

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

CITY OF TUCSON,
AN ARIZONA MUNICIPAL CORPORATION,
Plaintiff/Appellee,

v.

NOAH SENSIBAR,
Defendant/Appellant.

No. 2 CA-CV 2016-0051
Filed October 11, 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NOT FOR PUBLICATION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 Pima County
No. C20154817
The Honorable Jeffrey T. Bergin, Judge

APPEAL DISMISSED

COUNSEL

Michael G. Rankin, City Attorney
Alan L. Merritt, Deputy City Attorney
By Roi I. Lusk, Senior Assistant Prosecuting Attorney, Tucson
Counsel for Plaintiff/Appellee

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Hecker PLLC, Tucson
By T. William Pew III
Counsel for Defendant/Appellant

MEMORANDUM DECISION

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

STARING, Judge:

¶1 Noah Sensibar appeals the superior court’s ruling affirming the Tucson city court’s finding that he was responsible for multiple violations of the Neighborhood Preservation Ordinance of the Tucson Code. *See* T.C. §§ 16-1 through 16-83. We dismiss Sensibar’s appeal for the reasons that follow.

Factual and Procedural Background

¶2 In December 2014, the City of Tucson issued a notice of violation to Sensibar for unsafe conditions and for conducting remodeling work without required permits at a Tucson property owned by Blue Jay Real Estate, LLC. The city court conducted a civil infraction hearing in May 2015 and heard evidence about five alleged code violations at the property. The court also heard evidence that Sensibar, the managing partner of the LLC, was “the person in charge” of the property. The court found Sensibar responsible for all five violations. *See* T.C. §§ 16-3 (defining “responsible party”), 16-48 (providing penalties against “owner or responsible party”). The superior court affirmed the city court’s decision on appeal, and Sensibar’s appeal to this court followed.

Appellate Jurisdiction

¶3 We do not address the merits of an appeal over which we lack jurisdiction. *See State v. Bejarano*, 219 Ariz. 518, ¶ 2, 200 P.3d 1015, 1016 (App. 2008). And we “have an independent duty to

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confirm our jurisdiction over the appeal before us.” *Anderson v. Valley Union High Sch., Dist. No. 22*, 229 Ariz. 52, ¶ 2, 270 P.3d 879, 881 (App. 2012).

¶4 The exercise of our jurisdiction requires the timely filing of a notice of appeal. *Korens v. Ariz. Dep’t of Econ. Sec.*, 129 Ariz. 426, 427, 631 P.2d 581, 582 (App. 1981). Sensibar’s deadline to file a notice of appeal was February 4, 2016, thirty days after the superior court entered its ruling on the appeal from city court. *See* Ariz. R. Civ. App. P. 9(a). Because he did not file the notice of appeal until February 8, his appeal was untimely. Further, a motion for rehearing is not a time-extending motion under Rule 9(e), Ariz. R. Civ. App. P.¹ Thus, Sensibar’s motion for rehearing did not extend his deadline to file a notice of appeal. We therefore lack jurisdiction.² *See Korens*, 129 Ariz. at 427, 631 P.2d at 582.

Special Action Jurisdiction

¶5 Sensibar also requests we exercise special action jurisdiction in order to consider his arguments. We have broad

¹Neither is the denial of a motion for rehearing a separately appealable order. A.R.S. § 12-2101; *Arvizu v. Fernandez*, 183 Ariz. 224, 226-27, 902 P.2d 830, 832-33 (App. 1995) (appeal from special order after judgment must raise issues different from direct appeal from judgment and order must affect judgment or its execution).

²Sensibar claims T.C. § 16-48 conflicts with state law shielding LLC agents and members from liability. Our jurisdiction in a case originating in a municipal court extends only to an “action involv[ing] the validity of a . . . municipal fine or statute.” A.R.S. § 22-375(A). We are “limited to reviewing the facial validity of” the law or action being challenged; our jurisdiction does not encompass as-applied challenges. *State v. Burke*, 238 Ariz. 322, ¶ 3, 360 P.3d 118, 121 (App. 2015); *Hernandez v. Lynch*, 216 Ariz. 469, ¶ 8, 167 P.3d 1264, 1267 (App. 2007) (review of facial validity does not consider whether application violates particular individual’s rights). The untimeliness of Sensibar’s appeal makes it unnecessary to determine whether the substance of his challenge would permit us to exercise jurisdiction.

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discretion to exercise special action jurisdiction under A.R.S. § 12-120.21(A)(4) “even when the parties have not requested” it. *Phillips v. Garcia*, 237 Ariz. 407, ¶ 6, 351 P.3d 1105, 1108 (App. 2015). This discretion, however, should be reserved for “extraordinary circumstances,” including issues for which there is inadequate published authority and “recurring legal questions of statewide importance.” *State ex rel. Romley v. Fields*, 201 Ariz. 321, ¶ 4, 35 P.3d 82, 84 (App. 2001). We do not conclude this matter involves such circumstances, and we therefore decline to exercise special action jurisdiction.

Disposition

¶6 For the foregoing reasons, we dismiss Sensibar’s appeal.