a "Notice of Assignment" indicating "he ha[d] assigned his right to all proceeds flowing from this case to Kenneth S. Countryman, Esq." for legal fees owed to Countryman "predat[ing] the date of seizure" and the "assignment [wa]s effective as of 09/16/2011." Taylor's signature on the notice was dated September 19, 2013. Claimants

[1]At the hearing, the trial court ordered the state to respond to Claimants' "Status Conference Memorandum" by November 14; the state filed an untimely response on November 17.

then filed a "Clarified and Consolidated Application for Attorney Fees" in January 2015, and the trial court set the matter for "Internal Review." The state did not respond to Claimants' application for fees.

¶10 In March 2015, the trial court issued a notice stating that "additional argument is necessary to determine whether the State unreasonably delayed these proceedings, and therefore, warrants an award of attorneys' fees," apparently as a sanction under A.R.S. § 12-349 or Rule 11, Ariz. R. Civ. P., as urged by Claimants, and setting the matter for oral argument. The court also issued a separate order making several findings to "narrow the scope of the Oral Argument," which included a finding that the state—due to its lack of response or objection to Claimants' fee request—had "conceded . . . the reasonableness of the attorneys' fees requested." It further prohibited the state from "address[ing] whether it unreasonably delayed the proceedings and/or whether the requested attorneys' fees are reasonable," and "***strictly limited*** [argument] to . . . the statutory and/or legal basis to support an award of attorneys' fees in this case." At the time set for oral argument,[2] however, the state filed a "Motion for Leave to File Response to Requests for Attorney Fees and Costs" which the trial court granted and again set the matter for "internal review."

¶11 In June, the trial court issued an under-advisement ruling striking Claimants' application for attorney fees and costs and denying their request for attorney fees, citing both the assignment to Countryman and insufficiency of Claimants' affidavit for attorney fees and costs. Claimants moved to vacate the court's ruling and made an "informal request for change of judge pursuant to Rule 42(A)." *See* Ariz. R. Civ. P. 59. The trial court issued an unsigned notice declining to "take . . . further action as this matter is closed."

[2]It is unclear from the record whether the oral argument actually occurred at that time.

¶12 After Claimants filed a notice of appeal, this court suspended and revested jurisdiction to allow the trial court to resolve the motion to vacate in a signed order. It did so, affirming its previous ruling and entering judgment pursuant to Rule 54(c), Ariz. R. Civ. P. We have jurisdiction pursuant to A.R.S. §§ 12-2101(A)(1), (5)(a) and 12-120.21(A)(1).

Attorney Fees

¶13 Claimants assert on appeal, as they did below, that they are entitled to recover attorney fees under A.R.S. § 12-2030, permitting fees to prevailing parties in mandamus actions; A.R.S. §§ 13-2314(A) and 13-2314.04, permitting recovery of fees by persons against whom racketeering claims were unsuccessfully brought by the state or a private party; and Rule 11, Ariz. R. Civ. P., as a sanction for the state's filing of pleadings "not grounded in fact or warranted by law," expansion of proceedings "unnecessarily and without justification," and failure to comply with court orders. Claimants contend the trial court abused its discretion by declining to award attorney fees under all grounds.

¶14 Attorney fee awards are generally reviewed for an abuse of discretion, but we review whether a fee statute applies de novo. *See Burke v. Ariz. State Ret. Sys.*, 206 Ariz. 269, ¶ 6, 77 P.3d 444, 447 (App. 2003). We will uphold the trial court's exercise of discretion if the record contains a reasonable basis for its denial of fees, *Kadish v. Ariz. State Land Dep't*, 177 Ariz. 322, 326, 868 P.2d 335, 339 (App. 1993), but a refusal to grant attorney fees where law mandates an award requires reversal, *see Janis v. Spelts*, 153 Ariz. 593, 598, 739 P.2d 814, 819 (App. 1987). We therefore consider Claimants' assertion that they are entitled to mandatory attorney fees pursuant to §§ 12-2030, 13-2314, 13-2314.04.

A.R.S. § 12-2030

¶15 Claimants sought an award of attorney fees under a mandamus theory pursuant to § 12-2030, which requires a court to grant "fees and other expenses" to a private party who "prevails by

an adjudication on the merits in a civil action brought by the party against the state . . . to compel a state officer . . . to perform an act imposed by law as a duty on the officer." § 12-2030(A). To be entitled to attorney fees under § 12-2030, "[p]laintiffs must establish that they (1) prevailed on the merits (2) in a civil action (3) filed against the State or a political subdivision of the State (4) to compel a State officer or any officer of any political subdivision to perform a duty imposed by law." *Bilke v. State*, 221 Ariz. 60, ¶ 7, 209 P.3d 1056, 1058 (App. 2009).

¶16 This forfeiture proceeding was a civil action initiated by the state; it was not an action "brought by [a] party against the state." § 12-2030(A); *see also In re $15,379 U.S. Currency*, 241 Ariz. 82, ¶ 24, 383 P.3d 1156, 1164 (App. 2016). Manhertz entered into this action as a claimant by filing a verified claim, and although Taylor had earlier filed a "judicial claim" seeking release of the currency and the truck, this document was filed in the wrong county before the state had initiated a forfeiture proceeding in Pinal County, when no legal duty existed to release the property from its seizure for forfeiture under § 13-4308(B). *See In re Approximately $50,000 U.S. Currency*, 196 Ariz. 626, ¶¶ 6-7, 10, 2 P.3d 1271, 1274-75 (App. 2000) (person with interest in property cannot compel forfeiture proceeding).

¶17 Because Claimants did not file an action "against the state, [or] any political subdivision of th[e] state," they have not established all the elements required under § 12-2030. The fact that they prevailed in the forfeiture proceeding did not transform the matter into a mandamus action. *See In re $15,379*, 241 Ariz. 82, ¶ 25, 383 P.3d at 1164; *see also Stagecoach Trails MHC, L.L.C. v. City of Benson*, 231 Ariz. 366, ¶ 21, 295 P.3d 943, 947 (2013).

Racketeering Statutes

¶18 Claimants also argue the trial court erred in not imposing sanctions under § 13-2314(A) and § 13-2314.04(A). Both statutes allow a "person against whom a racketeering claim has been asserted" who prevails on that claim to recover costs and reasonable

attorney fees. § 13-2314(A) (party who successfully defends against racketeering claim brought by state may be awarded fees and costs); § 13-2314.04(A) (successful defendant in private racketeering action may be awarded fees and costs).

¶19 Neither provision is applicable here because Claimants are not "person[s] against whom a racketeering claim ha[d] been asserted." Section 13-2314(A) does not apply because the state did not file actions against Claimants personally, *see Cross v. Office of Attorney Gen. of State of Ariz.*, 165 Ariz. 14, 19, 795 P.2d 1297, 1302 (App. 1990) (§ 13-2314(A) provides in personam cause of action against racketeering and does not apply to *in rem* proceedings), nor is § 13-2314.04 applicable because no one has asserted a private racketeering action against Claimants, *see Hannosh v. Segal*, 235 Ariz. 108, ¶ 7, 328 P.3d 1049, 1052 (App. 2014) (§ 13-2314.04 allows private cause of action for racketeering). The trial court did not err in denying attorney fees based on §§ 13-2314 and 13-2314.04.

¶20 Having determined that the statutes Claimants rely upon in support of their claim for attorney fees are inapplicable, we conclude the trial court did not err in denying Claimants' fee requests. Moreover, because we will affirm a trial court's ruling if legally correct for any reason, we need not resolve whether the trial court's reasoning articulated in support of its denial of fees was correct. *See Rasor v. Nw. Hosp., LLC*, 239 Ariz. 546, ¶ 34, 373 P.3d 563, 574 (App. 2016) (we will affirm trial court's ruling if legally correct for any reason); *see also City of Phoenix v. Geyler*, 144 Ariz. 323, 330, 697 P.2d 1073, 1080 (1985) (appellate court will affirm judgment even if trial court has reached the right result for the wrong reason). Accordingly, we affirm the court's denial of attorney fees.

Rule 11 Sanctions

¶21 Claimants lastly contend they were entitled to attorney fees and costs as a sanction against the state pursuant to Rule 11(a), Ariz. R. Civ. P. Whether that rule applies is a question of law that we review de novo, *see Burke*, 206 Ariz. 269, ¶ 6, 77 P.3d at 447.

¶22 Rule 11(a), Ariz. R. Civ. P. requires attorneys to make reasonable inquiry before signing a "pleading, motion, or other paper." By signing, the attorney certifies that the matter is "well grounded in fact" and "warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law," and that it was "not interposed for any improper purpose." Ariz. R. Civ. P. 11(a); *see also State v. Shipman*, 208 Ariz. 474, ¶ 3, 94 P.3d 1169, 1170 (App. 2004). If the rule is violated, the court "shall impose upon the person who signed it, a represented party, or both, an appropriate sanction," which may include reasonable attorney fees. Ariz. R. Civ. P. 11(a). The trial court has discretion in fashioning an appropriate sanction. *See James, Cooke & Hobson, Inc. v. Lake Havasu Plumbing & Fire Prot.*, 177 Ariz. 316, 319, 868 P.2d 329, 332 (App. 1993).

¶23 Here, the state filed its notice of pending uncontested forfeiture on June 12, 2013, pursuant to A.R.S. §§ 13-4309(1) and 13-4307, a year after seizing the cash, truck, and gun, and nearly a year after Taylor had sent it a copy of his claim, notwithstanding that it had been misfiled. Manhertz filed a timely verified claim to the truck on June 28, 2013. *See* § 13-4309(2) (owner or interest holder may elect to file claim with the court within thirty days after notice). On September 13, three months after filing its initial notice, the state filed an "Application for Order on Forfeiture and Allocation of Property," in which it represented that "no further notice is required under law to any other person" and that no "Claim [had] been filed with the Clerk of the Court."

¶24 The state's representations that no claims had been filed and that no further notice was required were both false. As we noted in our decision in the previous special action proceeding, "Taylor's actions to make his interest in the currency known to the state is well-documented." *Taylor*, No. 2 CA-SA 2014-0034, ¶ 16. He mailed a copy of his notice of claim to state attorney Cameron's office and spoke directly with Cameron's assistant, who took his information and informed him there was no case number or knowledge of his property. In addition, after speaking with the assistant, Taylor again sent a copy of his claim to Cameron's office,

this time by fax. *Id.* Moreover, it is undisputed he was the listed owner of the gun per Bureau of Alcohol, Tobacco, Firearms and Explosives records. Taylor's association with the currency and the gun was readily ascertainable by the state within the meaning of A.R.S. § 13-4301(6), and he was entitled to receive notice of the pending forfeiture. *Id.*; *see* § 13-4309(1) (attorney for state in uncontested civil forfeiture action must provide notice within thirty days after seizure for forfeiture "to all persons known to have an interest"); *see also* § 13-4301(6) ("[p]erson known to have an interest" includes a person whose "interest can be readily ascertained at the time of the commencement of the forfeiture action"). Additionally, as noted above, Manhertz filed a timely verified claim to the truck with the Pinal County clerk of the court. *See* § 13-4309(2).

¶25 Cameron nevertheless proceeded to file and sign an application for order of forfeiture declaring that no claims had been filed, that no further notice was required, and that the state would proceed with an uncontested forfeiture pursuant to A.R.S. § 13-4314. On this record, it is clear that Cameron failed to conduct any reasonable inquiry into whether the application for uncontested forfeiture was grounded in fact or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. *See* Ariz. R. Civ. P. 11(a). And because a "reasonably prudent" attorney would not have filed the application for uncontested forfeiture if faced with similar factual circumstances, Cameron fell below objective standards of professional competence. *Smith v. Lucia*, 173 Ariz. 290, 297, 842 P.2d 1303, 1310 (App. 1992), *quoting Carroll v. Kalar*, 112 Ariz. 595, 596, 545 P.2d 411, 412 (1976); *see also Villa De Jardines Ass'n v. Flagstar Bank, FSB*, 227 Ariz. 91, ¶¶ 13-14, 253 P.3d 288, 293 (App. 2011) (compliance with Rule 11 measured by objective standard of reasonableness).

¶26 Further compounding the state's obduracy, Cameron repeatedly ignored court orders to file responses to motions and to return property to Claimants, which resulted in two separate courts, on separate occasions, contemplating contempt orders. During the special action proceeding, this court scheduled a contempt hearing after the state ignored our order to file a response to Claimants'

petition. And on remand, the trial court ultimately issued an order to show cause to compel the state to comply with its order to release the currency, which the state apparently did not do until just before the hearing. Moreover, the state repeatedly and continuously filed untimely responses to motions and often failed to file responses at all, which caused substantial delay in the proceedings. *Cf.* Ariz. R. Civ. P. 11(a) (rule violated by filing motions to cause unnecessary delay or needless increase in cost of litigation).

¶27 The state, represented by Cameron, unquestionably engaged in sanctionable conduct by filing its application for uncontested forfeiture when it was readily apparent that Manhertz had filed a timely claim and Taylor had not been served notice of the forfeiture proceedings. The trial court, however, did not address Claimants' request for Rule 11 sanctions in its ruling denying attorney fees, costs, and prejudgment interest. "If the court determined no violation of the rule occurred, this would represent an error of law and an abuse of the court's discretion." *In re $15,379*, 241 Ariz. 82, ¶ 22, 383 P.3d at 1164. Accordingly, we remand this issue for the trial court to impose an appropriate sanction. *See Villa De Jardines Ass'n*, 227 Ariz. 91, ¶ 13, 253 P.3d at 293 (court required to impose appropriate sanctions for Rule 11 violation); *see also Corbett v. ManorCare of Am., Inc.*, 213 Ariz. 618, ¶ 42, 146 P.3d 1027, 1037 (App. 2006) (Rule 11 sanctions may include award of expenses and attorney fees).[3]

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[3]The conduct of both Cameron and Countryman during these proceedings has raised questions regarding their adherence to the Arizona Rules of Professional Conduct. Cameron misrepresented in his application for forfeiture that all required notice had been provided and that no claims had been filed, as well as other dubious conduct detailed above. *See* Ariz. R. Sup. Ct., ER 3.3. And Countryman, on appeal, has cast significant aspersions against the trial court questioning its integrity, including the allegation that the court "was complicit in Cameron's continued perpetration of fraud," and that the court delayed proceedings "to punish [Claimants] for filing the special action." *See* Ariz. R. Sup. Ct., ER 8.2. We find nothing in the record suggesting judicial misconduct and therefore

Prejudgment Interest

¶28 Taylor next contends he should have been awarded prejudgment interest on the seized currency. Arguing that this is a "'non-forfeiture' civil proceeding," he claims he is entitled to prejudgment interest pursuant to A.R.S. § 12-823, the statute governing actions against public entities. Entitlement to prejudgment interest is an issue of law that we review de novo. *John C. Lincoln Hosp. & Health Corp. v. Maricopa Cty.*, 208 Ariz 532, ¶ 39, 96 P.3d 530, 542 (App. 2004).

¶29 Section 12-823 generally authorizes a plaintiff who obtains a judgment against the state to recover interest "from the time the obligation accrued." *In re $26,980 U.S. Currency*, 199 Ariz. 291, ¶ 25, 18 P.3d 85, 92 (App. 2000). But § 12-823 is inapplicable here because Taylor was a claimant in a forfeiture action, not a plaintiff in a civil action who had previously submitted a claim against the state. *See id.* Taylor provides no other authority to support his claim that he is entitled to prejudgment interest, therefore we will not disturb the court's decision declining such an award.

Costs

¶30 Finally, Claimants assert they were entitled to recover their costs in the trial court pursuant to A.R.S. § 12-341 "as successful part[ies] in a civil matter." We agree. An award of costs to the successful party is mandatory and not subject to the trial court's discretion. § 12-341; *see also Roddy v. County of Maricopa*, 184 Ariz. 625, 627, 911 P.2d 631, 633 (App. 1996).

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forward this decision to the State Bar of Arizona for any appropriate investigation and proceedings concerning possible violations of the rules of professional conduct.

Disposition

¶31 For the foregoing reasons, we vacate the trial court's order denying Claimants' request for costs and remand the case for an award of their costs and the imposition of an appropriate sanction against the state consistent with this decision. In all other respects, the trial court's judgment is affirmed. Claimants' request for attorney fees on appeal pursuant to Rule 21, ARCAP and Rule 11, Ariz. R. Civ. P. is denied, Rule 11 not being a proper basis for an award of fees on appeal. *Villa De Jardines Ass'n*, 227 Ariz. 91, n.10, 253 P.3d at 296 n.10. As the successful parties on appeal, however, Claimants are awarded their appellate costs pursuant to § 12-341, subject to compliance with Rule 21, ARCAP.