FILED BY CLERK
MAY 31 2011
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE ROBERT EARL KRONCKE	)	2 CA-CV 2010-0213
	)	DEPARTMENT B
	)	
	)	MEMORANDUM DECISION
	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CV201002627

Honorable William J. O'Neil, Judge

AFFIRMED

Robert Earl Kroncke — Phoenix
In Propria Persona

E C K E R S T R O M, Judge.

¶1 Appellant Robert Kroncke is subject to an administrative order declaring him a vexatious litigant and limiting his ability to file lawsuits and certain motions. On appeal, he challenges the trial court's order denying his application for leave to file several motions in that court. Because the court did not abuse its discretion in denying Kroncke's application, we affirm the order.

Factual and Procedural Background

¶2 Kroncke was convicted in 1996 of multiple crimes for which he currently is serving consecutive terms of imprisonment totaling 326.5 years. During his incarceration, he has filed numerous lawsuits. Several of those actions, including the latest attempted one, have been against his former criminal defense attorneys, Raymond Vaca and Kenneth Countryman.

¶3 As a result of this voluminous litigation, the superior court in Pinal County, by Administrative Order 2010-0075, dated June 16, 2010, declared Kroncke a vexatious litigant and ruled that he would be required to obtain leave from the presiding judge before filing any more civil complaints or post-judgment motions.[1] Shortly thereafter, Kroncke attempted to file a complaint in that court without complying with the administrative order. On July 1, the court noted Kroncke had failed to file an application as required and further found it had "been given no good cause to consider the authorization of the suit."

¶4 Without first applying for leave to file, Kroncke moved for relief from the judgment on July 30, and the clerk of the Pinal County Superior Court accepted his motion. Then, on September 13, 2010, Kroncke filed an "application pursuant to court order seeking leave to file." In his application, he sought leave from the court to file the motion he had already filed on July 30 along with two additional, nearly identical

[1]A similar order is in place in Maricopa County.

motions for relief from the "judgment" pursuant to Rule 60(c), Ariz. R. Civ. P.[2] The court denied Kroncke's application in an order filed November 3, 2010, and in doing so, essentially ruled on the merits of his motions. It concluded that Kroncke had been properly served with the administrative order, and thus had received notice of the ability of the court to "limit[] his vexatious actions," and that he had not shown the attempted filing of his lawsuit against Vaca and Countryman was "anything less than vexatious."

¶5 On November 17, 2010, Kroncke appealed from (1) the November 3, 2010 order denying his motion for relief from the trial court's July 1 order "and denying the due process right to file documents and complaint"; (2) a July 1, 2010 order "invoking [the administrative order] to deny the due process right to file a complaint"; and (3) the June 16 administrative order declaring him a vexatious litigant.

Discussion

¶6 Preliminarily, we note that Kroncke has not timely appealed from the first two of the three orders at issue. Thus, we have no jurisdiction to review those orders. *See Edwards v. Young*, 107 Ariz. 283, 284, 486 P.2d 181, 182 (1971). Rule 9(a), Ariz. R. Civ. App. P., provides that "[a] notice of appeal . . . shall be filed with the clerk of the superior court not later than 30 days after the entry of the judgment from which the appeal is taken, unless a different time is provided by law." Kroncke did not file a notice of appeal from either the administrative order or the July 1 order within thirty days of

[2]He also refers to Rule 59(a), Ariz. R. Civ. P., once in his second motion but relies on Rule 60(c) throughout the rest of the motion, the substance of which is virtually identical to his other two Rule 60(c) motions. Kroncke's motion would have been untimely had it been a motion for new trial under Rule 59(a). *See* Ariz. R. Civ. P. 59(d). Thus, we treat the motions as having been made exclusively under Rule 60(c).

entry. And although Rule 9(b) allows for the time of appeal to be extended when certain post-judgment motions are filed, Kroncke did not file any time-extending motions.[3] *See* Ariz. R. Civ. App. P. 9(b).

¶7 Kroncke emphasizes he had no notice of the administrative order until July 1 and that he did not receive a copy of it "until at least July 5, 2010, or after." But even assuming he did not receive the order when it was first issued, his notice of appeal is still not timely as to the court's June and July rulings. *See* Ariz. R. Civ. App. P. 9(a) (lack of notice within twenty-one days of entry of judgment may be cause for court, upon motion, to extend time for appeal for fourteen days). The failure to appeal a dispositive order renders it a final judgment that "preclude[s] any other judge from reconsidering that order." *Short v. Dewald*, 226 Ariz. 88, ¶ 22, 244 P.3d 92, 97 (App. 2010); *accord Century Med. Plaza v. Goldstein*, 122 Ariz. 583, 584, 596 P.2d 721, 722 (App. 1979). Because Kroncke has timely appealed from only one of the three orders at issue—the November 3 order denying his application for leave to file Rule 60(c) motions in that court—the other orders are now final. To the extent Kroncke's arguments directly attack the administrative order or the court's July 1 order, we do not address them.

¶8 In essence, Kroncke contends he should have been able to file his current complaint despite the existence of the administrative order declaring him a vexatious litigant. However, a trial court has the inherent power to enter an injunction limiting the

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[3]Although the denial of a motion for new trial under Rule 59(a) is a ground for extending the time to file a notice of appeal from a judgment, *see* Ariz. R. Civ. App. P. 9(b)(4), as we previously noted, Kroncke's "motion for new trial" was not timely under Rule 59(d), nor did it substantively invoke the grounds for relief under Rule 59(a).

ability of a vexatious litigant to file additional lawsuits.[4] *See generally Procup v. Strickland*, 792 F.2d 1069, 1071-73 & 1072 n.5 (11th Cir. 1986). "[T]he proper standard of review for an act of the trial court in the exercise of its inherent authority is abuse of discretion." *Couch v. Private Diagnostic Clinic*, 554 S.E.2d 356, 361 (N.C. Ct. App. 2001); *see State v. Boykin*, 112 Ariz. 109, 114, 538 P.2d 383, 388 (1975) (finding trial court abused discretion in wrongly exercising inherent power). "A court's inherent authority is largely unwritten; appellate affirmation of an exercise of that authority ordinarily is grounded on trial court findings and conclusions which explain its actions." *Acker v. CSO Chevira*, 188 Ariz. 252, 255, 934 P.2d 816, 819 (App. 1997).

¶9 Although a copy of his latest complaint was not made part of our record,[5] Kroncke essentially contended below that he is entitled "to relief from his conviction" under 42 U.S.C. § 1983 because his counsel and the prosecutor conspired "to deprive [him] of due process by concealment of evidence." He also alleged this concealment

[4]We also emphasize that when an appellate court faces a vexatious litigant, it retains the inherent authority to dismiss the appeal as frivolous. *State v. Curtis*, 185 Ariz. 112, 114, 912 P.2d 1341, 1343 (App. 1995), *disapproved on other grounds by Stewart v. Smith*, 202 Ariz. 446, ¶ 10, 46 P.3d 1067, 1071 (2002). The exercise of this discretionary power may be especially appropriate when an appellate court is confronted with a vexatious litigant, numerous prior appeals on related issues, and complex jurisdictional questions that are potentially irresolvable on the record before it.

[5]It is generally the appellant's duty to ensure the record on appeal contains all necessary items for this court to decide the issues raised. *See Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995). Here, Kroncke attempted to supplement the trial court record but was unsuccessful. Now he argues it was "reversible error to deny the constitutional right to make a record for appeal." Even assuming such a constitutional right exists, we need not decide whether a violation has occurred because the record is sufficient to decide the issues before us. *See Creach v. Angulo*, 189 Ariz. 212, 214, 941 P.2d 224, 226 (1997) (error must be prejudicial to require reversal).

created a state law claim of breach of fiduciary duty, and Division One of this court authorized him to file such an action. In its November 3 order, the trial court found that nothing in the referenced memorandum decision operated as a mandate for Kroncke's current lawsuit and that his "repeated and vexatious actions against Mr. Vaca" had been definitively resolved by this court and were now precluded.

¶10 We find no abuse of discretion in the trial court's ruling. First, both the trial court and this court have previously concluded, based on a well-established rule of law, that Kroncke has no claim against his former attorneys pursuant to 42 U.S.C. § 1983 unless he can show his conviction has been overturned, which he cannot do. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). Second, as to his alleged breach of fiduciary duty claim, Kroncke has taken this court's language out of context. In the decision that Kroncke claims authorizes him to file suit, this court found Kroncke had an avenue other than special action by which he could seek disclosure from his former counsel. In the context of discussing special action jurisdiction, we stated, "For example, the party may seek an injunction through a civil suit against counsel for breach of fiduciary duty." *Kroncke v. State*, No. 1 CA-CV 08-0258, ¶ 23 (memorandum decision filed Feb. 17, 2009). This statement of possibility is far from a mandate authorizing Kroncke to file such a lawsuit.

¶11 In essence, Kroncke has not shown how his current attempt to sue Vaca and Countryman is anything but vexatious. Thus, he has not met his burden to show the trial court abused its discretion when, pursuant to the Pinal County administrative order, it denied his application to file documents. *See Gen. Elec. Capital Corp. v. Osterkamp*, 172

Ariz. 191, 193, 836 P.2d 404, 406 (App. 1992) (burden on appellant to overcome "initial presumption that a judgment is correct" and to show court abused discretion).

Disposition

¶12 The order is affirmed.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge