

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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MAYRA LAU AND SAI C. LAU,  
HUSBAND AND WIFE,  
*Plaintiffs/Counterdefendants/Appellees,*

*v.*

CAMPBELL AVENUE SHOPPING CENTER, LLC,  
A FOREIGN LIMITED LIABILITY COMPANY,  
*Defendant/Counterclaimant/Appellant.*

No. 2 CA-CV 2016-0065  
Filed August 25, 2016

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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NOT FOR PUBLICATION  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).*

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Appeal from the Superior Court in Pima County  
No. C20130102  
The Honorable Jeffrey T. Bergin, Judge

**VACATED**

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COUNSEL

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By Stephen M. Weeks  
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**MEMORANDUM DECISION**

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

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H O W A R D, Presiding Judge:

¶1 Campbell Avenue Shopping Center (CASC) appeals from the trial court’s grant of Mayra and Sai Lau’s Rule 60(c)(4), Ariz. R. Civ. P., motion for relief from a void judgment. It contends the court had jurisdiction to enter the underlying judgment and erroneously concluded it had acted outside its jurisdiction in doing so. Because the court’s initial entry of judgment was voidable, and not void, we vacate the court’s grant of the motion for relief, and reinstate the original judgment.

**Factual and Procedural Background**

¶2 The following facts are not in dispute. In October 2015, the trial court entered a directed verdict against the Laus in their lawsuit against CASC. Approximately two weeks later, before a final judgment was signed, on November 13, the Laus filed an affidavit pursuant to A.R.S. § 12-409, requesting a change of judge on the grounds of bias. On December 4, before a ruling had been made on the change-of-judge issue, the challenged judge entered a final judgment in the case. Thirty-one days after the final judgment was entered, the Laus filed a Rule 60(c)(4) motion to set aside the judgment, contending the court lacked jurisdiction to enter it pursuant to Rule 42(f)(3)(A), Ariz. R. Civ. P. On February 1, the presiding judge denied the Laus’ motion for a change of judge. On February 9, the challenged judge granted the Laus’ motion for relief after concluding the December 4 judgment was “void” because he had lacked jurisdiction under Rule 42(f)(3)(A).

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¶3 CASC appealed that ruling. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(2).

**Discussion**

¶4 CASC argues the trial court abused its discretion by granting the Laus' Rule 60(c)(4) motion because the December 4 judgment, entered in violation of Rule 42(f)(3)(A), was voidable, but not void for lack of jurisdiction. We review a court's Rule 60(c) ruling for an abuse of discretion. *Skydive Ariz., Inc. v. Hogue*, 238 Ariz. 357, ¶ 24, 360 P.3d 153, 160 (App. 2015). However, we review de novo a court's conclusion regarding jurisdictional issues. *Mitchell v. Gamble*, 207 Ariz. 364, ¶ 6, 86 P.3d 944, 947 (App. 2004). A court abuses its discretion if it commits an error of law. *Hurd v. Hurd*, 223 Ariz. 48, ¶ 19, 219 P.3d 258, 262 (App. 2009).

¶5 Rule 60(c)(4) allows a party to seek relief from a final judgment if it is "void." "A judgment or order is 'void' if the court entering it lacked jurisdiction: (1) over the subject matter, (2) over the person involved, or (3) to render the particular judgment or order entered." *Martin v. Martin*, 182 Ariz. 11, 15, 893 P.2d 11, 15 (App. 1994). When faced with a void judgment, a trial court has no discretion and must vacate it. *Id.* at 14, 893 P.2d at 14.

¶6 Conversely, a judgment is voidable, or erroneous, when the issuing court has jurisdiction but the order is "subject to reversal on timely direct appeal." *Cockerham v. Zikratch*, 127 Ariz. 230, 234, 619 P.2d 739, 743 (1980). A voidable judgment "is binding and enforceable and has all the ordinary attributes of a valid judgment until it is reversed or vacated." *State v. Cramer*, 192 Ariz. 150, ¶ 16, 962 P.2d 224, 227 (App. 1998).

¶7 The Laus do not dispute CASC's contention that the trial court had jurisdiction over both the subject matter and the parties. See Ariz. Const. art. 6, § 14(1); A.R.S. § 12-123. They instead contend the December 4 judgment is void because the court lacked "jurisdiction to render the particular judgment, or . . . acted in excess of its jurisdiction." *Bill By & Through Bill v. Gossett*, 132 Ariz. 518, 520, 647 P.2d 649, 651 (App. 1982), *disapproved of on other grounds by Hall v. Lalli*, 194 Ariz. 54, ¶ 26, 977 P.2d 776, 183-84 (1999). They

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reason that under Rule 42(f)(3)(A) the trial court was prohibited from entering the judgment, and the court thus acted in excess of its jurisdiction.

¶8 Rule 42(f)(3)(A) provides that, upon the filing of a § 12-409(A) affidavit for change of judge, the challenged judge “shall proceed no further in the action except to make such temporary orders as may be absolutely necessary to prevent immediate and irreparable injury, loss or damage from occurring.” However, a court-made rule of procedure cannot limit a court’s constitutionally granted jurisdiction. *Taliaferro v. Taliaferro*, 186 Ariz. 221, 223, 921 P.2d 21, 23 (1996) (“This court could not, under its rulemaking power, detract from [a] constitutional grant of jurisdiction.”); *see also Collins v. Superior Court*, 48 Ariz. 381, 394, 62 P.2d 131, 137 (1936) (court-made rule cannot affect court’s jurisdiction “to render the particular judgment in any of the cases”).

¶9 Additionally, Rule 42(f) does not refer to removing jurisdiction but rather provides the challenged judge may take further action in the case. It acknowledges that judge may “make such temporary orders as may be absolutely necessary to prevent immediate and irreparable injury, loss or damage from occurring before the action can be transferred to another judge.” *Id.* And “if the named judge is the only judge in the county where the action is pending, that judge shall also perform the functions of the presiding judge.” *Id.*

¶10 In regard to Rule 42(f)’s provision allowing a peremptory change of judge as of right, we have found the failure to honor the rule is erroneous, but it does not divest the trial court of jurisdiction “to hear and determine the proceeding before it.” *See Taliaferro*, 186 Ariz. at 223, 921 P.2d at 23. Consequently, after the § 12-409(A) affidavit was filed and before it had been ruled upon, the trial court in this case was prohibited, pursuant to Rule 42(f)(3)(A), from entering the final judgment, but it nonetheless had jurisdiction to do so. *See Cockerham*, 127 Ariz. at 235, 619 P.2d at 744; *see also* Ariz. Const. art. 6, § 14(1); A.R.S. § 12-123(A).

¶11 We acknowledge that the distinction between judgments that are void and those that are erroneous, or voidable,

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has often become blurred in our case law. *See Cockerham*, 127 Ariz. at 234, 619 P.2d at 743 (“Confusion between void and merely erroneous judgments may stem from courts’ often loose usage of the word ‘void.’”). “There are many cases in the reports where courts have used the word ‘void,’ where a close analysis of the facts shows that ‘voidable’ is what is really meant, and there have been instances where appellate tribunals have used the word ‘jurisdiction’ when, in reality, they meant, not the *power* to perform a certain act, but the *performing of it when it was prohibited*, a very different thing.” *Collins*, 48 Ariz. at 392-93, 62 P.2d at 137. But “our imprecise use of language cannot detract from the constitutional grant of jurisdiction.” *Marvin Johnson, P.C. v. Myers*, 184 Ariz. 98, 102, 907 P.2d 67, 71 (1995).

¶12 The Laus have not cited any statutory or constitutional provision which deprived the trial court of its jurisdiction once the affidavit was filed. None of the cases we have found in which the lower court was determined to have exceeded its jurisdiction to issue a particular order have been based solely on a violation of Rule 42 or any other rule of procedure. *See, e.g., Ariz. Dep’t of Econ. Sec. v. Stanford*, 234 Ariz. 477, ¶ 13, 323 P.3d 760, 763 (App. 2014) (juvenile court’s sua sponte motion to establish permanent guardianship in excess of statutorily defined jurisdiction); *Thomas v. Thomas*, 220 Ariz. 290, ¶¶ 7-8, 10, 17, 205 P.3d 1137, 1139-41 (App. 2009) (trial court lacked jurisdiction under A.R.S. § 25-318(A) to enter order in post-decree dissolution proceeding “regarding community property intentionally omitted from a dissolution decree by both parties and transmuted by law to separate property”); *Michael M. v. Ariz. Dep’t of Econ. Sec.*, 217 Ariz. 230, ¶ 12, 172 P.3d 418, 421 (App. 2007) (“Although A.R.S. § 8-202(G) . . . gives the juvenile court jurisdiction over a child, it does not give the court jurisdiction over protective orders relating to that child.”); *Steiner v. Steiner*, 179 Ariz. 606, 609, 880 P.2d 1152, 1155 (App. 1994) (family court’s statutory grant of jurisdiction over parties’ minor child did not authorize court to award wife arrearages based on post-majority child support agreement). Accordingly, because the final judgment in this case was voidable, but not void, the court abused its discretion by setting it aside. *See Cockerham*, 127 Ariz. at 235, 619 P.2d at 744.

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**Attorney Fees and Costs**

¶13 The Laus and CASC have both requested their attorney fees and costs on appeal pursuant to A.R.S. § 12-341.01(A). In our discretion, we grant CASC's request upon its compliance with Rule 21, Ariz. R. Civ. App. P.

**Disposition**

¶14 For the foregoing reasons, we vacate the trial court's February 9, 2016 order granting the Laus' Rule 60(c)(4) motion.