IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

RALPH S. DIPIERO,
Plaintiff/Appellee,

v.

SHAWNTEIA GASTON,
Defendant/Appellant.

No. 2 CA-CV 2023-0155
Filed April 18, 2024

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NOT FOR PUBLICATION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 Maricopa County
No. CV2023006707
The Honorable Mary Collins Cronin, Judge Pro Tempore

AFFIRMED

COUNSEL

Sanford J. Germaine P.C., Phoenix
By Sanford J. Germaine
Counsel for Plaintiff/Appellee

Shawnteia Gaston, Phoenix
In Propria Persona

MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Eppich and Judge Gard concurred.

V Á S Q U E Z, Chief Judge:

¶1 In this forcible detainer action involving a commercial lease, Shawnteia Gaston appeals from the superior court's judgment awarding her landlord, Ralph Dipiero, possession of the premises, rent accruing through the entry of judgment, costs, and attorney fees. She asserts a number of errors involving attorney and judicial misconduct, the amount of the judgment against her, unlawful eviction, landlord retaliation, failure to state a claim upon which relief could be granted, breach of lease, and breach of the implied covenant of quiet enjoyment. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the superior court's judgment. *Sw. Soil Remediation, Inc. v. City of Tucson*, 201 Ariz. 438, ¶ 2 (App. 2001). In 2019, Gaston and Dipiero entered into a commercial lease agreement. Although the lease expired on December 10, 2022, Gaston continued occupying the premises. On March 28, 2023, Dipiero provided Gaston with written notice of termination of the lease and demanded that she vacate the premises by the end of April 2023. On May 1, Dipiero took possession of the premises by locking out Gaston. He posted a notice of reentry, which provided that any attempt by Gaston to reenter the property without the "express consent" of Dipiero would be deemed "an intentional and malicious trespass."

¶3 The next day, after learning Gaston had reentered the property, Dipiero filed an action for forcible detainer. Gaston filed an answer on May 12. On May 15, believing Gaston had vacated the premises, Dipiero filed a notice of voluntary dismissal. However, that same day, Gaston reentered the premises. She filed an objection to the dismissal, claiming she "has rights to that property." The superior court held an initial appearance hearing on May 16. During the hearing, Gaston admitted she had not surrendered possession of the premises despite receiving the termination notice. The court entered judgment in favor of Dipiero,

awarding him immediate possession of the premises, unpaid rent through the date of judgment, attorney fees, and costs. Gaston appealed, and we have jurisdiction under A.R.S. §§ 12-2101(A)(1) and 12-1182(A).[1]

Discussion

¶4 Gaston raises forty-eight issues that she argues require vacating the superior court's judgment against her. A forcible detainer action is a statutory proceeding created to provide a summary, speedy remedy for the person entitled to possession of certain premises to obtain actual possession. *Heywood v. Ziol*, 91 Ariz. 309, 311 (1962). These actions are limited in scope, focusing solely on the right to actual possession, A.R.S. § 12-1177(A), rather than determining the validity of a lease. *See United Effort Plan Tr. v. Holm*, 209 Ariz. 347, ¶ 21 (App. 2004). A person is guilty of forcible detainer if the person "[w]ilfully and without force" retains possession of real property after the lease terminates and the person receives a written demand for possession "by the person entitled to such possession." A.R.S. § 12-1171(3); *see also* A.R.S. § 12-1173(1).

¶5 Many of Gaston's arguments, both on appeal and below, are outside the scope of a forcible detainer action. We note that although Gaston is self-represented, she is held to the same standard as attorneys and we may not afford her any special leniency. *See Flynn v. Campbell*, 243 Ariz. 76, ¶ 24 (2017). We therefore decline to address these arguments and focus our discussion on the few arguments within the scope of matters properly raised in a forceable detainer action.[2]

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[1]The superior court's initial judgment did not state that "no further matters remain pending" as required by Rule 54(c), Ariz. R. Civ. P. Accordingly, we stayed the appeal for the superior court to "enter a judgment correctly certified as final . . . by including the precise finality language the rule requires." After a corrected judgment was filed, we reinstated the appeal.

[2]Accordingly, we do not address Gaston's arguments concerning attorney misconduct, breach of lease, unlawful eviction, and landlord retaliation because they are outside the scope of a forcible detainer action. *See* § 12-1177(A); *United Effort Plan Tr.*, 209 Ariz. 347, ¶ 21. Additionally, her arguments concerning judicial misconduct, breach of the implied covenant of quiet enjoyment, and failure to state a claim were not raised

¶6 Gaston argues, as she did below, that she was entitled to possession of the property because she paid the rent under an active lease. She claims the lease agreement, which started in December 2019, was for a term of five years. However, the lease provides that it expired in December 2022. Although Gaston asserts "[a]ll parties were in agreement that [she] would have a [five] year lease agreement if she purchased the business," nothing in the record supports this. She seems to suggest that the February 2022 contract for sale of the business confirms this agreement, in which it states "the landlord is in agreement to renew the lease for at least a five year term[]." However, she fails to recognize that Dipiero was not a party to this contract. Regardless, whether the sale contract created a lease agreement for a five-year term relates to the existence and validity of such lease, which is not appropriate in a forcible detainer action; it must be litigated separately. *See* § 12-1177(A); *Mason v. Cansino*, 195 Ariz. 465, ¶ 8 (App. 1999).

¶7 Gaston also maintains she and Dipiero had a "verbal and contract agreement" that the lease would be for a five-year term. To the extent this is true, Gaston's decision to forego a trial on the merits of possession forecloses this argument. Several times during the initial appearance hearing, the superior court reminded Gaston it was not an evidentiary hearing and asked her whether she wanted to proceed to trial. She declined. The court's judgment was therefore proper. *See* RPEA 11(e) (in contested detainer matters, when no factual issues exist for jury to determine, "matter shall proceed to a trial by the judge alone regarding any legal issues or may [be] disposed of by motion or in accordance with these rules"); *cf. Montano v. Luff*, 250 Ariz. 401, ¶ 16 (App. 2020) (right to trial in forcible detainer actions not violated when facts are not contested).

¶8 Here, the lease included an option for Gaston to renew the three-year lease for two additional years "if landlord and tenant agree[d]." Nothing in the record before us establishes that Gaston exercised this option. As such, when the stated lease term ended, Gaston became a month-to-month tenant, providing Dipiero the right to terminate the lease after providing Gaston with one month's notice. On March 28, 2023, Dipiero provided Gaston with a notice of expiration/termination of the lease and demanded that she vacate the premises by the end of April 2023. Under the lease, when the lease term expired or terminated, the monthly

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below and are thus waived. *See BMO Harris Bank N.A. v. Espiau*, 251 Ariz. 588, ¶ 25 (App. 2021) (arguments not raised below are waived on appeal).

rent increased to $2,800 while Gaston continued to occupy the premises. Gaston remained in possession of the premises until she returned the keys to Dipiero on May 16, 2023. Therefore, Gaston was guilty of forcible detainer because she "[w]ilfully and without force" remained in possession of the premises after Dipiero terminated the lease and demanded possession of the premises in writing. § 12-1171(3); *see also* § 12-1173(1) ("There is a forcible detainer if . . . a tenant from month to month . . . whose tenancy has been terminated retains possession after his tenancy has been terminated or after he receives written demand of possession by the landlord.").

¶9 The superior court thus did not abuse its discretion by awarding immediate possession of the premises to Dipiero in addition to rent accruing through the date of the judgment—after accounting for offsets and credits due to Gaston—reasonable attorney fees, and costs. Because Gaston did not meaningfully challenge Dipiero's right to possess the premises and the record supports the court's judgment, there is no error. *See Pac. Fire Rating Bureau v. Ins. Co. of N. Am.*, 83 Ariz. 369, 376 (1958) (judgment on pleadings in favor of plaintiff proper when allegations in complaint "set forth a claim for relief and the answer fails to assert a legally sufficient defense").

¶10 To the extent we understand her argument, Gaston also challenges the accuracy and propriety of the amount of the judgment entered against her.[3] The superior court awarded Dipiero judgment against

[3]Gaston's challenge to the amount of the judgment against her is presented primarily in her claims of judicial and attorney misconduct. As previously noted, we decline to address either claim because they are beyond the scope of a forcible detainer action, but there are additional reasons for not addressing them. For the first time on appeal, she alleges the superior court committed judicial misconduct by "sign[ing] a judgment" that was "in opposition [to its] orders" at the initial appearance hearing. This argument is waived because Gaston fails to cite to any legal authority supporting it. *See* Ariz. R. Civ. App. P. 13(a)(7) (argument section must contain "citation to supporting legal authority"); *Ramos v. Nichols*, 252 Ariz. 519, ¶ 8 (App. 2022) (arguments not supported by adequate explanation or authority are waived). She also contends Dipiero's counsel committed misconduct by charging "unreasonable and unjustifiable" fees. This argument was raised below in an unsuccessful motion for reconsideration. On appeal, Gaston does not develop any meaningful argument but merely cites to sections of the Arizona Rules of Professional

Gaston "for rent due through the date of judgment in the amount of $170.00 calculated as follows ($1,400 (i.e. 50% of $2,800.00 Holdover Rent May), less credit of $1,230.00 for return of the $1,000.00 security deposit and the $230.00 overpayment alleged in [Gaston's] Response." The court also awarded Dipiero his "taxable costs in the amount of $426.00, and reasonable attorneys' fees in the amount of $7,965.00." Under A.R.S. § 12-1178(A), a court must, among other things, enter judgment against a defendant guilty of forcible detainer "for all charges stated in the rental agreement and for damages, attorney fees, court and other costs and, at the plaintiff's option, all rent found to be due and unpaid through the periodic rental period." Gaston's lease expressly states that "complete legal costs incurred" and unpaid rent "up to the time of reentry" are recoverable in an action brought "as a result of unlawful detainer." The court properly did so in this case.

¶11 Gaston argues the judgment included "unjustifiable attorney fees . . . and force[d her] to pay for two days she was illegally locked out." Citing A.R.S. § 12-349(C), Gaston maintains, as she did below, that attorney fees and costs were "not legally justifiable" because (1) the complaint was filed "solely for harassment" because it states "the rent was not paid when [Dipiero's attorney] knew that the rent was paid before he filed" it; and (2) there were "no legal grounds" for Dipiero to file the notice of voluntary dismissal after Gaston had filed her answer.

¶12 Section 12-349(C) provides, "Attorney fees shall not be assessed if after filing an action a voluntary dismissal is filed for any claim or defense within a reasonable time after the attorney or party filing the dismissal knew or reasonably should have known that the claim or defense was without substantial justification." Gaston cites Rule 41, Ariz. R. Civ. P., as support for her claim that Dipiero "did not have legal grounds to file [the] complaint." As relevant here, Rule 41 permits a plaintiff to dismiss an action by filing a notice of dismissal before the defendant files an answer. This rule also provides that a defendant can move to dismiss an action "if the plaintiff fails to . . . comply with these rules." Ariz. R. Civ. P. 41(b). Gaston contends the attorney fees related to Dipiero's filing of the notice of

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Conduct to support her conclusory statements that the fees were improper and amounted to misconduct. Therefore, this argument is also waived. *See Boswell v. Fintelmann*, 242 Ariz. 52, n.3 (App. 2017) (appellant who "fails to develop and support his conclusory arguments . . . waives them").

dismissal were "unreasonable" and that she could have moved to dismiss the action because Dipiero did not comply with Rule 41.

¶13 Rule 41, however, does not apply in forcible detainer actions. *See* RPEA 1. Notably, there is no equivalent to Rule 41 under the Rules of Procedure for Eviction Actions or the statutes governing forcible detainers. Although filing a notice of dismissal "pursuant to Rule 41(a)(1)(A)(i)" may have been improper, in cases where, as here, the plaintiff believes the defendant voluntarily gave up possession, the action should be dismissed because the right to possession is the only issue to be litigated in forcible detainer actions. Moreover, we disagree that Dipiero filed the complaint "without substantial justification" because Gaston was found guilty of forcible detainer. *See United Effort Plan Tr.*, 209 Ariz. 347, ¶ 21 (primary issue to be decided in a forcible detainer action is the right of actual possession and "only appropriate judgment is the dismissal of the complaint or the grant of possession to the plaintiff"). Accordingly, we cannot say the attorney fees award was unreasonable.

¶14 Gaston further maintains she is "responsible for paying [fifteen] days for May's rent," as stated in the minute entry from the initial appearance, at a rate of $1,400 for the month. There is some discrepancy whether Gaston was responsible for unpaid rent for "half of May," as the superior court stated during the initial appearance, "through May 15," as memorialized in the minute entry from that hearing, or through May 16, as indicated in the judgment. Regardless of the precise date, Gaston's argument overlooks that the judgment calculated the rent owed at "50%" of May's rent, alleviating any discrepancy, at a rate of $2,800 because she was a holdover tenant beginning May 1. In any event, we decline to address this issue further because Gaston has waived this argument. Outside of her conclusory statements, she has not provided any relevant legal support for her position or drafted an argument that would permit appellate review. *See* Ariz. R. Civ. App. P. 13(a)(7); *see also Polanco v. Indus. Comm'n*, 214 Ariz. 489, n.2 (App. 2007).

Attorney Fees on Appeal

¶15 Dipiero requests his attorney fees and costs under A.R.S. §§ 33-361(B) and 12-341.01. Section 33-1315(A)(2), A.R.S., provides that "a prevailing party in a contested forcible detainer action is eligible to be awarded attorney fees pursuant to § 12-341.01." In addition, under the terms of the lease agreement, Dipiero can recover his "complete legal costs incurred . . . as a result of unlawful detainer of the Premises." Awarding reasonable attorney fees pursuant to a lease agreement between the parties

is mandatory. *See Chase Bank of Ariz. v. Acosta*, 179 Ariz. 563, 575 (App. 1994) ("A contractual provision for attorneys' fees will be enforced according to its terms."). We therefore grant Dipiero's request for attorney fees under § 12-341.01 and the attorney fees provision in the lease agreement. And as the successful party on appeal, we award Dipiero his costs upon his compliance with Rule 21(b), Ariz. R. Civ. App. P. *See* A.R.S. § 12-341.

Disposition

¶16 For the foregoing reasons, we affirm the superior court's judgment.